

**COMMONWEALTH OF KENTUCKY
DEPARTMENT OF WORKERS' CLAIMS
CLAIM NO. 2007-67991
BEFORE LAWRENCE F. SMITH,
ADMINISTRATIVE LAW JUDGE**

SHARON TURK

PLAINTIFF

vs.

OPINION, ORDER AND AWARD

PIKEVILLE COLLEGE, INC.

DEFENDANT

**HON. ROBERT L. ABELL
120 NORTH UPPER STREET
P.O. BOX 983
LEXINGTON, KY 40588-0983**

**HON. BENITA J. RILEY
RILEY & ALLEN
P.O. BOX 1350
PRESTONBURG, KY 41653**

COUNSEL FOR PLAINTIFF

COUNSEL FOR DEFENDANT

COPY SENT TO DEPARTMENT OF WORKERS' CLAIMS

SECTION I – INTRODUCTION

Plaintiff, Sharon Wright Turk, (hereinafter referred to as "plaintiff") filed an application for resolution of injury claim on October 22, 2009, indicating that on December 7, 2007, she was injured within the scope and course of her employment with defendant, Pikeville College, Incorporated (hereinafter referred to as "defendant") at Pikeville, Pike County, Kentucky. The plaintiff stated that she sustained multiple injuries on the defendant's property as the plaintiff walked from her car to her office, when she slipped and fell on a patch of black ice. The plaintiff notified her supervisor. At the time plaintiff filed this claim, she had received medical treatment for a fractured hip.

In response to the plaintiff's claim, the Office of Workers' Claims issued a scheduling order on November 17, 2009, assigning the matter to this Administrative Law Judge and setting a Benefit Review Conference (BRC) for March 10, 2010, at the Louisville hearing site.

Also, in response to the plaintiff's claim, defendant initially filed a Special Answer on December 2, 2009, asserting notice and the statute of limitation. The defendant then filed a Notice of Claim Denial on December 10, 2009, accepting the claim as acceptable but disputing the amount of additional compensation owed to the plaintiff. Thereafter, the parties commenced proof taking.

Due to scheduling conflicts, the parties were unable to meet for the BRC, but they were able to reach agreement on all some issues. A formal hearing took place on June 8, 2010. The matter now stands ready for final adjudication.

SECTION II - STIPULATIONS

By an agreed order rendered March 30, 2010, the parties agreed to the following stipulations:

1. That there was coverage under the Act;
2. That an employment relationship existed between the plaintiff and the defendant-employer at all times relevant;
3. That the plaintiff sustained a work related injury on December 7, 2007;
4. That the defendant employer had due and timely notice of the injury;
5. That TTD benefits were not paid, but the defendant-employer continued to pay the plaintiff's salary at a rate of \$1,200.00 per week from December 7, 2007 through January 2, 2008;
6. The defendant has paid on behalf of the plaintiff medical expenses in the amount of \$15,279.05;
7. That the plaintiff's average weekly wage (AWW) at the time of her injury was \$1075.50;

8. That the plaintiff returned to work on January 2, 200 at a greater wage;
9. That the plaintiff retains the capacity to return to her former work;
10. That the plaintiff's date of birth is May 21, 1946; and
11. That the plaintiff's level of education is completion of high school.
12. The plaintiff has specialized or vocational training in telemedicine.

SECTION III - CONTESTED ISSUES

In that same order the parties agreed that the contested issues are as follows:

1. Injury as defined by the Act;
2. Extent and duration;
3. Credit for salary continuation; and
4. Reasonableness and necessity of continued medical treatment.

SECTION IV – SUMMARY OF WITNESS EVIDENCE

The plaintiff presents as evidence her testimony from the formal hearing on June 8, 2010 and her deposition on January 5, 2010. The plaintiff further relies on the medical records and reports of Terry Trout, M.D. The defendant relies on the medical records and reports of Keith Hall, M.D., and Gregory Snider, M.D.

Plaintiff, **SHARON WRIGHT TURK**, age 64, testified that she had completed high school and had worked her way up through a career in administrative positions in the medical profession. She retired from the Veterans Administration Hospital in Lexington, and then went on to other facilities. She began working for the defendant October 1, 2000. She started out as Director of Telemedicine and during her tenure added to her duties Director of Continuing Medical Education and recently Clinical Rotations Records Officer.

The plaintiff's job duties include monitoring telemedicine logs, continuing education logs of doctors, and clinical rotation logs of students. Her job is primarily sedentary, involving much paperwork and computer work. She also has to make regular

trips to the Administrative Building, across a bridge from her own office. Since the accident the plaintiff will drive that short distance unless she has someone to accompany her.

On December 7, 2007 while working as Director of Continuing Medical Education for the defendant, the plaintiff slipped and fell on an icy, wet bridge she was attempting to traverse during the course of her employment duties. She heard her right hip bone break, so she knew not to move. She called security on her cell phone, and an ambulance took her to the hospital, where she had surgery.

Keith Hall, M.D., was at the hospital and told her he could fix it right away. He performed an open reduction internal fixation of the right hip. Although prescribed, the plaintiff received no formal physical therapy during her eight-day hospital recovery. The extent of physical therapy the plaintiff received during her hospitalization was a nurse who came twice a day and got her up to walk.

According to the plaintiff, she was not allowed to go to rehabilitative care because the Workers' Compensation insurer could not "make a decision."¹ Pikeville Rehabilitation Center had already accepted the plaintiff, but the defendant's insurer would not decide whether it would pay. The plaintiff remained in the hospital eight days then went home and rehabilitated herself. She remained off work for four weeks, initially using a walker and then a cane. She uses a cane to walk significant distances.

Since the accident the plaintiff has been unable to sleep in a bed. Lying flat or on her right side hurts. She has had to change the way she gets into a car and the way she dresses. Climbing stairs hurts. She can no longer stand at the stove to cook or at the sink to wash dishes. She has to use tall chairs. She has to use the handicapped buggy

at the grocery store and cannot stand in line without unbearable pain. Her hip continues to be tender where the bone broke and where the staples were removed. Sitting during the deposition caused her pain because the chair pressed against the tender spot in her hip.

The plaintiff refuses to take pain medications because she has negative feelings about them. The plaintiff testified that prior to the accident she had never had to use a cane to walk. She had had no physical problems before the fall. She used to be a runner, competing in races in Lexington. Now she did well to walk. The plaintiff testified that she felt the injury had aged her ten years, which at her age was quite significant.²

The plaintiff testified that she had seen Dr. Hall twice since the surgery. She had no follow-up appointments scheduled, and he had released her. The plaintiff believes that with rehabilitative treatment she would not have a limp and would not need a walker or a cane. Her doctor had requested rehabilitation, but when it was not approved, he did not ask again. The plaintiff had not seen him recently, so she did not know whether he would recommend further rehabilitation.

The plaintiff testified that she had been an insulin-dependent diabetic before the accident, and she was still. Since the accident, she had come to need an insulin pump.

SECTION V – SUMMARY OF MEDICAL EVIDENCE

TERRY TROUT, M.D., a physician board-certified in physical medicine and rehabilitation, conducted an independent medical evaluation of the plaintiff on August 20, 2009 at the request of the plaintiff's attorney. He took a history of the plaintiff's injury and treatment consistent with the above summary. He noted that Dr. Hall had seen the

¹ Formal hearing transcript, June 8, 2010, p.11.

² Plaintiff deposition, January 5, 2010, p.27.

plaintiff twice after surgery. After that, she had been released to return as needed. She was permitted to work "as tolerated."³ Dr. Trout noted, and the plaintiff reported, that she had no physical therapy after surgery. She stated that she had been trying home exercise as much as possible.

The plaintiff reported that prior to the fall she had customarily walked 10 miles per week. Now, after her surgery, she could no longer walk distances and had to use a cane or occasionally a walker. Walking was now painful, as was bending forward and rising from a seated position. She could only climb stairs using two handrails.

The plaintiff indicated that she disliked pain medication and did not want to get addicted to them. She took no medication stronger than Tylenol. She used a heating pad for pain relief so often and for such long periods that she had recently burned herself.

Dr. Trout noted that the plaintiff had no numbness and no prior history of hip pain prior to her work injury and fracture of December 7, 2007. She had last seen her position on January 17, 2008 and had reportedly been placed on no restrictions but activity as tolerated. However, due to her chronic pain she had to sleep in a recliner as she could not sleep in a bed. Also, the plaintiff complained of chronic right lower extremity edema since the surgery that was worse toward the end of the day.

Dr. Trout conducted a physical examination. He observed that the plaintiff limped. She had some tenderness along the lumbosacral spine paraspinal musculature L4 through S1, but no spasms or trigger points. Her spinous processes were nontender and non-displaced. She had pain with a range of motion in all planes of motion. Neuromuscular examination revealed manual motor testing to be 5/5 throughout. She

³ Dr. Terry Trout Form 107-I, August 20, 2009, p.3.

had give way with strength testing to the right hip with internal rotation, external rotation, and hip flexion due to complaints of groin pain/hip pain.

Dr. Trout diagnosed right intertrochanteric hip fracture, right hip pain, functional loss secondary to the above. He was of the opinion that within reasonable medical probability the plaintiff's injury was the cause of her complaints. He assessed and 8% impairment pursuant to the AMA Guides to the Evaluation of Permanent Impairment, 5th Edition and noted that the plaintiff did not have an active impairment prior to this injury. In his opinion the plaintiff had reached maximum medical improvement on January 17, 2008 also in his opinion, the plaintiff retained the physical capacity to return to the type of work she performed at the time of her injury. However she had restrictions of no lifting more than 15 pounds, no pushing or pulling greater than 10 pounds and no climbing except for stairs with handrails. He also stated the stair climbing should only be on an occasional basis. In addition, he respected the plaintiff from standing greater than 20 minutes without the ability to sit for 15 minutes and no walking greater than 10 minutes without the ability to sit for 15 minutes. He included no running, no jumping, no squatting and no crawling into his restrictions.

