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

DANNY BELL v. EMERSON ELECTRIC COMPANY

Direct Appeal from the Chancery Court for Gibson County
No. 4119 George R. Ellis, Chancellor

No. W1999-00988-WC-R3-CV - Mailed February 21, 2001; Filed May 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 sustained a seven and one-half percent permanent partial disability to the body as a whole as a result of an on-the-job injury to his left shoulder. The defendant says the evidence does not support the finding. 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

JOHN K. BYERS, SR. J., delivered the opinion of the court, in which Janice Holder, J. and Don R. Ash, S.J., joined.

P. Allen Phillips, Jackson, Tennessee, for the appellant Emerson Electric Company.

Robert B. Vandiver, Jackson, Tennessee, for the appellee, Danny Bell.

OPINION

History

The plaintiff, at time of trial, was forty-five years of age. He worked for the defendant as a forklift driver and as a quality instructor. Prior to this the plaintiff worked for nineteen years at Martin Marietta Corporation (Milan Arsenal) doing a variety of jobs. After he was injured and underwent surgery, the plaintiff returned to full-time work for the defendant as a forklift operator.

Facts

While working for the defendant, the plaintiff experienced two incidents that are closely related medically to the condition for which the trial court awarded the plaintiff recovery.

In May of 1996, the plaintiff stepped in hydraulic oil on the floor and slipped. When he slipped, he was holding onto an overhead pipe, which resulted in his left shoulder being injured. The plaintiff was referred to Dr. Louis Murphy and subsequently was seen by Dr. Keith Nord, an orthopedic surgeon, for this injury.

On October 30, 1997, the plaintiff was struck by a forklift and thrown several feet. He landed on his left side. He was again seen by Dr. Murphy for the resulting injury.

Medical Evidence

Dr. Nord saw the plaintiff on September 15, 1997, because the plaintiff was complaining of pain in his left shoulder. Dr. Nord was of the opinion the plaintiff had a left shoulder impingement and possible rotator cuff tear. An MRI was done and was read on September 26, 1997. The test showed a synovial cyst in the shoulder but no rotator cuff tear. On October 29, 1997, Dr. Nord diagnosed the plaintiff's problem as a left shoulder impingement and a humeral head cyst. The plaintiff was scheduled for surgery, but before the surgery could be performed, the plaintiff was injured in the forklift accident at work.

Dr. Nord performed surgery on December 4, 1997, and during the course of the surgery found the plaintiff also had a labral tear (a tear to tissue around the head of the humerus). Dr. Nord was of the opinion the tear was caused by the accident involving the plaintiff being struck by a fork lift on October 30, 1996. He reached his conclusion because the MRI, done just prior to the accident, did not reveal a tear. Dr. Nord found the plaintiff had sustained a five percent impairment to the upper extremity (arm) or a three percent whole body medical disability by reason of the injury.

Discussion

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. *See Corcoran v. Foster Auto GMC, Inc.,* 746 S.W.2d 452, 456 (Tenn. 1988). When the medical testimony is presented by deposition, as it was in this case, this Court is able to make its own independent assessment of the medical proof to determine where the preponderance of the evidence lies. *Cooper v. INA,* 884 S.W.2d 446, 451 (Tenn. 1994); *Landers v. Fireman's Fund Ins. Co.,* 775 S.W.2d 355, 356 (Tenn. 1989).

The defendant's position in this case is, in effect, that the injury of October 30, 1997, makes no difference because the surgery was done to correct the shoulder impingement and cyst problem, which the plaintiff had suffered as a result of the May of 1996 injury. The defendant contends therefore that the plaintiff's disability was not caused by the October 30, 1997, accident–or at least not made more severe by the occurrence. The defendant's position is not, however, supported by the medical evidence.[1] Dr. Nord was of the opinion the forklift accident caused the labral tear. He found the plaintiff suffered a three percent permanent partial medical impairment to the body as a whole as a result of this injury. The evidence is unrefuted and supports the finding of the trial judge.

The judgement of the trial court is affirmed, and the cost of the appeal is taxed to the defendant.

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JOHN K. BYERS, SENIOR JUDGE

[1]Only Dr. Nord testified in the case.

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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 on appeal are taxed to the Defendant/Appellant, Emerson Electric Company, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM