

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

January 25, 2001 Session

BOYD ADAMS v. GALAXY LOGISTICS, ET AL.

**Direct Appeal from the Circuit Court for Robertson County
No. 9054 James E. Walton, Judge**

**No. M2000-01552-WC-R3-CV - Mailed - March 14, 2001
Filed - April 16, 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 to the Supreme Court of findings of fact and conclusions of law. In this appeal, the employer insists (1) the trial court erred in finding that the worker's injury to his left leg was caused by a work-related injury to the right leg, (2) that the award of permanent partial disability benefits based on 80 percent to both legs is excessive, and (3) 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 Circuit Court
Affirmed.**

JOE C. LOSER, JR., SP. J., delivered the opinion of the court, in which FRANK F. DROWOTA, III, J., and JOHN K. BYERS, SP. J., joined.

Robert R. Davies, Davies & Humphrey, Nashville, Tennessee, for the appellants, Galaxy Logistics, Inc. and Connecticut Insurance Company.

Neal Agee, Jr., Agee & Agee, Lebanon, Tennessee, for the appellee, Boyd Adams.

MEMORANDUM OPINION

The employee or claimant, Boyd Adams, is a 40-year-old high school graduate, formerly employed as a truck driver for the employer, Galaxy. On October 16, 1998, he fell after stepping on loose pavement while exiting his truck and injured his right knee. He completed his run, then reported the accident to the employer, and was sent to the emergency room, where he was released with his right leg immobilized. He was referred to Dr. Thomas Byrd, who ultimately operated on the right knee. While recuperating from surgery, his left knee became painful and had to have similar surgery. The claimant is 5'8" tall and weighs 320 pounds.

Dr. Byrd did not believe the increased weight bearing on the left leg because of the injury to the right leg caused or contributed to the left leg injury. An independent medical examiner, Dr. David Gaw, opined that the increased weight bearing probably aggravated the pre-existing degenerative arthritis in the employee's left knee and that his disability was therefore causally related to the above accident. Dr. Gaw's opinion was supported by lay testimony.

Dr. Byrd assessed the injured worker's permanent impairment at 10 percent to the right leg. Dr. Gaw assessed the injured worker's permanent impairment at 20 percent to each leg. The employee receives other disability payments totaling \$2,100.00 per month.

Upon the above summarized evidence, the trial court awarded permanent partial disability benefits based on 80 percent to the body as a whole. Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). The panel is not bound by the trial court's findings but conducts an independent examination of the evidence to determine where the preponderance of the evidence lies. Wingert v. Government of Sumner County, 908 S.W.2d 921 (Tenn. 1995).

The appellant argues that there is no expert medical evidence of a causal relationship between the accident and the injury to his left knee. The argument ignores the testimony of Dr. Gaw. Absolute certainty on the part of a medical expert is not necessary to support a workers' compensation award, for expert opinion must always be more or less uncertain and speculative; Kellerman v. Food Lion, Inc., 929 S.W.2d 333 (Tenn. 1996); and, where equivocal medical evidence combined with other evidence supports a finding of causation, such an inference may nevertheless be drawn under the case law. Tindall v. Waring Park Assoc., 725 S.W.2d 935 (Tenn. 1987). When the medical testimony differs, the trial judge must choose which view to believe. In doing so, he is allowed, among other things, to consider the qualifications of the experts, the circumstances of their examination, the information available to them, and the evaluation of the importance of that information by other experts. Orman v. Williams Sonoma, Inc., 803 S.W.2d 672 (Tenn. 1991). Moreover, it is within the discretion of the trial judge to conclude that the opinion of certain experts should be accepted over that of other experts and that it contains the more probable explanation. Combustion Engineering, Inc. v. Kennedy, 562 S.W.2d 202 (Tenn. 1978). From our independent examination of the record, we cannot say the trial court abused its discretion by accepting the opinion of Dr. Gaw or that the evidence preponderates against the trial court's finding that the injury was causally related to the claimant's injury at work.

The appellant next contends the award of permanent partial disability benefits is excessive under the circumstances. Extent of vocational disability is a question of fact. Seals v. England/Corsair Upholstery Mfg., 984 S.W.2d 912, 917 (Tenn. 1999). Once the causation and permanency of an injury have been established by expert testimony, the 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. McCaleb v. Saturn Corp., 910 S.W.2d 412 (Tenn.

1995). It has long been the rule that the opinion of a qualified expert with respect to a claimant's clinical or physical impairment is a factor which the court will consider along with all other relevant facts and circumstances, but it is for the court to determine the percentage of the claimant's industrial disability. Federated Mut. Imp. and Hardware Ins. Co. v. Cameron, 220 Tenn. 636, 422 S.W.2d 427 (1967). From our independent examination of the record and a consideration of the above principles, we cannot say the evidence preponderates against the trial court's award.

The appellant finally argues that the trial court erred in commuting the award to a lump sum. Permanent disability benefits that are payable periodically may be commuted to one or more lump sum payment(s) on motion of any party subject to the approval of the circuit, chancery or criminal court. Lump sum payments, in the aggregate, amount to a sum of all future installments of compensation. Tenn. Code Ann. § 50-6-229(a). In determining whether to commute an award, the courts must consider (1) whether the commutation will be in the best interest of the employee, and (2) the ability of the employee to wisely manage and control the commuted award. Id. Whether to commute a workers' compensation award to a lump sum is discretionary with the trial court, and the trial court's decision will not be disturbed on appeal unless the trial court's decision amounted to an abuse of discretion. Edmonds v. Wilson County, 9 S.W.3d 106, 109 (Tenn. 1999). We find no abuse of discretion in the present case.

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

JOE C. LOSER, JR.

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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 appellants, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM