

ARKANSAS COURT OF APPEALS

DIVISION II

No. CA08-895

MARGARITA BARBOSA

APPELLANT

V.

CURT BEAN LUMBER COMPANY;
Compensation Managers

APPELLEES

Opinion Delivered March 4, 2009

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F004211]

AFFIRMED

JOSEPHINE LINKER HART, Judge

On April 6, 2000, appellant¹ sustained a compensable injury to her right shoulder and face when she was involved in an accident in which the tractor-trailer she was driving rolled over. She was assigned a twelve percent permanent physical impairment. At the time of her injury, she earned an average weekly wage of \$671.68. On appeal, she argues that the Arkansas Workers' Compensation Commission's decision to deny her wage-loss disability benefits in excess of the percentage of her permanent physical impairment was not supported by substantial evidence. We affirm.

Wage loss is the extent to which a compensable injury has affected a claimant's ability to earn a livelihood. *Whitlatch v. Southland Land & Dev.*, 84 Ark. App. 399, 141 S.W.3d 916 (2004). Our workers' compensation statutes provide that "[i]n considering claims for

¹The record styles appellant's last name as "Barbosa," but she testified that her last name is "Basson," and her brief states that her last name is "Burbosa." Given these discrepancies, for our purposes, we will identify her as "appellant."



permanent partial disability benefits in excess of the employee's percentage of permanent physical impairment, the Workers' Compensation Commission may take into account, in addition to the percentage of permanent physical impairment, such factors as the employee's age, education, work experience, and other matters reasonably expected to affect his or her future earning capacity." Ark. Code Ann. § 11-9-522(b)(1) (Repl. 2002). In reviewing decisions from the Commission, the appellate court views the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings and affirms if the decision is supported by substantial evidence. *Whitlatch, supra*. When a claim is denied because the claimant has failed to show an entitlement to compensation by a preponderance of the evidence, the appellate court affirms if the Commission's opinion displays a substantial basis for the denial of relief. *Id.*

After the rollover accident, appellant underwent surgery in 2001 for a torn rotator cuff. In 2002, she was assigned a twelve percent permanent physical impairment and released to return to work without restrictions. Appellant, who was thirty-seven years old at the time of the hearing, had earned a GED, an accounting specialty and data entry certificate, and a commercial driver's license. Further, she was a certified mechanic. After her shoulder surgery, she was able to work as a truck driver for two other trucking companies. During her employment with these companies, she became an owner-operator of a truck, and she purchased a second truck and hired another driver. She testified that she netted between \$3000 and \$15,000 a month for the truck she drove as a team with her husband and between



\$6000 to \$8000 for the second truck. She testified that she earned more in this capacity than she did in her employment with appellee Curt Bean Lumber Company. She ceased driving, however, soon after her husband stopped driving. Appellant has since obtained employment in other capacities, including working as a service advisor at \$7.00 an hour, at a fast-food establishment at \$7.50 an hour, as a cashier at \$7.65 an hour, and as a school bus driver for \$7450 a year. She also worked again as a truck driver but quit because of new health issues that were not connected to her injury.

Appellant raises several arguments why there was not a substantial basis for the denial of wage-loss benefits. But here, there were statutory factors supporting the denial of wage-loss benefits that the Commission considered when it denied benefits. Appellant was only thirty-seven years old, was a certified mechanic, held a commercial driver's license, earned a GED, and had received training in accounting. Further, she was released to return to work without restrictions. Also, she was initially able to return to employment as a truck driver, and following that employment, she worked in several other capacities. Given appellant's age, education, and work experience, we cannot say that there was not a substantial basis for the denial of wage-loss benefits.

Affirmed.

GLOVER and HENRY, JJ., agree.