

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G600552

TAMMY L. MILLER, EMPLOYEE CLAIMANT

MHM SUPPORT SERVICES, EMPLOYER RESPONDENT NO. 1

MERCY HEALTH,
INSURANCE CARRIER/TPA RESPONDENT NO. 1

DEATH & PERMANENT TOTAL DISABILITY
TRUST FUND RESPONDENT NO. 2

OPINION FILED AUGUST 26, 2021

Upon review before the FULL COMMISSION in Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE EDDIE H. WALKER, JR.,
Attorney at Law, Fort Smith, Arkansas.

Respondents No. 1 represented by the HONORABLE RANDY P.
MURPHY, Attorney at Law, Little Rock, Arkansas.

Respondents No. 2 represented by the HONORABLE DAVID L. PAKE,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals and Respondents No. 1 cross-appeal an opinion and order of the Administrative Law Judge filed February 25, 2021. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on September 23, 2020 and contained in a pre-hearing order filed that same date are hereby accepted as fact.
2. Claimant has failed to prove by a preponderance of the evidence that she is permanently totally disabled. Claimant has met her burden of proving by a preponderance of the evidence that she has suffered a loss in wage earning capacity in an amount equal to 60% to the body as a whole.
3. Respondent #1 has controverted claimant's entitlement to permanent partial disability benefits in the amount of 60% to the body as a whole.

We have carefully conducted a *de novo* review of the entire record herein and it is our opinion that the Administrative Law Judge's February 25, 2021 decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the decision of the Administrative Law Judge, including all findings of fact and conclusions of law therein, and adopt the opinion as the decision of the Full Commission on appeal.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative

Law Judge's decision in accordance with Ark. Code Ann. §11-9-809 (Repl. 2012).

For prevailing on this appeal before the Full Commission, claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. § 11-9-715(Repl. 2012). For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b)(Repl. 2012).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Palmer dissents.

DISSENTING OPINION

I respectfully dissent from the majority on the 60% wage-loss increase.

The wage-loss factor is the extent to which a compensable injury has affected the claimant's ability to earn a livelihood. *Lee v. Alcoa Extrusion, Inc.*, 89 Ark. App. 228, 201 S.W.3d 449 (2005). In determining disability, the

Commission must consider medical evidence and other factors affecting wage loss, such as a claimant's age, education, and work experience. *Id.* “**Motivation, postinjury income**, credibility, demeanor, and a multitude of other factors are matters to be considered in claims for wage-loss-disability benefits in excess of permanent-physical impairment.” *Cooper v. Univ. of Ark. for Med. Scis.*, 2017 Ark. App. 58, at 7, 510 S.W.3d 304, 309 (emphasis added).

Claimant is restricted to sedentary work. Claimant is young (late 40s), intelligent (graduated nursing school with a 4.0 GPA) and has experience doing sedentary jobs. Despite these highly-marketable qualities, Claimant has not even bothered to look for sedentary work. Claimant also currently receives \$1,463 per month in social-security-disability benefits.

Because Claimant is unmotivated to return to work within the limits of her disability, she has not attempted to find work within her limitations. Her failure to even look for suitable work makes it impossible for the Commission to determine how much of the wage loss is attributable to her injury. Accordingly, I would find that Claimant failed to prove that she is entitled to wage-loss increase of 60% and, therefore, must respectfully dissent.

CHRISTOPHER L. PALMER, Commissioner