

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

November 30, 2000 Session

**JIM BELL v. RICH PRODUCTS CORPORATION**

**Direct Appeal from the Chancery Court for Rutherford County  
No. 98-WC-1542 Robert E. Corlew, III, Chancellor**

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**No. M2000-00950-WC-R3-CV - Mailed - January 12, 2001  
Filed - February 14, 2001**

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 of findings of fact and conclusions of law. In this appeal, the employer insists the award of permanent partial disability benefits is excessive and that the trial court erred in commuting the award to a lump sum. As discussed below, the panel has concluded the judgment should be affirmed.

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

LOSER, SP. J., delivered the opinion of the court, in which BIRCH, J. and PEOPLES, SP. J., joined.

Stacey Cason and Terry L. Hill, Manier & Herod, Nashville, Tennessee, for the appellant, Rich Products Corporation.

Dicken E. Kidwell, Murfreesboro, Tennessee, for the appellee, Jim Bell.

**MEMORANDUM OPINION**

The employee or claimant, Jim Bell, is 41 years old and a high school graduate with experience as a service station attendant, fast food service worker, delivery truck driver and handyman. He was working for the employer, Rich Products, in the sanitation department when, on May 17, 1998, he suffered burn injuries to his arms, hands and shoulders. He was treated at the Vanderbilt University Burn Center by Dr. Kevin Kelly. Dr. Kelly has performed four surgical procedures to remove burned skin and reconstruct areas from which grafts were taken.

The claimant reached maximum medical recovery on March 10, 1999, ten months after the accident. Dr. Kelly has assigned a permanent medical impairment rating of 39 percent to the whole body, but conceded on cross examination that the guidelines only allowed for 30 percent, the additional 9 percent being for scarring on the areas from which the grafts were taken. The doctor

gave an affirmative answer when cross examined as to whether the claimant was able to perform a laundry list of menial tasks. The employee testified that he could not work at a full time job because of lost endurance. A case manager for the employer testified that he could find a job for the injured man. A vocational expert testified that he found 32 jobs compatible with the claimant's limited ability to work.

At the time of the trial, the claimant had no regular income and had been living on his savings of approximately \$20,000.00, all of which had been spent, and inheritance, of which \$50,000.00 remained.

Upon the above summarized evidence, the trial judge awarded permanent partial disability benefits based on 90 percent to the body as a whole, commuted to a lump sum of \$131,208.57. Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2).

Trial courts are not bound to accept physicians' opinions regarding the extent of a claimant's disability, but should consider all the evidence, both expert and lay testimony, to decide the extent of an employee's disability. Walker v. Saturn Corp., 986 S.W.2d 204, 207 (Tenn. 1998). An injured employee is competent to testify as to his own assessment of his physical condition and such testimony should not be disregarded. Id at 208. A trial judge may consider many pertinent factors, including age, job skills, education, training, duration of disability, and job opportunities for the disabled, in addition to anatomic impairment, for the purpose of evaluating the extent of a claimant's permanent disability. Tenn. Code Ann. § 50-6-241(b). From our examination of the record and a consideration of the stated principles, we cannot say the evidence preponderates against the finding of the trial court as to the extent of the claimant's vocational disability. The first issue is resolved in favor of the appellee.

Upon application by a party and approval by a proper court, benefits which are payable periodically may be commuted to one or more lump sum payments(s), if the court finds such commutation to be in the best interest of the employee and the employee has the ability to wisely manage and control the commuted award. Tenn. Code Ann. § 50-6-229(a). Such applications are not granted as a matter of course. Forkum v. Aetna Life & Cas. Ins. Co., 852 S.W.2d 230 (Tenn. 1993). The injured worker has the burden of establishing first that a lump sum is in his best interest and, second, that he is capable of wisely managing and controlling a lump sum, but the decision whether to commute to a lump sum is within the discretion of the trial court. Bailey v. Colonial Freight Systems, Inc., 836 S.W.2d 554 (Tenn. 1992). The trial court did not abuse its discretion by commuting this award to a lump sum. The second issue is also resolved in favor of the appellee.

For the above reasons, the judgment of the trial court is affirmed. Costs on appeal are taxed to the appellant.

JOE C. LOSER, JR., 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 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 the appellant, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM