IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
October 9, 2001 Session

PATRICIA DAISY COLEMAN v. TOWER AUTOMOTIVE, ET AL.

Direct Appeal from the Circuit Court for Carroll County
No. 4049 Julian P. Guinn, Judge

No. W2001-00284-WC-R3-CV - Mailed December 3, 2001; Filed January 22, 2002

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-appellant contends the award of permanent partial disability benefits based on 35 percent to the body as a whole is excessive. As discussed below, the panel concludes the judgment should be affirmed.

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

JOE C. LOSER, JR., SP. J., delivered the opinion of the court, in which L.T. LAFFERTY, SR. J., and JANICE M. HOLDER, J., joined.

Deana C. Seymour, Jackson, Tennessee, for the appellants, Tower Automotive and Lumbermen's Mutual Casualty Company.

Donald E. Parish, Huntingdon, Tennessee, for the appellee, Patricia Daisy Coleman.

MEMORANDUM OPINION

The employee or claimant, Patricia Coleman, is 46 years old with a general education diploma and experience as a school bus driver and production worker. At the time of her injury, she was working as a production worker for the employer, Tower Automotive, an assembler of automotive parts. Her job requires heavy lifting. She is an insulin dependent diabetic and suffers from chronic lung and vascular diseases. She was injured at work on January 8, 1999, when a wrench she was using to tighten a bolt slipped, causing her to fall to the floor. She continued working while seeing a number of doctors with complaints of severe shoulder pain.

Magnetic resonance imaging testing revealed a herniated cervical disc. When conservative care failed to relieve the problem, the injury was surgically repaired by Dr. John Brophy, a neurosurgeon, and Dr. Mark Harriman, an orthopedic surgeon. The claimant has returned to work for the same employer at the same or greater wage than before the injury. Dr. Brophy estimated her permanent medical impairment to be 10 percent. Dr. Harriman estimated her permanent medical impairment to be 7 percent and proscribed bending. Both used AMA Guides. The claimant lost two months work following surgery.

Dr. Robert J. Barnett, an orthopedic surgeon, examined and evaluated the claimant after surgery. Using Orthopedic Guides, Dr. Barnett estimated her permanent medical impairment to be 20 percent.

From the above summarized evidence, the trial court awarded, inter alia, permanent partial disability based on 35 percent to the body as a whole. Appellate review of findings of fact is de novo upon the record of the trial court accompanied by a presumption of correctness of the findings, 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 that 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 documentary evidence as the trial judge. See Walker v. Saturn Corp., 986 S.W.2d 204 (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 employer argues the award is excessive because it exceeds two and one-half times the medical impairment rating. 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).

The argument is based on evidence in the record that the orthopedic guidelines have been withdrawn from publication and the notion that the trial court therefore erred in considering the testimony of Dr. Barnett. The appellee correctly responds that, withdrawn from publication or not, the General Assembly has declared the orthopedic guidelines an authoritative source upon which medical experts may base their opinions of an injured worker's permanent medical impairment. We agree with the appellee. Mere withdrawal from publication does not have the effect of repealing a

legislative act.

From a consideration of Ms. Coleman's age, the condition of her health before and after the injury, her education and experience, as well as the opinions of medical experts concerning her physical impairment, we cannot say the evidence preponderates against the trial court's findings. The judgment is accordingly affirmed. Costs are taxed to the appellants.

_____

JOE C. LOSER, JR.

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
October 9, 2001

PATRICIA DAISY COLEMAN v. TOWER AUTOMOTIVE, et al.

Circuit Court for Carroll County
No. 4049

No. W2001-00284-WC-R3-CV - Filed January 22, 2002

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 Appellants, Tower Automotive and Lumbermen's Mutual Casualty Company, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM