

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

December 18, 2002 Session

BUFORD PRINCE v. CITY OF TULLAHOMA, ET AL.

**Direct Appeal from the Circuit Court for Coffee County
No. 30928 John W. Rollins, Judge**

**No. M2002-00619-WC-R3-CV - Mailed - March 5, 2003
Filed - April 7, 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. In this appeal, the employee insists (1) the trial court erred in limiting his award of disability benefits to the maximum of 400 weeks times his weekly compensation rate and (2) the trial court erred in applying his award of temporary total disability benefits against the maximum. As discussed below, the panel finds no reversible error.

Tenn. Code Ann. § 50-6-225(e) (2002 Supp.) Appeal as of Right; Judgment of the Circuit Court Affirmed

JOE C. LOSER, JR., SP. J., delivered the opinion of the court, in which ADOLPHO A. BIRCH, JR., J., and JOHN K. BYERS, SR. J., joined.

Rick L. Moore, Tullahoma, Tennessee, for the appellant, Buford Prince

Dale A. Tipps, Nashville, Tennessee, for the appellees, City of Tullahoma and AIU Insurance Company

MEMORANDUM OPINION

The employee or claimant, Mr. Prince, sought workers' compensation benefits from his employer, City of Tullahoma, and its insurer, AIU, for a work related injury. At the conclusion of the trial, the trial court awarded the claimant permanent partial disability benefits based on 80 percent to the body as a whole, which equates to 320 weeks of benefits at the claimant's compensation rate of \$353.33, or \$113,065.60. The employee has appealed.

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). The reviewing court is required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. Wingert v. Government of Sumner County, 908 S.W.2d 921, 922 (Tenn. 1995). The standard governing appellate review of findings of fact by a trial court requires the Special Workers' Compensation Appeals Panel to examine in depth a trial court's factual findings and conclusions. GAF Bldg. Materials v. George, 47 S.W.3d 430, 432 (Tenn. 2001). The trial court's findings with respect to credibility and weight of the evidence may generally be inferred from the manner in which the court resolves conflicts in the testimony and decides the case. Tobitt v. Bridgestone/Firestone, Inc., 59 S.W.3d 57, 61 (Tenn. 2001). The extent of an injured worker's vocational disability is a question of fact. Seals v. England/Corsair Upholstery Mfg., 984 S.W.2d 912, 915 (Tenn. 1999). Where the medical testimony in a workers' compensation case is presented by deposition, the reviewing court may make an independent assessment of the medical proof to determine where the preponderance of the proof lies. Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 167 (Tenn. 2002). Conclusions of law are reviewed de novo without a presumption of correctness. Nutt v. Champion Intern. Corp., 980 S.W.2d 365, 367 (Tenn. 1998).

The claimant initiated this civil action to recover workers' compensation benefits for a back injury occurring in 1998. After a trial on the merits, the trial court awarded him, among other things, permanent partial disability benefits based on 80 percent to the body as a whole, which equates to 320 weeks times his agreed weekly compensation rate of \$353.33, or \$113,065.60, which, when added to the temporary total disability benefits already received by the claimant, totaled \$152,837.80. Then the trial court, concluding that the maximum total disability benefit allowed by law was 400 weeks times the employee's weekly compensation rate, capped the award at \$141,332.00, thereby reducing the combined award of temporary total and permanent partial disability benefits by \$11,505.80.

The claimant contends the trial court's calculation of the maximum total disability benefit is erroneous in that it is based on an incorrect formula. The claimant also contends the trial court erred in considering temporary total disability benefits as part of the maximum total benefit.

Compensable disabilities are divided into four separate classifications: (1) temporary total disability, (2) temporary partial disability, (3) permanent partial disability and (4) permanent total disability. Tenn. Code Ann. § 50-6-207. Each class of disability is separate and distinct and separately compensated for by different methods. Compensation benefits are allowable for an injured employee, separately, for each class of disability which results from a single compensable injury. Redmond v. McMinn County, 209 Tenn. 463, 467, 354 S.W.2d 435, 437 (1962). The total sum which may be recovered as disability benefits, other than for permanent total disability¹, is, however, subject to a statutory limitation, called the maximum total benefit, and the total of all disability compensation for a single injury may not exceed such limitation. Tenn. Code Ann. § 50-6-

¹ Awards of permanent total disability are payable to age 65 without regard to the monetary cap imposed by the 400-week maximum total benefit provision of Tenn. Code Ann. § 50-6-102(a)(6).

205(b)(1). Thus the trial court did not err in considering temporary total disability benefits as part of the maximum total benefit.

Tenn. Code Ann. § 50-6-102(a)(13)(C) (2002 Supp.) provides, in pertinent part, as follows:

(13) “Maximum total benefit” means the sum of all weekly benefits to which a worker may be entitled; and

(C) For injuries occurring after July 1, 1992, the maximum total benefit shall be four hundred (400) weeks times the maximum weekly benefit except in instances of permanent total disability.

In oral argument before this tribunal, the appellant conceded the trial court did not err in determining the applicable maximum total benefit.

Finding no reversible error in the record, we affirm the judgment. Costs are taxed to the appellant.

JOE C. LOSER, JR.

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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 the Appellant, Buford Prince, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM