IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS COMPENSATION APPEALS PANEL
AT KNOXVILLE
(December 14, 2000 Session)

DANNY MIDDLETON v. PORCELAIN PRODUCTS COMPANY

Direct Appeal from the Knox County Chancery Court
No. 99-143589-2 Daryl Fansler, Chancellor

No. E2000-01464-WC-R3-CV - Mailed - May 22, 2001
Filed: June 25, 2001

This Workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with Tenn. Code Ann. § 50-6-225(e) for hearing and reporting of findings of fact and conclusions of law. The employee appeals and contends the trial court erred (1) in finding his medical impairment to be eleven percent instead of eighteen percent to the body, (2) in concluding that he has employment opportunities available locally, and (3) in failing to consider economic feasibility in determining local employment opportunities. We affirm the judgment of the trial court.

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

HOWELL N. PEOPLES, SP. J., delivered the opinion of the court, in which WILLIAM M. BARKER, JUSTICE, and JOHN K. BYERS, SR. J., joined.

Richard Baker, Knoxville, Tennessee, for the Appellant, Danny Middleton.

Steven B. Johnson, Knoxville, Tennessee, for the Appellee, Porcelain Products Company.

MEMORANDUM OPINION

Facts

Danny Middleton, a resident of Tazewell, Claiborne County, Tennessee, had worked for Porcelain Products in Knoxville, Tennessee for 4.5 years at the time he injured his right shoulder in February 1998. Middleton would drive 110 miles each day to and from work.

After having surgery on his injured shoulder, Middleton was released to return to work with restrictions of lifting no more than 20 to 25 pounds, or up to 50 pounds if he could do it in a neutral position. He cannot move his right arm overhead, and must keep the right arm in a neutral position, which was described as having his hands on a typewriter or piano keyboard. John McElligott, M.D., assessed Middleton's permanent impairment at 18 percent to the upper extremity, which he converted under the AMA Guides to 11 percent to the body as a whole. He clarified that the injury involved the shoulder girdle and not just the arm.

Rodney Caldwell, PhD., a vocational expert called as a witness for Middleton, testified that he used a local labor market that included the Knoxville standard statistical metropolitan area. He concluded that Middleton has a vocational disability of 75 percent. He testified that if the assessment of vocational ability was limited to jobs in Claiborne County, he did not "know that the percentage itself would change." He stated that a traveling range of 40 to 50 miles is usually considered reasonable for commuting to work, and that, in his opinion, jobs in Anderson and Knox counties would be considered local jobs to Claiborne County. Dr. Caldwell described the jobs that Middleton can do with his educational and physical limitations as including machine-tending or operating jobs that can be done with one hand and that would not involve lifting objects with both hands on a regular basis.

The trial court sustained the employer's objection to evidence relating to the feasibility of Middleton taking a minimum wage job in Knox County. Counsel for Middleton contended that it was pertinent to the issue of what would constitute "reasonable employment opportunities locally" under Tenn. Code Ann. § 50-6-242(d).

Standard of Review

Review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise. TENN. CODE ANN. § 50-6-225(e)(2). *Stone v. City of McMinnville*, 896 S.W.2d 548, 550 (Tenn. 1995). The application of this standard requires this Court to weigh in more depth the factual findings and conclusions of the trial courts in workers' compensation cases. *Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452 456 (Tenn. 1988). Conclusions of law are subject to *de novo* review with no presumption of correctness. *Ganzevoort v. Russell*, 949 S.W.2d 293 (Tenn. 1997).

Discussion

Middleton contends the trial court erred in its finding of fact when it determined his medical impairment to be 11 percent instead of 18 percent to the body. Dr. McElligott testified that the AMA Guides do not calculate an impairment rating for the shoulder, but only for the "upper extremity." Tennessee workers' compensation law treats an injury to the shoulder as an injury to the body as a whole. *Wells v. Sentry Ins. Co.*, 834 S.W.2d 935 (Tenn. 1992); *Continental Ins. Co. v. Pruitt*, 541 S.W.2d 594 (Tenn. 1976). We agree with the trial court that it is reasonable and logical for disability to be based on the percentage of

impairment to the body since the award is for the disability to the body as a whole rather than limited to the loss of use of the shoulder or "upper extremity."

Middleton claims the trial court erred in concluding that he has employment opportunities available locally. While Dr. Caldwell testified that there had been a 75 percent reduction in the jobs now available to Middleton, there is no evidence that there are no employment opportunities available to him. The extent of vocational disability is a question of fact to be determined from all the evidence, including lay and expert testimony. Tenn. Code Ann. § 50-6-241(c); *Worthington v. Modine Mfg. Co.*, 798 S.W.2d 232, 234 (Tenn. 1990). The evidence does not preponderate against the findings of the trial judge.

Counsel for Middleton would have the court consider economic feasibility in determining local employment opportunities. He contends the term, "locally available", in Tenn. Code Ann. § 50-6-242 means employments which are both economically feasible for the employee to accept and which are local to the employee's place of residence. His own vocational expert has testified that Knoxville is in the "local labor market" for Mr. Middleton. The trial court did not err in so concluding.

Conclusion

The judgment of the trial court is affirmed. Costs of the appeal are taxed against the Appellant.

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Howell N. Peoples

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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 Judgment of the Court.

Costs on appeal are taxed to the appellant, Danny Middleton and Richard Baker, surety, for which execution may issue if necessary.

06/25/01