GREGORY T. SNIDER, MD conducted an independent medical examination of the plaintiff on January 7, 2010. First, Dr. Snider took a history that the plaintiff was a 63-year-old employee of Pikeville osteopathic college. She's the director of continuing medical education and the director of telemedicine. She has worked there since October 2000. On December 7, 2007 the plaintiff was walking across the bridge to work as she slipped on the ice and fell. She was seen at the Pikeville medical Center ER on

the day of the injury and x-rays confirmed and intertrochanteric hip fracture. Dr. Hall performed surgery the same day and the plaintiff was discharged home.

Dr. Snider noted that the plaintiff complained of right hip pain rate at 6/10 with an increase in pain with cold weather. She also complained of severe limitations including that she had to sleep in a recliner. She also had less energy and endurance than before the injury.

The plaintiff's medical history included a right ankle fracture in 1983. She also indicated that she was an independent diabetic with hypertension, GERD, and high cholesterol. She was on several medications.

Dr. Snider found the plaintiff to be alert and in no apparent distress. He diagnosed right hip intertrochanteric fracture and a status post ORIF for right hip fracture along with right hip bursitis. In his opinion, the plaintiff had received appropriate medical intervention and she had reached maximum medical improvement approximately February 7, 2008. In addition, the plaintiff warranted no further formal medical treatment for the work injury. Dr. Snider further determine that the plaintiff could continue working as a medical education and telemedicine director without any specific restrictions. He assessed a 4% whole person impairment pursuant to the AMA Guides to the Evaluation of Permanent Impairment, 5th Edition.

KEITH HALL, M.D., a board-certified orthopedic surgeon, was the plaintiff's treating physician. On May 20, 2008 defendants workers compensation insurance carrier sent Dr. Hall and evaluation form for him to complete. In answers to questions posed in the form Dr. Hall stated that the patient's diagnoses as relates to the injury was right intertrochanteric hip fracture. He also stated that the plaintiff had reached

maximum medical improvement as May 17, 2008. As to further medical treatment, Dr. Hall indicated "occasional NSAIDS". He further stated that the plaintiff had no restrictions and no permanent impairment pursuant to the AMA Guides.

SECTION VI – FINDINGS OF FACT AND CONCLUSIONS OF LAW

Credit for salary continuation payments. The parties have identified as a contested issue credit for salary continuation payments made from December 7, 2007 through January 2, 2008 at the rate of \$1200 per week. The parties also agree that the plaintiff returned to work at her regular duty earning a greater wage on January 2, 2008. Defendant is entitled to a dollar for dollar credit against past-due TTD benefits if any for the salary continuation payments. Plaintiff asserts that this amount equals \$3655.00. I find accordingly.

This administrative law judge observed the plaintiff at the formal hearing. She appears to have fortitude and tenacity far beyond that demonstrated by most people her age. Clearly she sustained a serious injury that normally would be career ending. Yet she continues to work at the same job with the same level of intensity. From my review of the record, I am overwhelmingly convinced that, at the least, this plaintiff has an 8% permanent impairment pursuant to the AMA Guides to the Evaluation of Permanent Impairment, 5th Edition. She does not qualify for the enhancement provisions only because she has heroically returned to work at the same job making the same or greater wages. I find based upon her level of activity and the type of job that she does, that the provisions of Fawbush v. Gwinn, 107 S.W. 3d 5, (Ky., 2003) do not apply at this time. Accordingly, the following order is entered.

SECTION VII –ORDER AND AWARD

In view of the above stated findings of fact and conclusions of law, and this ALJ being otherwise sufficiently advised;

IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. Plaintiff shall recover benefits based upon a 8% impairment. The calculation of the award shall be as follows:

\$	484.85	(State maximum rate)
	X .08%	(8% wbi)
\$	38.79	
	X .85	(per KRS 342.730(1)(b))
\$	32.97	

2. Pursuant to the provisions of KRS 342.730 plaintiff is entitled to recover the amount of **\$32.97** per week beginning the December 2, 2008 and continuing for 425 weeks thereafter.

3. The plaintiff shall be entitled to recover 12% on any due and unpaid benefits thereof.

4. Defendant/employer shall be entitled to a credit for any such payments heretofore paid.

5. Pursuant to KRS 342.730 (4) all income benefits payable pursuant to this chapter shall terminate as of the date upon which the employee qualifies for normal old age Social Security Retirement Benefits under the United States Social Security Act.

6. The plaintiff shall recover of the defendant/employer and/or its insurance company for the current relief of any effects of the injuries, medical, surgical, hospital treatment, including nursing, medical or surgical supplies, and appliances as may reasonably be required at the time of the injury and thereafter during disability.

Specifically, defendant is directed to provide physical therapy services to the plaintiff if her treating physician makes the determination in the next 30 days that physical therapy is needed to help the plaintiff walk better.

7. All motions for approval of attorney fees shall be filed within thirty days from the final disposition of this award.

Rendered and copies deposited in the United States Mail addressed to the parties at the beginning of this document, this 9th day of August, 2010.



LAWRENCE F. SMITH
ADMINISTRATIVE LAW JUDGE
916 N. MULBERRY STREET, SUITE 100
ELIZABETHTOWN, KY 42701
TELEPHONE: (270) 766-5321
FACSIMILE: (270) 766-5323