

**IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE**

**ADVANCED PLATING, INC. v. JAMES A. WHITEHEAD**

**Direct Appeal from the Chancery Court for Davidson County  
No. 90-1790-I, Irvin H. Kilcrease, Chancellor**

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**No. M2001-01885-WC-R3-CV - Mailed - September 20, 2002  
Filed - October 22, 2002**

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This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of Tennessee for findings of fact and conclusions of law. In this case, the employee contends (1) the trial court erred in awarding permanent partial disability benefits to a scheduled member rather than finding that the employee was and is permanently and totally disabled and (2) the trial court erred in awarding temporary total disability benefits for only 19 weeks. Appellee, Advanced Plating, Inc., counters requesting reversal and dismissal contending that the injury to the employee did not arise out of and in the course and scope of his employment. For reasons stated, the judgment of the trial court is affirmed.

**Tenn. Code Ann. § 50-6-225(e)(3) Appeal as of Right; Judgment of the Chancery Court Affirmed**

GRAY, SP. J., delivered the opinion of the court, in which DROWOTA, C. J., and LOSER, SP. J. joined.

George Ellis Copple, Jr. and Ramona P. Desalvo, Nashville, Tennessee, for the appellant, James A. Whitehead.

David J. Deming, Nashville, Tennessee, for the appellee, Advanced Plating, Inc.

## **MEMORANDUM OPINION:**

James A. Whitehead (“Whitehead”), the employee-appellant, was born on the 10<sup>th</sup> day of February, 1937. He was employed by Advanced Plating, Inc. (“Advanced Plating”), the employer-appellee, as a buffer from 1988 until 1998. Whitehead alleges that on or about January 30, 1998, he injured his right knee while working at his buffing machine when a valve cover, the object he was buffing, became caught on a machine part and was thrown down toward his knee. Whitehead immediately reported the injury to Advanced Plating.

Prior to this injury, the then 60-year-old Whitehead suffered from serious health problems including diabetes, hypertension, high cholesterol, and obesity. He was also a recovering stroke victim. After the injury, his knee became swollen and painful, and Whitehead could no longer work after February 16, 1998. He saw Dr. Cranfield, who believed Whitehead was experiencing pain but could not ascertain whether the knee had a fracture.

Once he was approved for TennCare, Whitehead saw Dr. Bacon on June 1, 1999. Dr. Bacon found that Whitehead had pre-existing osteoarthritis in his right knee. He treated Whitehead conservatively for ten months and again in April 2000. Dr. Bacon then noted that Whitehead’s pre-existing osteoarthritis was aggravated by the January 30, 1998 work injury and that this condition progressed more rapidly than usual. Whitehead waited as long as he could, but he could no longer bear the pain. He underwent knee replacement surgery on May 8, 2000. Whitehead achieved maximum recovery from the surgery on September 19, 2000.

Dr. Prachyl, a vocational rehabilitation counselor, tested Whitehead to determine his employability. Based on factors such as Whitehead’s limited education, lack of special training, and long history of work as a manual laborer, Dr. Prachyl found that Whitehead qualified for less than 1% of the total jobs in Nashville prior to his injury. Post-injury, the number of jobs available to him further decreased to “essentially zero.” Dr. Prachyl concluded that Whitehead was 100% occupationally disabled and unemployable.

In addition, Whitehead's three witnesses testified that he mostly sits around at home, experiences instability in his leg, and has difficulty with mobility. Whitehead has neither returned to his previous job since February 16, 1998, his last day at Advanced Plating, nor has he been employed elsewhere.

The trial court found that Whitehead was entitled to vocational disability of 50% to the lower right extremity with an average weekly compensation rate of \$256.26. Whitehead was also awarded future medical expenses pursuant to Tenn. Code Ann. § 50-6-204. Additionally, the trial court awarded Whitehead temporary total disability benefits from the date of surgery, May 8, 2000, until the date of maximum medical improvement, September 19, 2000.

Advanced Plating, Inc., appellee-employer argues on appeal that the preponderance of the evidence weighs against any finding that the employee's knee condition was aggravated or advanced by an on-the-job injury. It is the contention of the employer that the manner in which the employee claimed to have injured his knee could not have happened.

James A. Whitehead testified as to how the accident happened on January 30, 1998. He said he reported the accident on that day to Cheri Tracy, one of the owners who worked in the office.

Ms. Tracy testified that the accident was reported to her but not on January 30, 1998. It was reported by all testimony within 30 days of its happening. Notice of the accident is not an issue.

Steven Tracy, one of the owners, and two other employees of Advanced Plating testified about the buffing process. A video was shown. The testimony and the video does not preponderate against the trial judge's findings.

