

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
August 31, 2000 Session

DONALD EARL MATHIS v. EMERSON MOTOR COMPANY

**Direct Appeal from the Chancery Court for Crockett County
No. 7628 George R. Ellis, Chancellor**

No. W1999-01792-WC-R3-CV - Mailed February 21, 2001; Filed April 2, 2001

This workers' compensation appeal has been referred to the Special Workers' Compensation Panel of the Supreme Court in accordance with Tennessee Code Annotated § 50-6-225(e)(1999) for a hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The plaintiff suffered an injury to two of his fingers. The issue for review is whether the trial court erred in finding that the plaintiff sustained an 85 percent permanent partial disability to the right arm. We reverse the trial court and modify the judgment to award the plaintiff 85 percent permanent partial disability to the right hand.

Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Chancery Court is Modified and Remanded.

WIL V. DORAN, SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and ROBERT L. CHILDERS, SP. J., joined.

P. Allen Phillips and B. Duane Willis, Jackson, Tennessee, for the appellant, Emerson Motor Company.

T. J. Emison, Jr., Alamo, Tennessee, for the appellee, Donald Earl Mathis.

MEMORANDUM OPINION

FACTUAL EVIDENCE

At the time of trial, plaintiff was forty-five (45) years of age. He had completed the eleventh (11th) grade of high school, obtained his GED and also had a year of education as a computer engineer. On July 21, 1998, plaintiff was working as a press operator. While guiding metal into a straightening machine plaintiff caught his glove in the machine, pulling his hand up into the straightener. Two of his fingers, the ring finger and middle finger of his right hand, actually went

into the machine. The plaintiff no longer works as a press operator. He is now a forklift operator and also assists other employees, basically helping out wherever he is needed. The plaintiff stated that as a result of this accident he does not parachute, snow ski, or water ski anymore. He stated that he continues to have pain in his shoulder, all the way down to the tips of his fingers at times, and he believes he has lost 25 percent of the strength in his right arm and about a fourth of the motion in his right shoulder. The plaintiff's fingers were sutured by the emergency room physician and he was later seen by Dr. Marshall Yellen.

Jim Dye, the plaintiff's supervisor, testified that the plaintiff does a great job, and that he did not even know that the plaintiff had a workers' compensation claim until three (3) days before trial. Mr. Dye stated that the plaintiff does anything asked of him and even some things that he is not asked to do. Mr. Dye stated that the plaintiff never complained to him in any way about his hands.

MEDICAL EVIDENCE

Dr. Yellen found only the right ring and long fingers to be injured and performed surgery to the flexor tendon of the right long finger. He found no reflex sympathetic dystrophy ("RSD") when he evaluated the plaintiff on July 7, 1999.

Dr. Yellen gave the plaintiff a 23 percent impairment to the right upper extremity, basing his opinion on the plaintiff's subjective range of motion. Dr. Yellen's ratings were given specifically to the fingers on the hand. Dr. Yellen testified that he took his ratings to the fingers, then translated that rating into hand impairments, and then translated the hand impairment ratings into upper extremity impairment ratings.

The plaintiff was seen by Dr. William L. Bourland, on July 20, 1999, for an evaluation. In his description of the accident, Dr. Bourland described only the injuries to the long and ring fingers. Although the plaintiff complained of pain in his right shoulder, the doctor found a full range of motion and no evidence of a significant problem and did not give an impairment rating to the right shoulder. Dr. Bourland testified that the plaintiff was actively using the hand, and he based his rating on the loss of motion in the fingers. He gave no additional rating for grip strength. Dr. Bourland found no evidence of RSD and gave the plaintiff a 24 percent impairment rating to the right hand, which he then translated into 22 percent impairment to the upper extremity. He did not make a finding regarding the right wrist. The doctor testified that he would place no restrictions on him and stated that the plaintiff was not going to be able to grip as well on that hand as he could before with the loss of motion.

The plaintiff was seen by Dr. Joseph C. Boals, III, on September 8, 1999, for an evaluation. On the basis of grip strength testing and loss of motion, Dr. Boals gave the plaintiff an impairment rating of 57 percent to the upper extremity, but did not discuss any problems outside of the fingers on plaintiff's right hand. Dr. Boals found no evidence of RSD and stated that the plaintiff had a full range of motion in the wrist. He described Mr. Mathis's right arm as being useful only as "a paper weight and maybe in some very limited handling of light material such as paper or pen."

The plaintiff had seen a Dr. Jennifer Johnson on two occasions prior to the accident in question. On January 16, 1996, two and a half years before the incident in question, Dr. Johnson opined that the plaintiff's right hand showed some synovial thickening, with pannus around the joints on the right hand. She noted that plaintiff had great difficulty closing his hand to make a fist because of the joint enlargement. She diagnosed polyarthritis, and gave the plaintiff medications for this condition. On June 16, 1996, he returned to Dr. Johnson stating that "his hands were killing him." Dr. Johnson noted that "his main complaint is his hands, they are beginning to lock up on him some, his arms, shoulders, pretty much pain in many joints." Again, she diagnosed polyarthritis. Dr. Johnson last saw plaintiff on December 18, 1998, after the incident in question. She again diagnosed polyarthritis, but also added the recent lacerations to plaintiff's fingers as a separate diagnosis.

ANALYSIS

The trial court found that the plaintiff sustained 85 percent permanent partial disability to the right arm, however, the evidence shows that the plaintiff's treatment only involved two fingers on his right hand and that the problems with closing his hand existed prior to the incident in question. There is no medical proof that the plaintiff's pre-existing condition was aggravated by the injury. There was no evidence of any injury to the hand, arm, or shoulder as a result of this accident. If there is an injury to a specified member under the statute and not to any other part of the body then the compensation awarded for the injury should be limited to the scheduled member. Ivory v. Emerson Motor Company, 1996 WL 508859 (Tenn. Sept. 9, 1996), Shores v. Shores, 217 Tenn. 96, 395 S.W.2d 388 (Tenn. 1965). Statutory schedules must control a disability award for an injury to a scheduled member only. Wells v. Sentry, 834 S.W.2d 935, 938 (Tenn. 1992).

Because there is evidence of a pre-existing arthritic condition to the plaintiff's right hand, there may be some doubt as to the validity of the grip strength test administered by Dr. Boals. However, it has been stated many times that the Workers' Compensation Act should be liberally construed in order to accomplish the purposes for which it was enacted and that all doubts should be resolved in favor of the injured worker. For this reason we find that it is reasonable to commute the finger injuries into a disability rating to the hand, but no further. We find that the evidence preponderates against the judgment of the trial court and we modify the decree and hold that the plaintiff has sustained an 85 percent permanent disability to the right hand.

This matter is remanded to Chancery Court for all necessary purposes not inconsistent with this opinion. Costs are taxed one half to the appellant and one half to the appellee.

WIL V. DORAN, SPECIAL JUDGE

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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 one-half to the Appellant and one-half to the Appellee, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM