IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

TROY C. LEDBETTER v. BATESVILLE CASKET COMPANY

Chancery Court for Franklin County
No. 14,840

No. M1998-00670-SC-WCM-CV - Decided April 7, 2000

JUDGMENT

This case is before the Court upon motion for review of Troy C. Ledbetter pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), 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 motion for review is not well taken and should be denied; 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 will be paid by Troy C. Ledbetter, for which execution may issue if necessary.

It is so ordered.

PER CURIAM

BIRCH, J., NOT PARTICIPATING

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS COMPENSATION APPEALS PANEL AT NASHVILLE
(MAY 27, 1999 SESSION)

TROY C. LEDBETTER,	)	
	)	
Plaintiff/Appellee,	)	FRANKLIN COUNTY CHANCERY
	)	
	)	
v.	)	Hon. Jeffrey F. Stewart
	)	Chancellor.
BATESVILLE CASKET COMPANY,	)	NO. 01S01-9805-CH-00104
	)	
Defendant/Appellant,	)	

For Appellants	For Appellee
Bryan Essary	Timothy S. Priest
Nashville, TN	Nashville, TN

MEMORANDUM OPINION
Filed - April 7, 2000

Members of Panel:

Justice Adolpho A. Birch, Jr.
Henry D. Bell, Special Judge
Hamilton Gayden, Jr., Special Judge

REVERSED

Hamilton Gayden
Special Judge

This workers compensation appeal has been referred to the Special Workers Compensation Appeals Panel in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. The appellant, Batesville Casket Company alleges two errors were committed by the trial court: (1) The trial court erred in its conclusion that the plaintiff had reached maximun medical improvement for this case to be ripe for a determination of all issues; (2) The trial court's assignment of 50% disability to the arm is contrary to the evidence presented at trial. On appeal the appellee also asserts that the trial court erred in not allowing him to recover the examination fee of five-hundred dollars that was paid to Dr. Gaw, a consulting physician.

The panel finds that the evidence prepoderates against a finding that this case was ripe for determination for all issues. However, the panel affirms the trial court's denial of reimbursement of the five hundred dollar examination. The panel remands for further hearing the amount of the permanent impairment when the claim is ripe for determination.

Review of the finding of facts by the trial court shall be de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise.

Appellee, Troy Craig Ledbetter is forty-one years old and is a high school graduate. Appellee

began his career at Batesville Casket Company in approximately 1977 or 1978, and as of April 7, 1998, appellee was still employed by appellant. Appellee has held many different positions during his twenty year career, including many that required him to use vibratory tools that necessitated constant gripping, squeezing, and lifting. At the time of the hearing below the appellee was still actively employed by the appellant.

In approximately May of 1994, appellee, a right hand dominant, began experiencing a pain in the center of his wrist. The appellee sought medical attention from the nurse that was onsite at Batesville. The nurse provided appellee with a brace for his wrist. Approximately one year later the appellee sought outside medical attention because of worsening pain in his wrist. On May 4, 1995 the appellee visited Dr. Robert Russell who diagnosed appellee as having Kienbock's disease. Dr. Russell explained that Kienbock's disease is idiopathic, but is mainly seen in people who utilize vibratory tools that require constant gripping, squeezing and lifting. Dr. Russell has treated hundreds of cases of Kienbock's disease. The appellee subsequently visited Dr. Russell on June 29,1995, October 27, 1995, May 7,1996, and September 20, 1996. These follow up visits showed no improvement, no worsening, and continued pain and discomfort. Dr. Russell informed the appellee that an ordinary case of Kienbock's disease could heal within two to four years and the wait and see approach was best.

In Dr. Russell's deposition he stated that he did not believe that the appellee had reached a point in which a permanent impairment rating was appropriate. In his opinion Kienbock's diseases could take up to four years to reverse itself and he was of the opinion that the appellee's condition would continue to improve.

The appellee, on the advice of counsel, went to see Dr. Gaw, a physician specializing in orthopedics. Dr. Gaw confirmed Dr. Russell's diagnosis. However, in Dr. Gaw's deposition he, Dr. Gaw, gave the opinion that the appellee had reached maximum medical improvement on June 29, 1995. Dr. Gaw stated further that the appellee's condition will not improve because in his opinion

it had reached a plateau. Dr. Gaw defined the term plateau based on the AMA Guides, which states that if the impairment is not likely to change more than three percent impairment to the body as a whole in the following year, then by definition the person's condition has plateaued. Dr. Gaw concluded that the appellee had a 12% impairment to the extremenity and a 7% impairment to the whole person. Dr Gaw has treated five cases of Kienbock's disease.

Thus, the issue of whether the appellee's medical condition had reached maximum medical improvement is the matrix for a professional disagreement between Dr. Russell and Dr. Gaw.

The appellant cites TCA § 50-6-225 (e)(2) to show that the preponderance of evidence proves this case was not ripe for determination, and should not be decided until appellee's treating physician is able to determine whether the condition is static and susceptible to a permanent impairment rating. The appellant asserts that a postponement should have occurred. The appellant submits to the court that the nature of the case is of a non-pressing nature, which is illustrated by the appellee's continued work for the appellant, in addition to the probability of his condition improving. The appellant relies on the treating physician, Dr. Russell in his conclusions that a permanent impairment rating is inappropriate because the appellee's condition is likely to improve. The appellant also directs the court to look at the improvement between Dr. Russell's findings in June 1996 with Dr. Gaws findings in October 1997 as evidence of the illness improving, the appellant further submits to the court that Dr. Gaw refused to acknowledge any improvement between the range of motion recorded one year prior by Dr. Russell and the range of motion he recorded, even though the numbers had drastically improved.

After careful review the panel believes that this case was not ripe for determination on all the issues because the appellee had not reached maximum medical improvement. Dr. Russell, the treating physician, clearly stated that he believed with a reasonable amount of medical certainty that the appellee's condition would improve. The Court adopts the opinion of appellee's treating physician. The Court therefore remands this case to the trial court for a determination of plaintiff's

impairment when appellee reaches maximum medical improvement. The panel affirms the trial court's denial of the five hundred dollar examination fee paid to Dr. Gaw by the appellee. Court costs are assessed to the appellee.

Hamilton Gayden, Jr., Special Judge

CONCUR:

Justice Adolpho A. Birch, Jr.

Henry D. Bell, Special Judge