

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G605938

SYLVIA TILLERY, EMPLOYEE	CLAIMANT
ALMA SCHOOL DISTRICT, EMPLOYER	RESPONDENT
ARKANSAS SCHOOL BOARDS ASSOC. WCT., INSURANCE CARRIER/TPA	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED SEPTEMBER 16, 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 JAMES A. ARNOLD,
II, Attorney at Law, Fort Smith, Arkansas.

Respondents No. 2 represented by the HONORABLE CHRISTY L. KING,
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 May 12, 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 February 24, 2021 and contained in

a pre-hearing order filed that same date are hereby accepted as fact.

2. The parties' stipulation that claimant reached maximum medical improvement on November 19, 2020 is also hereby accepted as fact.

3. Claimant did not waive or refuse to participate with an offered program of rehabilitation or job placement assistance. A.C.A. §11-9-505(b)(3).

4. Claimant has suffered a loss in wage earning capacity in an amount equal to 10% to the body as a whole as a result of her compensable injury.

5. Respondent #1 has controverted claimant's entitlement to all unpaid indemnity benefits.

We have carefully conducted a *de novo* review of the entire record herein and it is our opinion that the Administrative Law Judge's May 12, 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 of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Therefore we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

CHRISTOPHER L. PALMER, Commissioner

Commissioner Willhite concurs and dissents.

CONCURRING AND DISSENTING OPINION

After my *de novo* review of the entire record, I concur in part with but must respectfully dissent in part from the majority opinion. I concur with the majority's findings that the claimant did not waive or refuse to participate with an offered program of rehabilitation or job placement assistance. I also agree that the claimant suffered a loss in wage earning capacity. However, I must dissent from the majority opinion finding that the claimant's wage loss benefits should be limited to 10%.

The record supports a finding that the claimant is entitled to wage-loss benefits. The claimant was assessed with a 13% permanent impairment rating to the body as a whole for her back injury. At the time of the hearing, the claimant was sixty-four years old. The claimant completed

high school, one year of college, and obtained a certificate in graphic design and arts.

The claimant worked for the respondent-employer as a custodian for approximately ten years. Prior to working for the respondent-employer, the claimant worked as a custodian for UAFS, Warner High School, and the Creek Nation. Since the workplace accident, the claimant has started taking basic computer classes at the Adult Education Center in Van Buren. The claimant is also performing part-time work in a job training program at the Community Center in Mulberry.

The claimant completed a reliable Functional Capacity Evaluation (hereinafter, "FCE") with 33 of 33 consistency measures within expected limits. The FCE revealed that the claimant was able to perform medium classification work. After reviewing the FCE results, Dr. Blankenship opined that the claimant was able to perform a sedentary job with a permanent weight-lifting restriction of 20 pounds. Dr. Blankenship also indicated that the claimant's restrictions would prevent her from returning to her pre-injury job.

An assessment by a vocational rehabilitation consultant, Heather Taylor, revealed that the claimant has no transferrable skills.

According to Taylor, the claimant can return to the workforce without additional training in an unskilled/semi-skilled position. Taylor also indicated that the claimant would need additional training to work in the type of administrative position she is interested in pursuing.

Although it appears that the claimant might have an opportunity to improve her wage-earning capacity through re-training for clerical jobs, it would be speculative to limit the claimant's wage loss benefits on this basis. The Commission can only assess the claimant's wage loss based on her current circumstances. Thus, I find that the claimant is entitled to wage loss benefits in an amount greater than that awarded by the majority.

Based on the aforementioned, I find that the claimant's future earning capacity has been affected by her compensable injury. Therefore, I find that the claimant is entitled to a twenty percent (20%) wage-loss benefit.

For the foregoing reasons, I concur in part and dissent in part from the majority opinion.

M. SCOTT WILLHITE, Commissioner