

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON

June 30, 2000 Session

RONNIE WAYNE INMAN v. EMERSON ELECTRIC CO.

**Direct Appeal from the Chancery Court (Humboldt) for Gibson County
No. H-3814 George R. Ellis, Chancellor**

No. W1999-02245-WC-R3-CV – Mailed April 4, 2001; Filed August 20, 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 of findings of fact and conclusions of law. The trial court found the plaintiff sustained a twenty-five percent permanent partial disability to the body as a whole. The defendant disputes 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
Affirmed.**

DON R. ASH, SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and JOHN K. BYERS, SP. J., joined.

P. Allen Phillips and Jennifer K. Craig, Jackson, Tennessee, for the appellant, Emerson Electric Co.

John C. Nowell, Jr., Trenton, Tennessee, for the appellee, Ronnie Wayne Inman.

MEMORANDUM OPINION

History

Plaintiff, Ronnie Wayne Inman, filed a Complaint for workers' compensation benefits on April 25, 1997. The trial was heard on August 17, 1999. At the conclusion of the proof the trial court awarded plaintiff 25% permanent partial disability to the body as a whole. Defendant, Emerson Electric Co., appeals the decision of the trial court. For the reasons discussed below, we affirm.

Facts

On or around May 18, 1996, plaintiff was struck on the back, buttocks and right arm by hot aluminum, which shot from a machine at defendant's plant. The plaintiff was taken to the emergency room at Humboldt General Hospital. His wounds were dressed and treated and he was sent home with oral medication. The plaintiff returned to work the next day, but was unable to work. Later in the week, plaintiff was transferred to a cooler part of the plant. At his new job the plaintiff had no trouble keeping up with his production quota. Moreover, other than doctor appointments, the plaintiff did not miss work before the trial.

Dr. William Hickerson, a plastic surgeon, first examined the plaintiff on February 4, 1997 for scar tissue on his back. At the examination, the plaintiff complained of occasional shooting pain in the area of the scar tissue. Dr. Hickerson diagnosed scar tissue and recommended a re-moisturizing agent. Upon re-examination, Inman was found to have little change to his condition. Dr. Hickerson opined the scar tissue was not such that it would be rated under the AMA Guidelines. He did not place any restrictions based upon the scarring of the skin.

Next, Dr. Hickerson recommended that Dr. Cobb, an orthopedic surgeon, examine the plaintiff. Dr. Cobb noted that the problems might be musculoskeletal in nature. He also found the plaintiff had more tenderness with deeper palpation and there could be a mild lumbar strain. Dr. Cobb opined there was no sign of permanent impairment from an orthopedic standpoint and there were no restrictions from an orthopedic standpoint.

Next, Dr. Goshorn, a plastic surgeon, examined the plaintiff. Dr. Goshorn's opinion was presented to the trial court through a letter marked as an exhibit to Dr. Schnapp's deposition. Dr. Goshorn opined that the plaintiff had chronic pain secondary to a deep thermal injury. He further stated that the plaintiff had no functional impairment to the area, although he had impairment secondary to pain.

Next, Dr. Schnapp, a physician who specializes in pain management, examined the plaintiff. Upon his examination plaintiff described an aching and throbbing pain, which was sensitive, particularly when he was hot and perspired. Dr. Schnapp opined that a significant portion of the plaintiff's pain was mechanical pain related to bones, joints, and ligaments. Further, he did not believe that the plaintiff should be following any restrictions due to the burn injury and that his primary pain was deeper and unrelated to the burn.

Finally, Dr. DeMere examined the plaintiff and diagnosed healed scars of arms and back. Dr. DeMere was unable to find any other injury apart from the skin damage. He opined a 10% permanent partial impairment rating to the body as a whole. However, he stated that the AMA Guidelines were not particularly helpful in arriving at the impairment rating.

Medical History

At the trial the plaintiff testified that his injuries were very painful and that he still suffered pain. The plaintiff stated that he worked better in cooler places. He further stated that, should he lose his job with the defendant, it would be very difficult for him to accept jobs that involved heat.

Next, the plaintiff's brother testified that he lived with the plaintiff in an apartment. He testified that the first month after the accident the plaintiff had difficulty sleeping through the night. He also testified that over time the plaintiff appeared to get better and complained of pain less frequently.

At the time of the trial the plaintiff was 46 years of age. Plaintiff possessed a GED and his work history included laying tile and working in factories. He had been employed with the defendant since 1994. The trial court held that the plaintiff had a 25% permanent partial disability to the body as a whole, and lifetime future medical benefits pursuant to the statute.

Discussion

Our review is de novo upon the record accompanied by a presumption of correctness unless the preponderance of the evidence indicates otherwise. Tennessee Code Annotated § 50-6-225 (e) (2) (1997 Supp.). All of the medical testimony in this cause was presented either by deposition or by stipulated medical records. None of the doctors testified in court, and thus the trial judge had no opportunity to observe the demeanor of these witnesses while testifying.

Thus, as to this evidence, we review it without a presumption of correctness upon the theory that we have the same opportunity to consider this evidence, which the trial court enjoyed, and as we review the record de novo, we apply a presumption of correctness only with regard to testimony of witnesses who testified in person. Krick v. City of Lawrenceburg, 945 S.W.2d 709, 712 (Tenn. 1997). In this appeal, the defendant contends that the trial court erred in finding that the plaintiff had sustained a permanent partial disability as a result of his work related injury.

In the instant case, four doctors gave an impairment rating of zero and no restrictions. Dr. McCarthy DeMere saw the plaintiff on three visits as well as an examination. In this case and very similar to the case of Bates v. Cooper Industries, et al., 22 TAM 17-5 (Tenn. 1997), the trial court chose to accept the opinion of one physician and rejected the testimony of three or four others. Obviously in a workers' compensation case, the trial judge has discretion to determine which expert medical testimony to accept when such evidence conflicts. Relying upon Dr. DeMere's rating, the trial court found an impairment rating of 25% to the body as a whole. A medical or anatomical impairment rating is not always indispensable to a trial court's finding of a permanent vocational impairment; anatomical impairment is distinct from the ultimate issue of vocational disability; and a medical expert's characterization of a condition as "chronic" and the placement of permanent medical restrictions is sufficient to prove permanency. Walker v. Saturn Corp., 986 S.W.2d 204, 207 (Tenn. 1998), citing Hill v. Royal Ins. Co., 937 S.W.2d 873, 876 (Tenn. 1996). Moreover, trial

courts are not bound to accept physicians' opinions regarding the extent of a claimant's disability, but should consider all the evidence, both expert and lay testimony, to decide the extent of an employee's disability. Walker v. Saturn Corp., 986 S.W.2d at 208.

We find the testimony of the plaintiff, his doctor and his family members is sufficient to support the trial court's finding of 25% permanent partial impairment to the body as a whole. First, there is no question that the injury to the plaintiff was very serious. After the accident the plaintiff found it difficult to complete his old job. In fact, he was only able to work for sustained periods in cool places.

Finally, 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 to those circumstances on review. Kellerman v. Food Lion, Inc., 929 S.W.2d 333 (Tenn. 1996). In addition, this panel is not at liberty to substitute its own opinion as to the extent of an injured worker's permanent disability for that of the trial court. See Collins v. Howmet Corp., 970 S.W.2d 941 (Tenn. 1998). The evidence in this case supports the trial court's finding of 25% impairment to the body as a whole. Therefore, the trial court's holding is affirmed. Costs are taxed to the defendant Emerson Electric Co.

DON R. ASH, SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

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No. W1999-02245-SC-WCM-CV - Filed August 20, 2001

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 Emerson Electric Company.

IT IS SO ORDERED this 20th day of August, 2001.

PER CURIAM

Holder, J. - Not participating.