IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
October 13, 2000 Session

DONNA MARCOM v. PCA APPAREL INDUSTRIES, INC. AND WAUSAU UNDERWRITERS INSURANCE COMPANY, ET AL.

Direct Appeal from the Chancery Court for Coffee County
No. 98-446 John Rollins, Chancellor

No. M2000-00377-WC-R3-CV - Mailed - January 30, 2001
Filed - March 2, 2001

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 trial court found the plaintiff had suffered an injury arising out of her employment with the defendant and awarded her a vocational disability of sixty (60%) percent to the left leg. The defendant argues that the evidence does not support the award of sixty (60%) percent to the left leg based on an anatomical rating of twelve (12%) percent. We affirm the judgment of the trial court.

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

TOM E. GRAY, SP.J., delivered the opinion of the court, in which FRANK F. DROWOTA, III, J. and JOHN K. BYERS, SR.J, joined.

Martin D. Holmes, Nashville, Tennessee, for Appellants, PCA Apparel Industries, Inc., and Wausau Underwriters Insurance Company

Walter F. Nichols, Manchester, Tennessee, for Appellee, Donna Marcom

MEMORANDUM OPINION

Donna Marcom was born on the 3rd day of May, 1942 in Coffee County, Tennessee. She quit high school in 1960 before graduating, but in 1978 she obtained her General Equivalency Diploma (GED).

In 1961, Ms. Marcom went to work for PCA Apparel Industries, Inc., as a sewing machine operator and was later promoted to supervisor over a parts section. In August, 1978 she quit working for PCA and stayed at home for about three (3) months and then returned to work outside the home

at a small garment plant, M and M. After being employed at M and M for about nine (9) months the plant closed and Ms. Marcom then worked for Park Industries and then for Freedom Industries.

Donna Marcom returned to work at PCA in 1986 working as a scheduler. A few years later she was promoted to the first shift supervisor in the screen printing department continuing to do scheduling. This job required the employee to be on her feet most of the work day. She had to step up onto platforms as high as two (2) feet and walk from printer to printer supervising 25 to 27 persons. Her work days were eight (8) to ten (10) hours per day and she could sit from one (1) to two (2) hours per day.

While in the course and scope of her employment on the 1st day of December, 1995, Donna Marcom stepped from a platform and injured her left ankle. The employer sent her for medical treatment. She saw Dr. Runge in Murfreesboro who put a cast on her ankle and leg for six weeks. His treatment did not resolve her problem, and she was referred to Dr. Robert Clendenin who placed the employee on anti-inflammatory medications and on an exercise and strengthening program.

When Ms. Marcom continued to have pain and other problems with her left ankle, Dr. Clendenin referred her to Dr. Robert Johnston, an orthopedic surgeon, who saw plaintiff first on the 8th day of October, 1996. Conservative treatment was rendered but without satisfactory results, and on the 25th day of April, 1997 Dr. Johnston performed surgery on the injured employee.

Plaintiff continued under the care of Dr. Johnston and reached maximum medial improvement on the 16th day of June, 1998. Dr. Johnston opined that according to the AMA Guidelines that plaintiff suffered a permanent partial impairment of 12% to the lower extremity or a 17% to the foot translated to a 5% impairment to the body as a whole. He was also of the opinion that the accident at work caused her permanent partial impairment.

No specific restrictions on plaintiff's activity in terms of her job description were placed by Dr. Johnston. He did testify that plaintiff should avoid excessive climbing, and she should not repetitively go up and down steps or walk long distances.

On the date of the accident plaintiff was making $9.65 per hour as a supervisor. Her rate of pay was increased to $10.20 per hour in January, 1997.

Following surgery, Ms. Marcom returned to work in a clerical position performing light duty work. Accommodations were made for her condition. On June 13, 1997, George Bosse, screen print manager for PCA and Randy Buckner, vice president of operations for this particular PCA plant, met with Donna Marcom. The employee was asked if when released by her doctor did she want to return as supervisor in Mr. Bosse's department. According to the testimony of Mr. Bosse, Ms. Marcom said she did not want to return to supervisor.

Donna Marcom testified at trial that she to her knowledge did not make a statement to Mr. Bosse or Mr. Buckner that she did not want to be a supervisor. She did testify that she could not

"hold up to walk for eight (8) to ten (10) hours a day that is required."

Ms. Marcom was released by Dr. Johnston in August, 1997 with walking restrictions. PCA offered her a job as a clerk in the piece goods department that involved recording piece good roll number. The job paid an hourly rate of $7.16 which was $3.04 less per hour than she was making. The employee declined the job and quit working for PCA.

Since August, 1997 Ms. Marcom has not sought employment outside the home.

The standard review of factual issues in workers' compensation cases is de novo upon the record of the trial court with a presumption of correctness, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. §50-6-225(e)(2) 1998; Henson v. City of Lawrenceburg 851 S. W. 2d 809, 812 (Tenn. 1993). Under this standard, this court is required to conduct an in depth examination of the trial court's findings of fact and conclusions of law to determine where the preponderance of the evidence lies. Thomas v. Aetna Life & Casualty Company 812 S. W. 2d 278, 282 (Tenn. 1991).

The accident suffered by Donna Marcom was accepted as a compensible injury under the Workers' Compensation Laws, State of Tennessee. Defendant does not dispute that the permanent partial impairment was caused by the accident at work.

Appellant's only contention in this matter is that the trial judge erred in awarding a sixty (60%) percent vocational disability to the left leg when the treating physician, Dr. Johnston, testified that Ms. Marcom retained a twelve (12%) percent anatomical impairment to the left leg.

In Black v. Liberty Mutual Insurance Company 4 S. W. 2d 182 (Tenn. Sp. Workers' Comp. 1999) this court quoted Johnson v. Midwesco, Inc. 801 S. W. 2d 804, 806, (Tenn. 1990), "Vocational disability is not dependent on the degree of anatomical disability where a permanent condition is established by the medical proof. Rather, it is a function of the employee's earning capacity in the open labor market considering age, education, job skills, vocational training, local job opportunities, and other facts."

In Duncan v. Boeing Tennessee Inc. 825 S. W. 2d 416, 417 (Tenn. 1992) this court stated that "a worker does not have to show vocational disability or loss of earning capacity to be entitled to the benefits for loss of use of a scheduled member."

The evidence does not preponderate against the judgment of the trial court, and we affirm.

The costs of this appeal are assessed to the appellant.

_____

TOM E. GRAY, SPECIAL JUDGE

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

DONNA MARCOM v. PCA APPAREL INDUSTRIES, INC. AND WAUSAU UNDERWRITERS INSURANCE COMPANY, ET AL.

Chancery Court for Coffee County
No. 98-446

No. M2000-00377-WC-R3-CV - Filed - March 2, 2001

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