

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G707294

ELIZABETH SRITE, EMPLOYEE CLAIMANT

UNIVERSITY OF CENTRAL ARKANSAS, EMPLOYER RESPONDENT

PUBLIC EMPLOYEE CLAIMS DIVISION,
INSURANCE CARRIER/TPA RESPONDENT NO. 1

DEATH & PERMANENT TOTAL
DISABILITY TRUST FUND RESPONDENT NO. 2

OPINION FILED MAY 20, 2021

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

Claimant represented by the HONORABLE GARY DAVIS, Attorney at Law, Little Rock, Arkansas.

Respondents No. 1 represented by the HONORABLE CHARLES H. McLEMORE, 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

Respondents appeal an opinion and order of the Administrative Law Judge filed December 8, 2020. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulation set forth above is reasonable and is hereby

accepted.

3. Claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment in the form of surgery that was performed by Dr. James Adametz on January 9, 2019, plus treatment related thereto.
4. Claimant has proven by a preponderance of the evidence that she is entitled to additional temporary total disability benefits from January 9, 2019 to July 9, 2020.
5. Claimant has proven by a preponderance of the evidence that she is entitled to the impairment rating of nine percent (9%) to the body as a whole that was assigned on February 18, 2020 by Dr. Adametz, and to permanent partial disability benefits pursuant to that rating.
6. Claimant has proven by a preponderance of the evidence that she is entitled to wage loss disability of twenty percent (20%).
7. Claimant has proven by a preponderance of the evidence that she is entitled to a controverted attorney's fee on the indemnity benefits awarded herein.

We have carefully conducted a *de novo* review of the entire record herein and it is our opinion that the Administrative Law Judge's 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 concurs in part and dissents in part.

CONCURRING AND DISSENTING OPINION

I respectfully concur, in part, with and dissent, in part, from the majority opinion. Specifically, I dissent from the finding that the claimant is entitled to a 20% increase for wage-loss.

The wage-loss factor is the extent to which a compensable

injury has affected a claimant's ability to earn a livelihood. See, e.g., *Henson v. General Elec.*, 99 Ark. App. 129, 257 S.W.3d 908 (2007). The Commission is charged with the duty of determining disability based upon a consideration of medical evidence and other matters affecting wage loss, such as the claimant's age, education, and work experience. *Eckhardt v. Willis Shaw Exp., Inc.*, 62 Ark. App. 224, 970 S.W.2d 316 (1998). Other matters to be considered are motivation, post-injury income, credibility, demeanor, and a multitude of other factors. *Henson*, supra. The Commission may use its own superior knowledge of industrial demands, limitations, and requirements in conjunction with the evidence to determine wage-loss disability. *Morrison v. Confectionately Yours, Inc.*, 2010 Ark. App. 687, at 2.

Claimant's surgeon testified that Claimant should be able to at least do sedentary work. Claimant has ample experience performing office work that should allow her to find employment that provided comparable wages; however, Claimant admits that she has not looked for any sedentary work and does not intend to do so in the future. The ALJ specifically found that Claimant is not motivated to return to work. Given Claimant's young age (55) and plenty of office experience, it seems that the only thing keeping Claimant from

earning a comparable wage is her desire to do so.

As the Court of Appeals of Arkansas pointed out *in Morrison v. Confectionately Yours, Inc.*, 2010 Ark. App. 687, at 10, Claimant's motivation to return to work (or lack thereof) impedes our assessment of Claimant's loss-of-earning capacity.

Accordingly, for the reasons set forth above, I must concur, in part, and dissent, in part, from the majority opinion.

CHRISTOPHER L. PALMER, Commissioner