IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
January 22, 2001 Session

EVERETT E. HOLLINGSWORTH v. CROUCH LUMBER COMPANY

Direct Appeal from the Circuit Court for Benton County
No. 99CCV216 C. Creed McGinley, Judge

No. W2000-01214-SC-WCM-CV - Mailed March 8, 2001; Filed June 6, 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 the evidence preponderates against the trial court's finding that the employee is permanently and totally disabled and in favor of a minimal award of permanent partial disability benefits. 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 JANICE M. HOLDER, J., and L. T. LAFFERTY, SR. J., joined.

Lee Anne Murray, Nashville, Tennessee, for the appellant, Crouch Lumber Company.

Charles L. Hicks, Camden, Tennessee, for the appellee, Everett E. Hollingsworth.

MEMORANDUM OPINION

The employee or claimant was 78 years old when he was injured. He has less than a third grade education and cannot read or write, according to the undisputed proof. Other than helping his parents on the farm when he was a small child, his only jobs have been shoveling sand and loading trucks for Hardy Sand Company, cutting timber for another employer for seventeen years and cutting timber for Crouch Lumber Company for 24 years until he was injured when a loaded skidder hit him, knocking him unconscious and spraining his back. The back sprain was superimposed upon an arthritic, but asymptomatic spine. He testified that he has worked hard all his life, but has been unable to work at all since the accident, which occurred on September 18, 1998. His testimony was corroborated by his daughter, who sees him daily. He does walk about a mile a day, but it takes a good part of the day to do it.

He was treated and/or examined by three doctors. Anthony Segal, a neurosurgeon, first saw the injured employee in February 1999. Dr. Segal diagnosed cervical strain, recommended nerve block injections and assessed his permanent medical impairment at 4 percent to the whole body.

Terry O. Harrison, a family practitioner, has seen the injured worker since 1993, when he had a prior cervical strain, from which he completely recovered. Dr. Harrison diagnosed concussion and back sprain, and assessed his permanent medical impairment at 10 percent to the whole body, but used nonapproved guidelines. The doctor imposed restrictions of no lifting of more than 20 pounds, 15 repetitively, and opined that the employee is unable to "do gainful employment," considering his age, pain in his cervical and lumbosacral area and decreased range of motion in his cervical and lumbar spine.

Robert J. Barnett did not treat the employee, but examined and evaluated him. Dr. Barnett estimated his impairment at 10 percent to the whole body, using AMA guidelines, and restricted him from lifting more than 30 pounds, 10 pounds repetitively, from climbing, balancing, kneeling, crouching, crawling, twisting or stooping more than occasionally. The doctor testified further that the employee would be limited in reaching, handling, fingering, feeling, pushing and pulling and would retain significant limited motion in all directions in his neck.

Upon the above summarized evidence, the trial court found the claimant to be permanently and totally disabled. 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 appellant argues that the award of permanent total disability benefits is excessive because of expert medical testimony that he could work within his limitations. The argument ignores the claimant's own testimony, his age and his lack of education and job skills.

When an injury, not otherwise specifically provided for in the Act, totally incapacitates a covered employee from working at an occupation which produces an income, such employee is considered totally disabled. Tenn. Code Ann. § 50-6-207(4)(B). The definition focuses on an employee's ability to return to gainful employment. Davis v. Reagan, 951 S.W.2d 766 (Tenn. 1997). The fact of employment after injury is a factor to be considered in determining whether an employee is permanently and totally disabled, but that fact is to be weighed in light of all other considerations, including the employee's skills and training, education, age, local job opportunities, capacity to work at the kinds of employment in his or her disabled condition, rating of anatomic disability by a medical expert and the employee's own assessment of his or her physical condition and resulting disability. Cleek v. Wal-Mart Stores, Inc., 19 S.W.3d 770 (Tenn. 2000).

Moreover, an injury is compensable, even though the claimant may have been suffering from a serious pre-existing condition or disability, if a work-connected accident can be fairly said to be a contributing cause of such injury. An employer takes an employee as he is and assumes the risk of having a weakened condition aggravated by an injury which might not affect a normal person.

Harlan v. McClellan, 572 S.W.2d 641 (Tenn. 1978).

From a consideration of the above principles and our independent examination of the record, we cannot say the evidence preponderates against the trial court's finding of permanent total disability. The judgment of the Circuit Court for Benton County is therefore affirmed. Costs on appeal are taxed to the appellant.

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JOE C. LOSER, JR.

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ORDER

This case is before the Court upon motion 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 on appeal are taxed to the appellant.

IT IS SO ORDERED this 6th day of June, 2001.

PER CURIAM

Holder, J. - Not participating.