

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
BRIAN S. MILLER, JUDGE

DIVISION I

CA06-1164

May 16, 2007

FELICIA TRAVIS

APPELLANT

v.

METHODIST NURSING HOME,  
RISK MANAGEMENT RESOURCES,  
DEATH & PERMANENT TOTAL  
DISABILITY TRUST FUND, SECOND  
INJURY FUND

APPELLEES

AN APPEAL FROM THE ARKANSAS  
WORKERS' COMPENSATION  
COMMISSION  
[F203060]

AFFIRMED ON DIRECT-APPEAL;  
AFFIRMED ON CROSS-APPEAL

In February 2005, we held that appellant Felicia Travis sustained a compensable low back injury on January 20, 2002, while working for Methodist Nursing Home. *See Methodist Nursing Home v. Travis*, CA04-676 (Ark. App. Feb. 23, 2005). Based on this decision, the Commission determined that Travis was entitled to ten-percent wage-loss disability and attorney's fees and that the Second Injury Fund was not liable for those benefits. Travis now appeals claiming that substantial evidence does not support the award of only ten-percent wage loss. Appellee/cross-claimant Risk Management Resources claims that substantial evidence supports neither the ten-percent wage loss nor the exclusion of the Second Injury Fund from liability for the payment of benefits. We affirm both the direct-appeal and the cross-appeal.

In reviewing Workers' Compensation Commission decisions, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings and affirm if they are supported by substantial evidence, *i.e.*, evidence that a reasonable person might accept as adequate to support a conclusion. *Logan County v. McDonald*, 90 Ark. App. 409, 206 S.W.3d 258 (2005). The issue is not whether this court might have reached a different result from that reached by the Commission, or whether the evidence would have supported a contrary finding. *Id.* A decision by the Commission will not be reversed unless it is clear that fair-minded persons could not have reached the same conclusions if presented with the same facts. *Rice v. Georgia-Pacific Corp.*, 72 Ark. App. 148, 35 S.W.3d 328 (2000).

We affirm the Commission's decision regarding wage-loss benefits because reasonable minds could find that Travis was entitled to ten-percent wage loss. The medical evidence established that Travis had been unable to work and continued to be unable to work since March 13, 2003. Furthermore, at the time of the hearing, Travis was thirty years old, had a twelfth-grade education, and had worked in nursing since 1996. Since her injury, she was walking with the aid of a cane and, because of pain and weakness in her legs, was unable to walk far. She was also unable to drive for more than an hour at a time, and her prescribed medication caused drowsiness.

Tanya Owens, the vocational rehabilitation counselor assigned to Travis's case, testified that her evaluation of Travis revealed that Travis was young, bright, and articulate

and that she tested “very well.” Owens, however, believed that Travis did not want to work. She said that Travis essentially sabotaged her ability to get a job by bemoaning her medical condition when speaking to potential employers. Owens also believed that Travis had no financial incentive for returning to work because, in addition to receiving \$580 per month in workers’ compensation benefits, she and her family received approximately \$1600 to \$1800 per month in social security benefits. Owens believed that Travis could perform part-time sedentary work.

Travis testified that she wanted to work and denied refusing job offers. She said that she checked with a number of the employers provided by Owens but that none offered her a job. Although she believed she could be trained to type, she believed she was unable to hold a job.

The wage-loss factor is the extent to which a compensable injury affects a person’s ability to earn a livelihood. *Rice, supra*. 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. *Lee v. Alcoa Extrusion, Inc.*, 89 Ark. App. 228, 201 S.W.3d 449 (2005). In considering factors that may affect an employee’s future earning capacity, the Commission considers the claimant’s motivation to return to work, since a lack of interest or a negative attitude impedes its assessment of the claimant’s loss of earning capacity. Ark. Code Ann. § 11-9-522 (Supp. 2005); *Sapp v. Phelps Trucking, Inc.*, 64 Ark. 221, 984 S.W.2d 817 (1998).

The Commission clearly performed its duty of determining Travis's wage loss disability by considering the medical evidence and the other matters affecting her wage loss, such as her age, education, and work experience. The Commission also properly considered the factors affecting Travis's future earning capacity, such as her motivation to return to work. For these reasons, we affirm on this issue.

On cross-appeal, Risk Management also argues that the Second Injury Fund is liable for the benefits awarded Travis. In *Rice v. Georgia-Pacific Corp.*, 72 Ark. App. at 154, 35 S.W.3d at 332, we held that the Second Injury Fund is liable for payment of benefits when (1) the employee suffers a compensable injury at his present place of employment; (2) the employee had a permanent partial disability or impairment prior to that injury; and (3) the disability or impairment from the first injury combined with the recent compensable injury to produce the current disability status. Under these circumstances, the Fund is obligated to provide compensation for any disability greater than the disability resulting from the earlier injury and the anatomical impairment caused by the second injury. *Id.*

Our prior unpublished opinion establishes that Travis sustained a compensable injury at Methodist. There was, however, substantial evidence supporting the Commission's determination that Travis did not have a permanent partial disability or impairment prior to being injured at Methodist. Although Travis suffered back and neck injuries as a result of auto accidents in 1993, 1997, and 1998 and a fall in 1999, there was evidence that she did not have a disability or impairment at the time she began working for Methodist on

November 20, 2001. Travis testified that she had no work restrictions prior to her injury in January 2002 and that her position at Methodist required her to be on her feet at least seven hours a day and as much as fifteen hours a day. Moreover, she performed physically strenuous work at Methodist, including heavy lifting and moving around patients weighing between 150 and 200 pounds.

Finally, we disagree with Risk Management's argument that the Commission based its decision to exclude the Second Injury Fund from liability solely on the fact that Travis did not have a formal impairment rating from a physician prior to the January 2002 injury. The record indicates that the Commission based its decision on all of the evidence before it, including the information set forth above. Therefore, we affirm.

Affirmed.

GLOVER and BAKER, JJ., agree.