

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

**BETTY JO SISSOM V. STATE OF TENNESSEE DEPARTMENT OF LABOR
WORKERS' COMPENSATION DIVISION
SECOND INJURY FUND**

Direct Appeal from the Chancery Court for Rutherford County
No. 00WC-1704 Hon. Robert E. Corlew, III, Judge

No. M2003-01605-WC-R3-CV - Mailed - July 28, 2004

Filed - August 31, 2004

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 findings of fact and conclusions of law. The employee in this reconsideration case sustained a work-related back injury and previously sustained other work-related and nonwork-related injuries. Although she initially settled for a permanent partial disability award as compensation for her recent back injury and returned to work, she was later discharged due to that back injury. She argues that the trial court erred in not raising her prior permanent partial disability award to an award of permanent total disability. A reconsideration award is limited to 6 times the medical impairment rating due to the subject injury under Tenn. Code Ann. §§ 50-6-241(a)(2) and 50-6-241(b), and the trial court's decision within that maximum is supported by the evidence. 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.

JOHN A. TURNBULL, SP. J., delivered the opinion of the court in which FRANK F. DROWOTA, III, C.J., and JAMES L. WEATHERFORD, SR. J., joined.

William J. Butler, Lafayette, Tennessee, for the appellant, Betty Jo Sissom.

Dianne Stamey Dycus, Nashville, Tennessee, for the appellee, Second Injury Fund.

MEMORANDUM OPINION

Facts and Procedural Background

The fifty-five year old plaintiff, Betty Jo Sissom, worked as a production line worker for Rich Products. On April 24, 2000, Ms. Sissom injured her back in a work-related accident at Rich Products. She obtained maximum medical improvement on January 31, 2001, and was given a permanent impairment rating of 12% to the body as a whole by her treating physician, Dr. George Lien.

Ms. Sissom testified that she “knew at [her] age . . . that they would fire [her if she] had any restrictions.” Therefore, according to her testimony, she persuaded her doctor not to give her any permanent restrictions so that she could return to work. Ms. Sissom then returned to work at Rich Products and settled her workers’ compensation claim for 30% permanent partial disability, or 2 ½ times her 12% impairment rating.

Ms. Sissom’s doctor, however, later placed her under permanent restrictions due to her back injury, prohibiting her from lifting more than 20 pounds. Ms. Sissom was fired from Rich Products because of these restrictions. She then filed for reconsideration of her disability award under Tenn. Code. Ann. § 50-6-241(a)(2).

Prior to her work-related back injury, Ms. Sissom was awarded 70% permanent partial disability for work-related neck and shoulder injuries. Doctors assigned her a 22% permanent partial impairment rating to the body as a whole for these injuries. In addition, Ms. Sissom asserts prior disability due to work-related carpal tunnel syndrome and nonwork-related injuries to her leg and foot caused by a dynamite blast.

Ms. Sissom claims she was unable to find other employment after her termination because of the combination of her recent work-related back injury and her prior injuries. Her only employment experience has been working as a cosmetologist for many years and working for Rich Products for 8 years. Ms. Sissom attempted to return to cosmetology, but testified that the physical demands of cosmetology were too difficult because of her disabilities. She has also consulted with the local employment office and applied to work at several local businesses without success.

The sole vocational expert at trial testified that Ms. Sissom had a 59.86%

vocational disability rating as a result of the back injury alone. The trial court, considering itself bound to consider only the back injury in determining Ms. Sissom's disability award for this injury, raised her permanent partial disability award from 30% to 60% permanent partial disability to the body as a whole. However, Ms. Sissom contends that the trial court should have increased her disability award to permanent total disability in view of the combination of her prior injuries and her more recent back injury.

Analysis

Conclusions of law are reviewed *de novo* without a presumption of correctness on the part of the trial court. Niziol v. Lockheed Martin Energy Systems, Inc., 8 S.W.3d 622, 624 (Tenn. 1999). Statutory construction questions are questions of law. Bryant v. Genco Stamping and Manufacturing Co., 33 S.W.3d 622, 624 (Tenn. 1999). Both parties agree that the only disputed issue in this case is a question of law: "Whether an injured worker can receive an award greater than 6 times her impairment rating in an action for reconsideration under Tenn. Code Ann. § 50-6-241(a)(2)."

