

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 95-CC-01196 COA**

BOBBIE LOPER

APPELLANT

v.

K-MART

APPELLEE

PER CURIAM AFFIRMANCE MEMORANDUM OPINION

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED,
PURSUANT TO M.R.A.P. 35-B

DATE OF JUDGMENT:	10/18/95
TRIAL JUDGE:	HON. WILLIAM F. COLEMAN
COURT FROM WHICH APPEALED:	HINDS COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT:	GLEN WESLEY HALL PERCY STANFIELD
ATTORNEYS FOR APPELLEE:	SILAS W. MCCHAREN ARTHUR S. JOHNSTON, III
NATURE OF THE CASE:	CIVIL - WORKERS' COMPENSATION
TRIAL COURT DISPOSITION:	AFFIRMED THE ORDER OF THE MISSISSIPPI WORKERS' COMPENSATION COMMISSION
DISPOSITION:	AFFIRMED - 12/02/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	12/23/97

BEFORE BRIDGES, C.J., DIAZ, AND SOUTHWICK, JJ.

PER CURIAM:

The Mississippi Workers' Compensation Commission ordered that Bobbie Loper be reimbursed reasonable and necessary medical costs and be paid \$218.26 per week for a period of 42 weeks as compensation for permanent partial disability. Loper appealed to the Hinds County Circuit Court seeking permanent partial disability benefits for 450 weeks. The circuit court affirmed the Commission. The same relief is sought from this Court, but we also affirm the Commission.

The only issue in this case is whether the commission erred by failing to apply a supposed presumption that an employee's actual post-injury wages equal her post-injury wage-earning capacity. The sole authority cited for this proposition is **VARDAMAN DUNN, MISSISSIPPI WORKERS'**

COMPENSATION, § 67 at 76 n.22 (3rd Ed. 1987). Prior to showing post-injury earnings, a claimant has two evidentiary obligations. (1) She must show the existence of a permanent medical or physical impairment. As the Commission stated, this "burden has been easily shouldered by Loper." (2) There is also a "burden of showing that she has sought and been unable to obtain work" in the same or other employment. *Barnes v. Jones Lumber Company*, 637 So. 2d 867, 869-70 (Miss. 1994). Loper's evidence on an attempt to seek other employment was found lacking by the Commission. The only testimony was from Loper, who stated that she did not seek re-employment by K-Mart, nor did she seek any other job until a month prior to the hearing on her compensation claim. The hearing was a year after she reached maximum medical improvement. The wages that she did have were from babysitting her grandchildren and telephone sales of Avon products.

The Commission was correct that no presumption could arise from post-injury wages unless the claimant first shows that she has made meaningful efforts to seek employment. We affirm for the reasons stated in the Commission's opinion of March 7, 1995, which we attach as an exhibit.

THE JUDGMENT OF THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY IS AFFIRMED. ALL COSTS ARE ASSESSED TO THE APPELLANT.

BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.