

IN THE COURT OF APPEALS OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
(September 28, 2000 Session)

HAE SUK HOLDER v. WHIRLPOOL CORPORATION

**Direct Appeal from the Chancery Court for Rutherford County
No. 98WC-1009 Robert E. Corlew, III Chancellor**

**No. M2000-01368 WC-R3-CV- Mailed - March 8, 2001
Filed - May 10, 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 defendant, Whirlpool Corporation, appeals the judgment of the Chancery Court of Rutherford County where pursuant to *Tennessee Code Annotated* § 50-6-241(a)(2) the trial court allowed reconsideration of the plaintiff's industrial disability and found that the plaintiff was entitled to receive an additional award of six percent (6%) to the body as a whole in addition to the previous award of eight percent (8%) made in accordance with the original settlement order between the parties filed in the Chancery Court of Davidson County. The defendant submits that the trial court erred in finding that the plaintiff, who was terminated for personal misconduct, was entitled to reconsideration pursuant to *Tennessee Code Annotated* § 50-6-241(a)(2), resulting in enhancement of a prior disability. Under the recent ruling of the Tennessee Supreme Court in *Freeman v. Marco Transportation Co.*, 27 S.W.3d 909 (Tenn. 2000), in which the Court held that a request for reconsideration brought pursuant to *Tennessee Code Annotated* § 50-6-241(a)(2) must be filed in the same court that exercised jurisdiction over the original workers' compensation claim, we do not reach the issue raised by the defendant and find that the judgment of the trial court should be reversed and the cause dismissed without prejudice. Under the savings statute, the plaintiff can refile her request for reconsideration in the Chancery Court of Davidson County within one year of the date of the judgment that is the final disposition in this case.

Tenn. Code Ann. § 50-6-225 (e)(2000) Appeal as of Right; Judgment of the Chancery Court Reversed and Dismissed.

CATALANO, SP. J., delivered the opinion of the court, in which BIRCH, J. and WEATHERFORD, SR. J., joined.

David T. Hooper, Brentwood, Tennessee for the appellant, Whirlpool Corporation.

Christopher K. Thompson, Murfreesboro, Tennessee for the appellee, Hae Suk Holder.

MEMORANDUM OPINION

In 1995, Hae Suk Holder injured her right shoulder while working for Whirlpool Corporation (Whirlpool). She returned to work in February 1996 making the same wage she had been earning prior to her injury. On October 23, 1996, the Chancery Court of Davidson County approved a lump-sum settlement between the parties awarding Ms. Holder an eight percent (8%) permanent partial impairment to the body as a whole.

The order also provided that Whirlpool was “relieved of any further liability to [Ms. Holder] under the Tennessee Workers’ Compensation Law or otherwise, except for the obligation of the defendant to provide future medical benefits attributed to this injury....” The order did not contain any provisions regarding the right to reconsideration under *Tennessee Code Annotated* § 50-6-241(a)(2).

Ms. Holder continued to work for Whirlpool until June of 1998 when she had a physical altercation with another employee that resulted in her termination.

On August 7, 1998, Ms. Holder filed a complaint in the Chancery Court of Rutherford County seeking additional workers’ compensation benefits by a reconsideration of her industrial disability pursuant to *Tennessee Code Annotated* § 50-6-241(a)(2). The trial court found that Ms. Holder had sustained a fourteen percent (14%) vocational disability (an additional award of six percent (6%) to the original settlement award of eight percent (8%) vocational disability).

ANALYSIS

Tennessee Code Annotated § 50-6-241(a)(2) provides in pertinent part:

In accordance with this section, the courts may reconsider, upon the filing of a new cause of action, the issue of industrial disability. Such reconsideration shall examine all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's disabled condition. Such reconsideration may be made in appropriate cases where the employee is no longer employed by the pre-injury employer and makes application to the appropriate court within one (1) year of the employee's loss of employment,

Tenn. Code Ann. § 50-6-241(a)(2).

In the recent case of *Freeman v. Marco Transportation Co.*, 27 S.W.3d 909 (Tenn. 2000), our Supreme Court held that a request for reconsideration pursuant to *Tennessee Code*

Annotated § 50-6-241(a)(2) must be filed in the court that originally exercised jurisdiction over the workers' compensation claim. In *Freeman*, the Chancery Court of Knox County had approved the original settlement and the plaintiff had filed the complaint for reconsideration in the Circuit Court of Knox County. The Supreme Court dismissed the complaint for reconsideration but found that *Tennessee Code Annotated* § 28-1-105(a), the savings statute, applied to allow the plaintiff to refile his request for reconsideration within twelve (12) months of the entry of its judgment.

Under this ruling, which we recognize as controlling authority, we find that the judgment of the trial court should be reversed and the cause dismissed without prejudice. Under the savings statute, Ms. Holder may refile her complaint in the Chancery Court of Davidson County within one year of the date of the judgment that is the final disposition in this case.

We do not reach and express no opinion on the issue raised by Whirlpool.

CONCLUSION

The judgment of the trial court is reversed and the cause is dismissed without prejudice. The costs of this appeal are taxed to Ms. Holder.

Carol Catalano, Special Judge

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Chancery Court for Rutherford County
No. 98WC-1009

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JUDGMENT

This case is before the Court upon motion of Hae Suk Holder for review pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), 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 motion for review is not well taken and should be denied; 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 Hae Suk Holder, for which execution may issue if necessary.

IT IS SO ORDERED.

BIRCH, J., NOT PARTICIPATING