IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
(April 27, 2000 Session)

EDDIE RAY HARPER v. LOCKHEED MARTIN ENERGY SYSTEMS, INC.

Direct Appeal from the Circuit Court for Anderson County
No. 98LA0414 James B. Scott, Jr., Judge

No. E1999-01150-WC-R3-CV - Mailed - August 2. 2000
Filed: September 12, 2000

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The appellant-employee appealed the trial court's award of 12.5% permanent disability to the body as a whole which was based on a finding the employee had made a meaningful return to work resulting in capping the award at two and one-half times the medical impairment under T.C.A. § 50-6-241(a)(1). On appeal, appellant argues he did not return to work for the "pre-injury employer" and the six times medical impairment under subsection (b) should control the award. Judgment of the trial court is affirmed as the new employer was a successor or substitute employer for the original employer by reason of a change of contractors at the U.S. government facility.

Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Circuit Court Affirmed.

THAYER, SP. J., delivered the opinion of the court, in which ANDERSON, C. J., and BYERS, SR. J., joined.

Roger L. Ridenour, Clinton, Tennessee, for the appellant, Eddie Ray Harper.

Christopher H. Hayes, Oak Ridge, Tennessee, for the appellee, Lockheed Martin Energy Systems, Inc.

OPINION

Facts

The employee, Eddie Ray Harper, was employed by defendant, Lockheed Martin Energy Systems, Inc., as a chemical operator at the Oak Ridge National Laboratory in Oak Ridge, Tennessee. On September 7, 1996, he sustained a compensable work-related injury which was diagnosed as a lumbar strain resulting in a 5% medical impairment to the body as a whole. His treatment was of a conservative nature with medication and physical therapy.

The employee returned to work at Lockheed Martin with some physical restrictions and at the same wage rate he was receiving prior to the injury. He continued to work until March 1999 when the U.S. Department of Energy changed contractors at the laboratory and employee Harper and a number of other workers were "transitioned" to the new contractor, Bechtel Jacobs Company. The record indicates that due to the change of contractors, the Atomic Trades & Labor Council, Bechtel Jacobs and Lockheed Martin entered into an agreement whereby the transferred employees would retain all seniority rights, would continue at the same job and receive the same pay and benefits. The records of Lockheed Martin indicated that as of a certain date, employee Harper was terminated from its payroll and was transitioned to Bechtel Jacobs, the successor contractor.

The trial court was of the opinion that the employee had made a meaningful return to work under T.C.A. § 50-6-241(a)(1) and imposed the 2½ times cap which resulted in an award of permanent disability at 12.5% to the body as a whole.

Issue on Appeal

The employee has appealed the award and argues the trial court was in error in failing to find the award was controlled by subsection (b) of the statute which imposes a maximum award of six times the medical impairment. In support of this argument, it is stated that at the time of the trial below, the employee had been terminated by his regular employer and was in the employment of a new and different employer and not a "pre-injury employer".

Analysis

Generally speaking, T.C.A. § 50-6-241(a)(1) provides that when the injured employee returns to work for the "pre-injury employer" at a rate of pay equal to or greater than the wage rate received prior to the injury, the maximum award of permanent disability is two and one-half times the medical impairment. If the employee does not return to work for the "pre-injury employer" or the return to work is not considered meaningful, the maximum award of disability is six times the medical impairment rating under subsection (b). See also *Newton v. Scott Health Care Center*, 914 S.W.2d 884 (Tenn. 1995).

In this case the employee returned to work for his "pre-injury employer" at the same rate of pay and continued to work for about 2½ years before he was transferred to the payroll of the

successor employer. With his new employer, he held the same job, at the same plant, at the same pay and benefits, and under the same seniority rights he had acquired before the transfer. We also note that he had only been employed by Bechtel Jacobs for a month or two prior to the trial.

Conclusion

We are required to review the case *de novo* under T.C.A. § 50-6-225(e)(2) with a presumption of the correctness of the findings of fact unless we find the preponderance of the evidence is otherwise. When the appeal only presents a question of law involving statutory interpretation, the review is *de novo* with no presumption of correctness given the lower court's judgment. *Spencer v. Towson Moving & Storage, Inc.*, 922 S.W.2d 508, 509 (Tenn. 1996).

We concur with the ruling of the trial court that the return to work of employee Harper was meaningful under the peculiar facts of this case and that the award of disability would be governed by the provisions of T.C.A. § 50-6-241(a)(1).

One of the main objectives of this subsection is to encourage employers to accept injured employees back to work at the same wage rate as the employee was earning prior to sustaining the injury. This objective has been accomplished in this case since the employee has continued throughout the entire period to work at the same job under the same wages, benefits and conditions. We do not believe the legislature intended to change the maximum cap or award where a successor or substitute employer steps in and continues the very same employment relationship of the original employer. In considering the issue presented by this appeal, we must note that we are not dealing with the provisions of subsection (a)(2) where a new cause of action may arise under certain circumstances. The statute cannot be written to contemplate all factual circumstances that may arise from employment relationships and we believe our construction is reasonable under its present language.

The judgment of the trial court is affirmed. Costs of the appeal are taxed to the employee-appellant.

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ROGER E. THAYER, SPECIAL JUDGE

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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 facts and conclusions of law are adopted and affirmed and the decision of the Panel is made the Judgement of the Court.

Costs on appeal are taxed to the appellant, Eddie Ray Harper and surety, Roger L. Ridenour for which execution may issue if necessary.

09/12/00