

**ARKANSAS COURT OF APPEALS**

DIVISION III

No. CA12-92

COOPER TIRE & RUBBER  
COMPANY

APPELLANT

V.

RICHARD LEACH

APPELLEE

**Opinion Delivered** September 5, 2012

APPEAL FROM THE ARKANSAS  
WORKERS' COMPENSATION  
COMMISSION  
[NO. F702952]

AFFIRMED

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**RAYMOND R. ABRAMSON, Judge**

This is the second time this case is before us, this time following the December 1, 2011 opinion of the Workers' Compensation Commission (Commission), which awarded permanent-partial disability (PPD) and wage-loss benefits to the appellee Richard Leach. In our previous opinion, *Leach v. Cooper Tire & Rubber, Co.*, 2011 Ark. App. 571, we affirmed the Commission's February 8, 2011 decision that Leach's back injury was compensable, but reversed the Commission's denial of PPD benefits. We then remanded to the Commission to determine the degree of anatomical impairment and the amount of wage-loss disability benefits, if any, Leach should be awarded.

On remand, the Commission, without taking new evidence, awarded Leach a 7% PPD rating based on Table 75, Section II of the AMA Guides, 4th Edition, and a wage-loss disability of 25%. In awarding wage-loss disability benefits, the Commission specifically stated



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that it was giving minimal evidentiary weight to the opinion of Dr. Vogan, who opined that Leach was permanently disabled from returning to work, and was assigning greater weight to the opinions of Dr. Hillis, Dr. Gabbie, Dr. Stephens, Dr. Calhoun, and Dr. Sharp, who all opined that Leach was able to return to work for Cooper Tire. The Commission noted that, because Leach had permanent physical restrictions as a result of his compensable injury, he may no longer be able to earn his \$24.43 per hour with full work duties. However, because of his work experience and above-average intelligence, he should be able to pursue gainful employment within his permanent physical restrictions.

Cooper Tire appeals the Commission's award of PPD and wage-loss benefits. Leach cross-appeals the amount of wage-loss benefits awarded. We affirm the Commission's award of PPD and wage-loss benefits.

#### I. *Permanent Partial Disability Benefits*

Cooper Tire first argues that the Commission erred in awarding PPD benefits to Leach because the Commission failed to properly determine whether Leach's compensable back injury was the major cause of his permanent partial disability. That question was decided in our previous opinion. In that opinion, we found that, under *Pollard v. Meridian Aggregates*, 88 Ark. App. 1, 193 S.W.3d 738 (2004), because Leach's degenerative disc condition was asymptomatic before the accident and symptomatic thereafter, the major-cause requirement had been satisfied, and Leach was thus entitled to permanent benefits. That decision became



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law of the case here.<sup>1</sup> Thus, the only remaining issue was the degree of Leach's permanent disability.

On remand, the Commission determined that Leach had suffered a 7% permanent impairment, and substantial evidence supports this determination. In appeals involving claims for workers' compensation, we view the evidence in the light most favorable to the Commission's decision and affirm the decision if it is supported by substantial evidence. *Galloway v. Tyson Foods, Inc.*, 2010 Ark. App. 610, 378W.3d 210. Substantial evidence exists if reasonable minds could reach the Commission's conclusion. *Id.* The issue is not whether the appellate court might have reached a different result from the Commission; if reasonable minds could reach the result found by the Commission, the appellate court must affirm. *Id.* Here, the Commission found that Leach had suffered a 7% permanent disability based on Table 75, Section II of the AMA Guides, 4th Edition. Cooper Tire does not challenge the percentage of permanent disability determined by the Commission. Because the Commission's award is supported by substantial evidence in the record, we must affirm.

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<sup>1</sup>The doctrine of law of the case prohibits a court from reconsidering issues of law and fact that have already been decided on appeal. *Cadillac Cowboy, Inc. v. Jackson*, 347 Ark. 963, 69 S.W.3d 383 (2002). The doctrine provides that a decision of an appellate court establishes the law of the case for the trial upon remand and for the appellate court itself upon subsequent review. *Clemmons v. Office of Child Support Enforcement*, 345 Ark. 330, 47 S.W.3d 227 (2001). The law-of-the-case doctrine also prevents consideration of an argument that could have been raised at the first appeal and is not made until a subsequent appeal. *First Commercial Bank v. Walker*, 333 Ark. 100, 969 S.W.2d 146 (1998). The doctrine serves to effectuate efficiency and finality in the judicial process, and its purpose is to maintain consistency and avoid reconsideration of matters once decided during the course of a single, continuing lawsuit. *Jones v. Double "D" Props., Inc.*, 357 Ark. 148, 161 S.W.3d 839 (2004).



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## II. *Wage Loss Benefits*

Cooper Tire next argues that the Commission erred in setting a 25% wage-loss benefit, while Leach argues that this rating is insufficient. We disagree.

When a claimant has been assigned an anatomical-impairment rating to the body as a whole, the Commission may increase the disability rating and find a claimant permanently disabled based on the wage-loss factor. *Lee v. Alcoa Extrusion, Inc.*, 89 Ark. App. 228, 201 S.W.3d 449 (2005). The wage-loss factor is the extent to which a compensable injury has affected the claimant's ability to earn a livelihood. *Enter. Prods. Co. v. Leach*, 2009 Ark. App. 148, 316 S.W.3d 253. When determining wage-loss disability, the Commission should consider, in addition to medical evidence, the appellant's age, education, experience, and other factors affecting wage loss. Ark. Code Ann. § 11-9-522(b)(1) (Repl. 2002); *Glass v. Edens*, 233 Ark. 786, 346 S.W.2d 685 (1961). Other factors may include—but are not limited to—motivation to return to work, post-injury earnings, credibility, and demeanor. *Curry v. Franklin Elec.*, 32 Ark. App. 168, 798 S.W.2d 130 (1990). A lack of interest in pursuing employment impedes the assessment of the claimant's loss of earning capacity, although it is not a complete bar. *Logan Cnty. v. McDonald*, 90 Ark. App. 409, 206 S.W.3d 258 (2005). The Commission may use its own superior knowledge of industrial demands, limitations, and requirements in conjunction with the evidence to determine wage-loss disability. *Taggart v. Mid Am. Packaging*, 2009 Ark. App. 335, 308 S.W.3d 643.

Here, there is substantial evidence to support the Commission's conclusion that Leach



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is entitled to additional wage-loss benefits. In making its determination, the Commission considered the wage-loss factors and specifically noted Leach's age, his education, his specific skill set and occupational history, his above-average intelligence, his ability to work at his former vocation, and the fact that he has permanent physical restrictions as a result of his compensable injury. These findings were supported by the record and constitute substantial evidence to support an award of wage-loss benefits.

As to the amount of benefits awarded, Leach argues on cross-appeal that the only evidence presented was that Leach had suffered a 100% reduction in his wages as a result of his injuries, and, therefore, the Commission should have awarded him at least a 70% wage-loss disability based on the difference between his prior wages and the possibility of finding employment of minimum wage. But the question we must answer is not whether there was substantial evidence to support a 70% wage-loss disability, but whether substantial evidence supports the Commission's finding that Leach had a wage-loss disability of 25%. Here, as noted previously, the Commission sufficiently considered the wage-loss factors, including Leach's skill set, education, intelligence, physical limitations, and occupational history and determined that Leach could pursue gainful employment within his personal restrictions. The Commission is in a better position to evaluate a claimant's ability to earn wages in the same or other employment, as it has superior knowledge of industrial demands, limitations, and requirements. *Arkansas State Hwy. & Transp. Dep't v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981); *Sanyo Mfg. Corp. v. Leisure*, 12 Ark. App. 274, 675 S.W.2d 841 (1984). Thus,



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we cannot say that the Commission erred in its award of wage-loss benefits.

Affirmed.

VAUGHT, C.J., and ROBBINS, J., agree.

*The Bullock Law Firm*, by: *William G. Bullock, Sr.*, for appellant.

*Moore & Giles, LLP*, by: *Greg Giles*, for appellee.