Under Tenn. Code. Ann. § 50-6-241(a)(2), "the courts may reconsider, upon the filing of a new cause of action, the issue of industrial disability . . . in appropriate cases where the employee is no longer employed by the pre-injury employer." Thus, where an employee receives a disability award and goes back to work, but is later discharged, she may be eligible to have her award reconsidered. However, any new award granted as a result of such reconsideration "remains subject to the maximum established" in § 241(b). Id. Section 241(b) states that

where an injured employee is eligible to receive permanent partial disability benefits . . . and the pre-injury employer does not return the employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of injury, the maximum permanent partial disability award that the employee may receive is six (6) times the medical impairment rating."

§ 50-6-241(b).

This statutory language clearly indicates that, in a reconsideration case, the employee's disability award is limited to 6 times the employee's medical impairment rating. Therefore, an employee with a disability rating of 12% to the body as a whole cannot receive an award greater than 72% permanent partial

disability, or 6 times 12%. Moreover, under the statute the 6 multiplier is a maximum; therefore, the trial court has the authority to grant any award less than or equal to 6 times the medical impairment rating based on all the evidence of vocational disability. We find that the trial court did not err in granting Ms. Sissom an award of 60% permanent partial disability, or 5 times the medical impairment rating.

Ms. Sissom contends that she would have been eligible for an award of permanent total disability had she not settled for an award of permanent partial disability in order to go back to work. Accordingly, she argues that to preclude her from receiving permanent total disability in this reconsideration action is to punish her attempt to return to work. Ms. Sissom was originally found to have an impairment rating of 12% to the body as a whole, and any reconsideration award must be based on that impairment rating. Brewer v. Lincoln Brass Works, Inc. 991, S.W.2d, 226, 229 (Tenn. 1999). “Increased anatomical impairments and subsequent injuries are not factors for consideration under 241(a)(2). The focus is purely on the issue of industrial disability.” Id.

A fair reading of the opinion of the trial court on plaintiff’s motion to reconsider indicates a finding by the court that: 1. Upon reconsideration, Ms. Sissom is entitled to a 60% disability based on her back injury, a multiple of five times her impairment rating, and 2. Considering all prior disabilities, Ms. Sissom is not excluded from all employment available to her; and she is therefore not permanently and totally disabled. Counsel for plaintiff urgently insists that since Ms. Sissom has now received workers’ compensation awards which total more than 100%, under Vinson v. United Parcel Service, 92 S.W.3d 380, 384-385 (Tenn. 2002), she is, as a matter of law, totally and permanently disabled. We hold that Vinson has no impact on a Tennessee Code Annotated 50-6-208(b) case. The second injury fund law contemplates that workers may rehabilitate themselves from previous injuries. A simple addition of a present award with previous awards may, under section (b), exceed 100%. That finding would not amount to a finding of 100% permanent partial disability such as contemplated by Vinson. Therefore, in this case, there has been no finding by fact, or implication of law, that Ms. Sissom is permanently and totally disabled.

Conclusion

We hold that an employee’s new award in a Tenn. Code Ann. § 50-6-

241(a)(2) reconsideration case is limited to a maximum of 6 times the medical impairment rating due to the subject injury for which the original disability award was granted. The judgment of the trial court awarding five times the impairment rating is supported by the evidence and is affirmed. Costs of appeal are taxed to the appellant, Betty Jo Sissom.

John A. Turnbull, Special Judge

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
JUNE 10, 2004 Session

**BETTY JO SISSOM v. STATE OF TENNESSEE DEPARTMENT OF
LABOR WORKERS' COMPENSATION DIVISION SECOND INJURY
FUND**

Chancery Court for Rutherford County
No. 00WC-1704

No. M2003-01605-WC-R3-CV - Filed - August 31, 2004

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 appeals 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, Betty Jo Sissom, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM