

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT JACKSON  
May 16, 2001 Session

**LINDA ROWLAND v. NORTHBROOK HEALTH CARE CENTER**

**Direct Appeal from the Chancery Court for Madison County  
No. 56428 Joe C. Morris, Chancellor**

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**No. W2000-02562-WC-R3-CV - Mailed June 26, 2001; Filed July 30, 2001**

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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, Northbrook, insists the award of permanent partial disability benefits based on 70 percent to the body as a whole is excessive. As discussed below, the panel has concluded the judgment should be affirmed.

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

JOE C. LOSER, JR., 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 Jay Dustin King, Jackson, Tennessee, for the appellant, Northbrook Health Care Center.

Ricky L. Boren, Jackson, Tennessee, for the appellee, Linda Rowland.

**MEMORANDUM OPINION**

The employee or claimant, Linda Rowland, is 49 years old with an eleventh grade education and experience as a certified nurse's assistant. Her duties at Northbrook included feeding and bathing patients. She injured her low back lifting a patient on June 6, 1999. She continued working with pain for two weeks, then sought medical attention. She was eventually referred to Dr. John Neblett.

Dr. Neblett diagnosed a herniated disc and performed corrective surgery on September 9, 1999. While recuperating, the claimant developed a staph infection. The doctor released her to

return to work on January 17, 2000 with permanent restrictions of no lifting more than 50 pounds and no repetitive bending at the waist. She tried to return to work but was unable to work because of residual pain. She returned to Dr. Neblett, who ordered a second MRI. The test showed postoperative scarring and recurring disc herniation. After rehabilitation, she was restricted from prolonged standing or walking or lifting more than 10 to 15 pounds. The employer attempted to return the claimant to light duty work, but the claimant resigned because of disabling pain even though the employer was willing to make accommodations for her.

Dr. Neblett assigned a permanent impairment rating, based on appropriate guidelines, of 12 percent to the whole body. The claimant testified she cannot work.

Upon the above summarized evidence, the trial court found that the claimant's refusal to return to work was reasonable and awarded, inter alia, permanent partial disability benefits based on 70 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 of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225 (e)(2). This tribunal is not bound by the trial court's findings but instead conducts an independent examination of the record to determine where the preponderance lies. Galloway v. Memphis Drum Serv., 822 S.W.2d 584, 586 (Tenn. 1991). Where the trial judge has seen and heard the witnesses, especially if issues of credibility and weight to be given oral testimony are involved, considerable deference must be accorded those circumstances on review, because it is the trial court which had the opportunity to observe the witnesses' demeanor and to hear the in-court testimony. Long v. Tri-Con Ind., Ltd., 996 S.W.2d 173, 178 (Tenn. 1999). The appellate tribunal, however, is as well situated to gauge the weight, worth and significance of deposition testimony as the trial judge. Walker v. Saturn Corp., 986 S.W.2d 204, 207 (Tenn. 1998). The extent of an injured worker's vocational disability is a question of fact. Story v. Legion Ins. Co., 3 S.W.3d 450, 456 (Tenn. 1999).

The appellant contends the permanent partial disability award should not exceed two and one-half times the medical impairment rating because the claimant failed to make a reasonable attempt to return to work. For injuries arising after August 1, 1992, in cases where an injured worker is entitled to permanent partial disability benefits to the body as a whole and the pre-injury employer returns the employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of the injury, the maximum permanent partial disability award that the employee may receive is two and one-half times the medical impairment rating pursuant to the provisions of the American Medical Association Guides to the Evaluation of Permanent Impairment or the Manual for Orthopedic Surgeons in Evaluating Permanent Physical Impairment. Tenn. Code Ann. § 50-6-241(a)(1). If the offer from the employer is not reasonable in light of the circumstances of the employee's physical disability to perform the offered employment, then the offer of employment is not meaningful and the injured employee may receive disability benefits up to six times the medical impairment. See Nelson v. Wal-Mart Stores, Inc., 8 S.W.3d 625 (Tenn. 1999) On the other hand, an employee will be limited to disability benefits of not more than two and one-half times the medical impairment if his refusal to return to offered work is unreasonable. Newton v. Scott Health Care Center, 914 S.W.2d 884, 886 (Tenn. 1995). The resolution of what is

reasonable must rest on the facts of each case and be determined thereby. Id at 886.

The trial judge accredited the claimant's testimony that she is unable to perform her assigned duties because of her injuries. From our independent examination of the record, we cannot say the preponderance of the evidence is otherwise. An injured employee is competent to testify as to her own assessment of her physical condition and such testimony should not be disregarded. Walker at 208 (Tenn. 1998).

While this appeal was pending, the claimant filed and served a motion for an award of interest on payments made since the judgment was filed in the trial court. The employer cannot and does not dispute the claimant's entitlement to interest. However, the application should be made to the trial court.

For the above reasons, the evidence fails to preponderate against the findings of the trial court. The judgment is accordingly affirmed and the cause remanded to the trial court for an award of any interest due the claimant and all other purposes. Costs are taxed to the appellant, Northbrook Health Care Center.

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JOE C. LOSER, JR., 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 to the Appellant, Northbrook Health Care Center, for which execution may issue if necessary.

**IT IS SO ORDERED.**

**PER CURIAM**