When the trial judge has seen and heard a witness's testimony, considerable deference must be accorded on review to the trial judge's findings on credibility and the weight given to the testimony. Townsend v. State 826 S.W. 2d 434, 437 (Tenn. 1992). Humphrey v. David Witherspoon, Inc., 734 S.W. 2d 315, (Tenn. 1987).

Whitehead raises two issues on appeal. The first issue is whether the trial court erred in finding that he was entitled only to the permanent partial disability benefits of a scheduled member, i.e., to a maximum of 200 weeks for the loss of a leg, pursuant to Tenn. Code Ann. § 50-6-207(3)(A)(ii)(o), rather than those for a full-body injury. Second is whether the trial court erred in finding that Whitehead was entitled to temporary total disability benefits for only 19 weeks, i.e., from the date of his surgery until the date of maximum medical improvement, rather than the 135 weeks beginning on the date that he left his job due to his injury until the date of maximum medical improvement.

Appellant's issues on appeal are questions of law involving statutory interpretation. Accordingly, our review is de novo with no presumption of correctness given the lower court's judgment. Spencer v. Towson Moving & Storage, Inc. 922 S.W.2d 508, 509 (Tenn. 1996).

An employee is eligible for permanent total disability benefits only if the injury is to a non-scheduled member. Ivey v. TransGlobal Gas & Oil, 3 S.W.3d 441, 448 (Tenn. 1999). Relying on two unpublished cases, Whitehead argues that he was entitled to compensation for his body as a whole because his injury involved not only his knee, but also problems with mobility, instability, walking, prolonged standing, and driving.

However, the cited cases are factually inconsistent with Whitehead's injury. In one case, the scheduled injury was for a loss of hearing due to inner ear trauma, an injury that directly caused the dizziness and imbalance that affected the entire body. In the other case, the combination of injuries involved a back injury and depression resulting from that injury; however, a back injury is not scheduled under Tenn. Code. Ann. § 50-6-207. Whitehead's argument that his knee injury eventually connects to his entire body is a tenuous one that is attempted all too often. Under this logic, every injury could become a full body injury because eventually the ankle bone connects to the leg bone, the knee bone to the hip bone, and so forth. Consequently, we conclude that the injury to the knee is confined to the scheduled right leg injury, and we affirm the trial court's calculation of 50% vocational disability to the right leg.

On the issue of whether Whitehead is entitled to 135 weeks of temporary total disability rather than 19 weeks, Whitehead contends that the trial court erroneously awarded him 19 weeks of temporary total

disability (“TTD”), beginning from May 8, 2000, the date of his surgery, to September 19, 2000, the date on which he attained maximum medical improvement. Whitehead claims that the TTD period began on February 16, 1998, the last day he worked for Advanced Plating. Thus, Whitehead claims that the trial court should have awarded him 135 weeks, not 19 weeks, of TTD.

The elements of a TTD claim require the employee to prove (1) his total disability to work caused by a compensable injury; (2) a causal link between his inability to work and the injury; (3) the duration of his disability period. Hollingsworth v. S & W Pallet Co., \_\_\_ S.W.3d \_\_\_ (Tenn. 2002) (citing Simpson v. Satterfield, 564 S.W.2d 953, 955 (Tenn. 1978)). The causal connection between an employee’s injury and his inability to work may be established by lay witnesses; however, where the nature of the injury is such that renders common knowledge unreliable, the causal connection must be established by expert medical testimony. Id. at 956.

The testimony between experts and lay witnesses conflicts somewhat. The lay witnesses testified that Whitehead was totally unable to work after his last day of employment at Advanced Plating. Their testimony suggested that Whitehead sat around most of the time, experienced pain, instability, and difficulty with mobility. However, the expert testimony suggests otherwise. Upon examining Whitehead on February 16, 1998, Dr. Cranfield believed Whitehead was experiencing pain but could not positively ascertain whether the knee had a fracture. Whitehead used crutches for two to three weeks and permanently switched to a cane.

Dr. Bacon first saw Whitehead on June 1, 1999, and treated him conservatively for ten months. On May 8, 2000, he performed knee replacement surgery. Although Dr. Bacon restricted Whitehead from running, squatting, and other similar movements, Dr. Bacon encouraged him to do as much as he physically could with the leg and recommended not lifting anything heavier than 50 pounds. Dr. Bacon opined that Whitehead might do work that allows him to alternate between sitting and standing. According to Dr. Bacon, Whitehead’s impairment rating was between 37% and 50% of the leg.

In light of the expert testimony, Whitehead fails to present evidence that would preponderate against the trial court’s finding of 19 weeks of

TTD. Accordingly, the judgment of the trial court is affirmed, and the costs of this appeal are assessed to both parties equally.

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Tom E. Gray  
Special Judge

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SPECIAL WORKERS' COMPENSATION APPEALS PANEL

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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 will be paid by, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM