

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

JAMES MEYERS v. CONTINENTAL CASUALTY COMPANY

**Direct Appeal from the Chancery Court for Hamilton County
No. 97-0940 Howell N. Peoples, Chancellor**

**No. E1999-01593-WC-R3-CV - Mailed - July 6, 2000
Filed: August 11, 2000**

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 appellant-employer appealed the trial court's ruling finding the appellee-employee was entitled to an award of permanent disability benefits at 60 percent to the left hand. On appeal, appellant argues the award should have been confined to a scheduled member, the left thumb. The employee insists the appeal is frivolous. Judgment of the trial court is affirmed as the injury to the left thumb causes an unusual and extraordinary condition affecting the hand. The appeal is not found to be frivolous.

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

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

Jeffrey L. Cleary, Chattanooga, Tennessee, for the appellant, Continental Casualty Company.

Paul Campbell III, Chattanooga, Tennessee, for the appellee, James Myers.

OPINION

Facts

In this case the employee, James Meyers, sustained a compensable work-related injury on February 6, 1996, while working for his employer, M & M Mars, Incorporated. He described the event as getting his left hand caught in a belt and pulley of a machine which resulted in ripping off a part of his left thumb.

He was seen by an orthopedic surgeon at a hospital emergency room and soon returned to work although he could not perform his duties immediately. After healing, his thumb was extremely sensitive to contact and he was authorized to see another orthopedic for a second opinion. The second doctor performed a surgical procedure on September 12, 1996. Plaintiff exhibited his thumb to the trial court and the court noted there was a scar which ran from the base of his thumb on one side to the base of the thumb on the other side in the shape of a U. He testified he was left-handed and that he had difficulty when working and holding and using small hand tools such as hammers, pliers, screwdrivers, etc. and that while the feeling in his thumb was some better, it still felt abnormal most of the time.

Issues on Appeal

The trial court fixed the permanent partial disability of 60 percent to the left hand. The insurance carrier, Continental Casualty Company, has appealed and argues the award of disability should have been limited to the thumb. The employee insists the appeal is frivolous.

Expert Medical Evidence

Dr. Cauley W. Hayes, a hand surgeon, testified by deposition and stated the thumb had healed from the “magling injury” but it was very uncomfortable on contact with anything; that he performed a procedure known as a vascularized flap of soft tissue from the bottom of the thumb and attempted to improve the sensory condition; and that he gave a 24 percent impairment to the hand as a result of the 62 percent loss of the thumb. Dr. Cauley felt the impairment rating had to be to the hand because the thumb affects the other digits functionally whereas the loss of a finger would be confined to that digit only.

Dr. Robert Haralson, an orthopedic surgeon, also testified by deposition. He had never seen or examined plaintiff but had reviewed all of the medical records including Dr. Hayes’ deposition. He was of the opinion that the impairment rating should be confined to the thumb and fixed it at 27 percent. He did state that without the thumb, the hand can only do certain grasping and pulling actions so that the thumb was extremely important to the hand.

Analysis

Tennessee Code Annotated § 50-6-207 provides a schedule of compensation for injuries to certain members of the body. This schedule contemplates that the loss of the use of a member would have some normal and expected adverse effect upon that member of the body to which it is attached. *Jeffrey Manufacturing Co. v. Underwood*, 426 S.W.2d 189, 191 (Tenn. 1968). The normal and expected adverse effect is not compensable beyond the amount set forth for the loss of use of the scheduled member. However, where an injury to a scheduled member produces an unusual and extraordinary condition affecting other members of the body, then compensation is not necessarily limited to the loss of the injured member. *See Carney v. Safeco Insurance Co.*, 745 S.W.2d 868 (Tenn. 1988); *Eaton Corporation v. Quillen*, 527 S.W.2d 74 (Tenn. 1975); *Adams Construction*

Co. v. Cantrell, 263 S.W.2d 516 (Tenn. 1953); *Standard Glass Co. v. Wallace*, 225 S.W.2d 35 (Tenn. 1949).

Conclusion

Our *de novo* review of the record under Tennessee Code Annotated § 50-6-225(e) requires us to conclude that a recovery for partial loss of use of the hand is justified in this case. Surgery was performed at the bottom of the thumb where it joins the hand to the tip of the thumb and the injury has resulted in a great loss of the ability of the hand to hold and work with small tools which requires gripping by the hand. As the court stated in the *Eaton Corporation* case, *supra*, (a finger-hand issue) loss of use of the hand in the practical everyday work of an individual should be recognized as a loss of use of the hand under the schedule of compensation.

We do not find the appeal to be frivolous as insisted by the employee.

The judgment is affirmed. Costs of the appeal are taxed to defendant insurance carrier.

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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 defendant, Continental Casualty Company and Jeffrey L. Cleary, for which execution may issue if necessary.

08/11/00