

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

November 22, 2002 Session

DEBORAH GRIFFIN v. ACE USA

**Direct Appeal from the Chancery Court for Madison County
No. 58712 Joe C. Morris, Chancellor**

No. W2002-01433-WC-R3-CV - Mailed January 24, 2003; Filed February 26, 2003

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. The trial court found the plaintiff had sustained a 40 percent permanent partial impairment to her body as a whole as a result of an injury to her left arm,¹ which aggravated a previous impairment to her right arm. The employer appeals the trial court's judgment. The employer contends that the plaintiff's injury was to a scheduled member, not to the body as a whole, and that the evidence did not preponderate in favor of the amount of the trial court's award. We conclude that the plaintiff may recover only for the injury to her left arm, a scheduled member, and we modify the plaintiff's award to 50 percent permanent partial disability to the left arm.

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

JOHN K. BYERS, SR. J., delivered the opinion of the court, in which JANICE M. HOLDER, J. and JOE C. LOSER, SP. J., joined.

P. Allen Phillips, Jackson, Tennessee, for the appellant, Ace USA.

Jack Manhein, Jr., Jackson, Tennessee, for the appellee, Deborah Griffin.

MEMORANDUM OPINION

At the time of trial, the plaintiff, who is married and is the mother of a child, was forty years of age. She has a twelfth-grade education. The plaintiff's work history is, for the most part, that of

¹ The trial judge and the testifying physicians refer to the plaintiff's injuries as being to the "upper extremities." However, the Workers' Compensation Act refers to "arms."

a food service worker. In 1991, the plaintiff's right arm was broken in an automobile accident. The accident was not job-related. As a result of that injury, the plaintiff has a metal plate in her right arm.

On March 22, 2000, the plaintiff received a work-related injury to her left ring finger, resulting in amputation of the finger, for which she received compensation based upon a 25 percent loss of use of her left arm.

On March 14, 2001, while working as a crust stacker for the defendant, the plaintiff's left arm was caught by mechanical flippers on a production line. Her radius and ulnar bones were severely fractured.

The plaintiff testified that as a result of the left arm injury she is unable to bend her wrist, that she cannot perform household chores because of the loss of grip, that her left arm is weaker, and that she has pain in her left arm. She further testified that as a result of the injury to her left arm she has to use her right arm more often, which has caused her right shoulder to hurt.

The physician who was treating the plaintiff's arm fracture released her to return to work on July 10, 2001, without any restrictions. However, the plaintiff was still under restrictions as a result of the March 2000 injury. The plaintiff was doing a light-duty job at the time of trial.

On July 21, 2001, the plaintiff submitted a resignation letter to Aurora Foods, Inc. The plaintiff reported to Aurora that she resigned because she was having pain in both of her arms due to the two accidents she had while working at Aurora.

The trial court found that the plaintiff's injury to her left arm aggravated and exacerbated the prior injury to her right arm, resulting in a 40 percent permanent partial disability to the body as a whole.

Medical Evidence

Dr. W. Randolph Fly, an orthopedic surgeon, saw the plaintiff immediately after the left arm injury² and performed surgery that consisted of opening the arm and placing plates on the broken bones. Dr. Fly continued to see the plaintiff over a period of several weeks and testified that she progressed normally in the healing process, which included pain and weakness in her arm during the time of treatment. Dr. Fly stated on May 8, 2001, that the plaintiff could return to work with restrictions of no lifting over 5 to 10 pounds, no fine manipulation with her left hand, and limited hours of work. On July 10, 2001, Dr. Fly found that she had reached maximum medical improvement. He fixed no restrictions on her as a result of the injury to her left arm. He testified the previous restrictions for the injury to her fingers were still in effect. Dr. Fly testified he only

² Dr. Fly's notes on the date of the plaintiff's injury indicate that the plaintiff reported pain in her left shoulder. There was no further mention of left shoulder pain by Dr. Fly.

treated the plaintiff for the injury to the left arm. He found she sustained a 3 percent impairment to her left arm because of stiffness as a result of the injury.

Dr. Robert Barnett, an orthopedic surgeon, saw the plaintiff for purposes of evaluation of the left arm injury. He had previously seen the plaintiff for evaluation of the ring finger amputation on the left hand. Dr. Barnett reported that she had severe disability affecting the left upper extremity with loss of sensation and grip strength. Dr. Barnett also reported that the plaintiff had said she had left shoulder pain as a result of the injury to her left arm but that it disappeared. The plaintiff told Dr. Barnett that the injury to her left arm required her to use her right arm more often and this caused her to have pain in her right shoulder. Dr. Barnett found she continued to have right shoulder pain. He assigned a 30 percent impairment rating to the plaintiff's left arm by combining a 16 percent impairment rating for the March 2000 injury to the left ring finger and a 15 -16 percent impairment rating for the March 2001 injury to her left arm. Dr. Barnett concluded that the plaintiff was unemployable because of the severe disability caused by injuries to both of her arms.

Discussion

We conclude that the injury in this case cannot be attributed to an injury to the body as a whole, whether under a theory of aggravation of a pre-existing condition as argued by the plaintiff or under a theory that the left arm injury extended to the body as a whole. There is no question that the plaintiff had a previous injury to her right arm. There is, however, no showing that the left arm injury caused anything other than pain to the right arm, nor is there any medical evidence showing further impairment to the plaintiff's right arm. If a work injury aggravates a pre-existing condition merely by increasing pain, then the plaintiff is not entitled to recover therefor. Sweat v. Superior Indus. Inc., 966 S.W.2d 31 (Tenn. 1998).

Tenn. Code Ann. § 50-6-207 creates a scheme of compensation for injuries to a scheduled member. The arm is a scheduled member. It is well settled that an award for disability for an injury to a scheduled member is exclusively controlled by the rate established by the legislature. Wade v. Aetna Cas. & Sur. Co., 735 S.W.2d 215 (Tenn. 1987). Before workers may recover on the basis of an injury to the body as a whole that occurred as the result of an injury to a scheduled member, they must show that the injury extended beyond the scheduled member. Thompson v. Leon Russell Enters., 834 S.W.2d 927 (Tenn. 1992).

The plaintiff relies upon Jeffery Mfg. Co. v. Underwood, 426 S.W.2d 189 (Tenn. 1968), and Cummings v. Royal Indem. Co., 264 F. Supp. 189 (E.D. Tenn. 1967), to assert that she may recover for injury to the body as a whole. In Jeffery, the plaintiff suffered an injury to his foot which caused him to limp and resulted in back pain. In Cummings, the plaintiff sustained a fracture to her left arm, left ankle and left shoulder. In our view, neither of these cases are applicable to the present case. Based upon the evidence before us, we find that the plaintiff may recover only for the injury to her left arm.

The employer has compensated the plaintiff for the injury to her left ring finger based on an

award of 25 percent permanent partial disability to her arm. At the time of the injury in this case, the plaintiff was working for the defendant doing light work to accommodate this previous injury.

We find that the current injury has resulted in a 50 percent additional loss to the plaintiff's left arm, and, therefore, we modify the judgment of the trial court to reflect an injury to the plaintiff's left arm rather than an injury to the body as a whole.

Conclusion

The judgment of the trial court is affirmed, as modified. This case is remanded to the trial court for proceedings consistent with this opinion. The costs of this appeal are taxed to the plaintiff.

JOHN K. BYERS, SENIOR JUDGE

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JUDGMENT ORDER

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 Appellee, Deborah Griffin, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM