

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT JACKSON

(January 27, 2000 Session)

**RONALD GEDDINGS v. IMPERIAL GUARD & DETECTIVES  
SERVICES, ET AL.**

**Direct Appeal from the Chancery Court for Shelby County  
No. 109486-3 D. J. Alissandratos, Chancellor**

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**No. W1999-00199-WC-R3-CV - Mailed May 8, 2000; Filed June 27, 2000**

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This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with *Tennessee Code Annotated* §50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The defendants, Imperial Guard & Detective Services and the Travelers Insurance Company (Imperial), appeal the judgment of the Shelby Chancery Court awarding the plaintiff, Ronald Geddings (Geddings), sixty-five percent (65%) permanent partial disability to the body as a whole as a result of a mental injury and commuting the award to a lump sum in trust to be administered by Geddings' wife. Imperial does not appeal the trial court's award of sixteen percent (16%) permanent partial disability for a low back injury. For the reasons stated in this opinion, we affirm the award of sixteen percent (16%) permanent partial disability to the body as a whole for the injury to the low back; reverse the award of sixty-five percent (65%) permanent partial disability to the body as a whole for the mental injury; and reverse the award of benefits commuted to a lump sum.

**Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Chancery Court Affirmed in Part; Reversed in Part**

MALOAN, SP. J., delivered the opinion of the court, in which HOLDER, J., and WEATHERFORD, SR. J., joined.

Gayle B. Lakey, Memphis, Tennessee, for the appellants, Imperial Guard & Detective Services and The Travelers Company.

Stephen R. Leffler, Memphis, Tennessee for the appellee, Ronald Geddings.

**MEMORANDUM OPINION**

Geddings was age forty-one (41) at the time of this trial. He graduated from high school and attended some college. Geddings first worked for Imperial as a security officer, advanced to general manager, and then to vice president of operations.

On December 9, 1996, Geddings and other Imperial employees attended a sexual harassment seminar. After the seminar, Geddings was hit by an automobile while crossing Poplar Avenue in Memphis, Tennessee. Geddings testified the vehicle struck his buttocks and he fell on the street on his stomach. His only visible injuries were cuts and bruises to his arms, hands, buttocks, and ankle. Geddings was able to assist fellow injured workers, then crossed the street, and either sat down on the curb or collapsed unconscious.

Dr. John Brophy, a neurosurgeon, treated Geddings for an injury to his lower back. On February 17, 1997, Dr. Brophy performed a decompression laminectomy at L4-5 and released Geddings to light duty in March 1997 and full duty without restrictions on May 12, 1997. Dr. Brophy assigned an eight percent (8%) permanent impairment to the body as a whole for his low back injury.

When Geddings returned to his former job at Imperial he began to have forgetfulness and memory loss. He was assigned to the night shift, where he continued to work for one (1) year until he resigned in March 1998. He then worked for a smaller security company, Guardco, performing similar duties, but was terminated eight (8) or nine (9) months later for lack of organization.

William Jenkins, Ed.D., a vocational rehabilitation expert, evaluated Geddings for vocational disability. As a result of numerous tests and a review of a neuropsychological evaluation by Nan Hawks, Ph.D.,<sup>1</sup> dated January 19, 1998, Dr. Jenkins testified Geddings had a sixty percent (60%) to sixty-five percent (65%) vocational disability for his psychological problems.

At trial, Geddings' attorney requested the trial court to make separate awards for the low back injury and the mental injury. Over Imperial's objection, the trial court awarded sixteen percent (16%) permanent partial disability to the body as a whole for the back injury and an additional sixty-five percent (65%) permanent partial disability to the body as a whole for the mental injury. Further, the trial court granted Geddings' motion to commute the award to a lump sum in trust to be administered by Geddings' wife.

## ANALYSIS

The scope of review of issues of fact is *de novo* upon the record of the trial court, accompanied by a presumption of correctness of the findings, unless the preponderance of evidence is otherwise. *Tennessee Code Annotated* §50-6-225(e)(2). *Lollar v Wal-Mart Stores, Inc.*, 767 S.W.2d 143 (Tenn. 1989). When a trial court has seen and heard witnesses, especially where issues of credibility and weight of oral testimony are involved, considerable deference must be accorded the trial court's factual findings. *Humphrey v David Witherspoon, Inc.*, 734 S.W.2d 315 (Tenn. 1987). However, where the issues involve expert medical testimony which is contained in the record by deposition, as it is in this case, then all impressions of weight and credibility must be drawn from

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<sup>1</sup>Apparently, Dr. Hawks' deposition was filed with the trial court, but was never entered into evidence during the trial and is not in the record on appeal.

the contents of the depositions, and the reviewing court may draw its own impression as to weight and credibility from the contents of the depositions. *Overman v Williams Sonoma, Inc.*, 803 S.W.2d 672, 676-77 (Tenn. 1991).

Imperial raised numerous issues on appeal, some of which were clarified and resolved by the attorneys during oral argument before this panel on January 27, 2000. By stipulation, no issue is taken with the trial court's award of sixteen percent (16%) permanent partial disability to the body as a whole for the low back injury. The issues on appeal are: 1) the trial court's separate awards for the back and mental injuries; 2) the trial court's award of sixty-five percent (65%) permanent partial disability to the body as a whole for the mental injury; and 3) the lump sum award in trust to be administered by Geddings' wife.

### SEPARATE AWARDS

The practice of making separate awards for concurrent injuries as a result of the same occurrence in one lawsuit is contrary to *Tennessee Code Annotated* §50-6-207(3)(c) which limits Geddings to one total award and states in part: "When an employee sustains concurrent injuries resulting in concurrent disabilities, such employee shall receive compensation only for the injury which produced the longest period of disability...." As stated by the Supreme Court in *Kerr v Magic Chief, Inc.*, 793 S.W.2d 927, 928 (Tenn. 1990) citing *Crump v B & P Construction Co.*, 703 S.W.2d 140 (Tenn. 1986): "There should be only one overall rating of disability and that should be to the body as a whole." The trial court was in error to make separate awards in this case.

### MENTAL INJURY

The plaintiff in a worker's compensation case has the burden of proving every element of his case by a preponderance of the evidence. *Elmore v Traveler's Ins. Co.*, 824 S.W.2d 541, 543 (Tenn. 1992). An accidental injury arises out of one's employment when there is apparent to the rational mind, upon a consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury, and occurs in the course of one's employment if it occurs when an employee is performing a duty he was employed to do. *Fink v Caudle*, 856 S.W.2d 952 (Tenn. 1993). As to causation, our Supreme Court stated in *Tindall v Waring Park Ass'n*, 725 S.W.2d 935, 937 (Tenn. 1987) as follows:

This Court has consistently held that causation and permanency of a work-related injury must be shown in most cases by expert medical evidence. Furthermore, by "causal connection" is meant not proximate cause as used in the law of negligence, but cause in the sense that the accident had its origin in the hazards to which the employment exposed the employee while doing his work. Although absolute certainty is not required for proof of causation, medical proof that the injury was caused in the course of the employee's work must not be speculative or so uncertain regarding the cause of the injury that attributing it to the plaintiff's employment would be an arbitrary determination or a mere possibility. If, upon undisputed proof, it is conjectural whether disability resulted from a cause operating within

employment, there can be no award. If, however, equivocal medical evidence combined with other evidence supports a finding of causation, such an inference may nevertheless be drawn by the trial court under the case law.

Id. (emphasis added)

In the present case, there is no expert medical evidence to establish causation and permanency of a mental injury. Neither Dr. Jenkins (Ed.D.) nor Dr. Hawks (Ph.D) are medical doctors. The law in Tennessee is clear, causation and permanency of a mental injury must be proven by a medical doctor, not a psychologist or vocational disability expert. “The testimony of a clinical psychologist . . . is not legally sufficient to support an award of permanent partial disability.” *Cigna Property & Casualty Ins. Co. v Sneed*, 772, S.W.2d 422 (Tenn. 1989); *Henley v Roadway Exp.*, 699 S.W.2d 150 (Tenn. 1985); *Freemon v V. F. Corp, Kay Windsor Div.*, 675 S.W.2d 710 (Tenn. 1984).

The only medical evidence considered by the trial court was the testimony of Dr. Brophy, who treated Geddings solely for his low back injury. It was error for the trial court to base an award on the testimony of Dr. Jenkins and/or Dr. Hawks over the objection of Imperial. There being no proof of causation or permanency by expert medical evidence, this panel must reverse the trial court’s award of sixty-five percent (65%) permanent partial disability to the body as a whole for the mental injury.

#### LUMP SUM AWARD

*Tennessee Code Annotated* §50-6-229(2) allows the trial court to commute to one (1) or more lump sum payments on consideration of “whether the commutation will be in the best interest of the employee, and such court shall also consider the ability of the employee to wisely manage and control the commuted award irrespective of whether there exist special needs.”

The evidence in this case does not support a lump sum award. There is no proof in the record Geddings has the ability to wisely manage and control the commuted award, the proof is to the contrary. The trial court made a specific finding that Geddings “is not capable of handling those monies.” The trial court was in error to commute the award to a lump sum.

#### CONCLUSION

The trial court’s award of sixteen percent (16%) permanent partial disability to the body as a whole for the back injury is affirmed, the award of sixty-five percent (65%) permanent partial disability to the body as a whole for the mental injury is reversed; and the commutation to a lump sum is reversed. Plaintiff/Appellee, Ronald Geddings, is taxed with the costs of this cause.

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**JUDGMENT**

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs on appeal are taxed to the Appellee, Ronald Geddings, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM