

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
August 30, 2000 Session

JIMMY L. LANE v. SCHERING-PLOUGH CORPORATION, ET AL.

**Direct Appeal from the Chancery Court for Bradley County
No. 98-002 Jerri S. Bryant, Chancellor**

No. E2000-00829-WC-R3-CV - Mailed - October 13, 2000

FILED: NOVEMBER 14, 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 State Second Injury Fund has appealed the trial court's ruling that it was not entitled to a credit or setoff for payment of temporary total disability benefits against that portion of the permanent disability award which it is responsible to pay. Judgment of the trial court is affirmed.

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

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

Paul G. Summers, Attorney General and reporter and E. Blaine Sprouse, Assistant Attorney General, of Nashville, Tennessee, for the Appellant, State Second Injury Fund.

Ashley L. Ownby, of Cleveland, Tennessee, for the Appellee, Jimmy L. Lane.

OPINION

The Second Injury Fund has appealed from the ruling of the trial court that it was not entitled to a credit or setoff for payment of temporary total disability benefits against that portion of the permanent disability award which it is responsible to pay.

Facts

The facts are not in dispute and the appeal only involves a question of law. The employee, Jimmy L. Lane, was injured during the course and scope of his employment on March 14, 1996. He had previous disabilities and was found to be totally disabled as a result of the March 1996 accident. He was awarded temporary total disability benefits in the sum of \$23,499.72 which had accrued at the time he reached maximum medical improvement on October 3, 1997.

At the time of the last injury he was 59 years of age and the court, pursuant to Tenn. Code Ann. § 50-6-207(4)(A)(i), ordered his permanent disability benefits to be paid until he became 65 years of age, which the parties agreed would result in payments for a total of 210 weeks. It was also undisputed that his maximum weekly benefits of \$302.77 would result in permanent total disability benefits of \$63,581.70.

The trial court apportioned the permanent disability award by ordering the employer, Schering-Plough Corporation, to pay 50 percent of the award and the Second Injury Fund to pay the remaining 50 percent. The judgment stated that the employer would pay its 50 percent share of the award which amounted to \$29,611.88 because the employer was allowed some credit for previous payment of permanent partial disability benefits.

With respect to the liability of the state fund, the judgment recited that the remaining 50 percent of the award (\$31,790.85) was to be reduced by the total amount paid as temporary total benefits (\$23,499.72) for a net liability of \$8,291.13.

After judgment was duly entered, the employee filed a motion to alter and/or amend the judgment so as to disallow the credit for payment of temporary total disability benefits and this motion was sustained.¹

Standard of Review

Ordinarily, an appellate review in a workers' compensation case is *de novo* with a presumption of the correctness of the findings of the trial court unless we find the preponderance of the evidence is against the conclusion of the court. Tenn. Code Ann. § 50-6-225(e)(2). However, when the issue on appeal only involves a question of law, there is no presumption in favor of the ruling. *Niziol v. Lockheed Martin Energy Systems*, 8 S.W.3d 622 (Tenn. 1999); *Union Carbide Corporation v. Huddleston*, 854 S.W.2d 89, 91 (Tenn. 1993).

Analysis

¹ Chancellor Jerri S. Bryant did not hear the original case and only ruled on the motion to alter the judgment.

The Second Injury Fund argues the trial court misinterpreted the term “maximum total benefit” as the language is defined in Tenn. Code Ann. § 50-6-102(13)(C) and cites the case of *Smith v. Liberty Mutual Ins. Co.*, 762 S.W.2d 883, 885 (Tenn. 1988). Our reading of this decision indicates employee Smith was injured during July 1986 which was at a point in time when the statutory language was different from language of the statute when employee Lane was injured during March 1996. The Court in the Smith case did hold that the term “maximum total benefit” included combined temporary and permanent total disability benefits and the maximum statutory recovery could not exceed a monetary cap of \$75,600.

With respect to this appeal, Tenn. Code Ann. § 50-6-102(13) provides:

“Maximum total benefit” means the sum of all weekly benefits to which a worker may be entitled; and

(A)

(B)

(C) For injuries occurring on or after July 1, 1992, the maximum total benefit shall be four hundred (400) weeks times the maximum weekly benefit except in instances of permanent total disability.

In the case of *Bomely v. Mid-America Corp.*, 970 S.W.2d 929 (Tenn. 1998), several issues were raised with respect to the liability of the Second Injury Fund for a portion of the award of permanent total disability. Employee Bomely was injured in 1993 and again in 1994. One of the issues in the case was what effect the statutory language of “maximum total benefit” defined in Tenn. Code Ann. § 50-6-102 had on awards of permanent total disability under Tenn. Code Ann. § 50-6-207 which required benefits to be paid until the employee was 65 years of age. The Court held that the language as defined under this section of the code specifically excluded permanent total disability awards and that awards of permanent total disability under Tenn. Code Ann. § 50-6-207 are not subject to the monetary cap imposed by the definition in Tenn. Code Ann. § 50-6-102. See also *Love v. American Olean Tile Co.*, 970 S.W.2d 440 (Tenn. 1998) which was a companion case of *Bomely* and involves the same issue and same ruling.

Conclusion

Since cases of permanent total disability have been expressly removed from the statutory definition of the term “maximum total benefit” in Tenn. Code Ann. § 50-6-102(13) and the Second Injury Fund concedes there is no statutory language allowing the requested offset of temporary total disability benefits, we are of the opinion the trial court was correct in modifying the judgment to provide the Second Injury Fund was liable to pay 50 percent of the total disability award without any credit for temporary total disability benefits that had been paid to the employee. Since the statutory definition of “maximum total benefit” has changed, we find *Smith v. Liberty Mutual Ins. Co.*, *supra*, not applicable to the facts of the present appeal.

The judgment is affirmed. Costs of the appeal are taxed to the State Second Injury Fund.

ROGER E. THAYER, SPECIAL JUDGE

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JIMMY L. LANE V. SCHERING-PLOUGH CORPORATION, ET
Chancery Court for Bradley County
No. 98-002

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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 State Second Injury Fund, for which execution issue if necessary.

11/14/00