IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
June 2004 Session

LARRY THRASHER v. CARRIER CORPORATION, ET AL.

Direct Appeal from the Chancery Court for Coffee County
No. 99-401 L. Craig Johnson, Judge sitting as Chancellor

No. M2003-01217-WC-R3-CV- Mailed - October 19, 2004
Filed - November 19, 2004

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with *Tennessee Code Annotated* § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of facts and conclusions of law. This case, submitted on briefs, is before the Panel for a second time. In the first appeal filed by the employer, this Panel reduced the trial court's award of 100% permanent partial disability for work-related injuries to the employee's "two feet" to 40% permanent partial disability to "each foot." The employer brings a second appeal contending that the trial court erred in interpreting the Panel's judgment modifying the award. The employee contends that this is both a frivolous appeal and a bad-faith effort to avoid paying the employee his workers' compensation benefits. The Panel has concluded that the judgment of the trial court is affirmed.

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

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

B. Timothy Pirtle, McMinnville, Tennessee, for the appellants, Carrier Corporation and Insurance Company of the State of Pennsylvania.

Donald J. Ray, Tullahoma, Tennessee, for the appellee, Larry Thrasher.

MEMORANDUM OPINION

Mr. Larry Thrasher is a 30 year employee of Carrier Corporation, whose job duties required him to stand on his feet for long periods of time. On September 10, 1999, Mr. Thrasher filed a complaint for workers' compensation benefits alleging that he had developed bilateral plantar fasciitis as a result of his employment.

Finding that Mr. Thrasher had suffered an injury within the course and scope of his employment, the trial court found that Mr. Thrasher had sustained a 29% permanent partial medical impairment to "both feet" and awarded 72.5% permanent partial disability to "both feet." The trial court also found that under the law Mr. Thrasher's recovery was limited to 2 ½ times the impairment rating.

Mr. Thrasher filed a motion to alter or amend the court's ruling that the caps contained in *Tenn. Code Ann.* § 50-6-241 applied to this case:

> [I]njuries to "two feet" are considered injuries to scheduled members. [T.C.A. § 50-6-207(z).] Injuries to scheduled members are not subject to the caps of two and one-half times the medical impairment contained in T.C.A. § 50-6-241. (*Atchley v. Life Care Center of Cleveland*, 906 S.W.2d 428, 431.)

After hearing the motion, the trial court agreed that the statutory cap did not apply and found that "that loss of two feet is a scheduled member and not combined as an injury to the body as a whole. Pursuant to the remainder of the Court's findings in regards to the injury, the Courts amends its previous opinion and assesses a permanent partial disability of one hundred percent (100%) to the two feet of the plaintiff." Carrier appealed.

On November 20, 2002, the Panel issued an opinion stating that "[t]he finding of 100 percent is excessive and is reduced to 40 percent." The Panel found that the trial court's finding of 100% disability to the two feet was not supported by a preponderance of the evidence because the employee 1) "improved dramatically" with conservative treatment; 2) returned to his job; and 3) works in his garden, mows grass, etc. at home. In its opinion the Panel stated that: "the schedule governs whatever award shall be made to one sustaining either total or partial loss, or loss of use, of a scheduled member." In regards to the trial court's 100% permanent partial disability finding the Panel noted: "Aside from the fact that a 'partial' disability of 100 percent is incongruous, the evidence does not warrant a finding equivalent to the *loss of both* and by extrapolation, to *total and permanent disability* to the body as a whole."[1]

The Panel stated: "The evidence preponderates against a finding of 100 percent disability to both feet, and in favor of a finding of 40 percent permanent, partial disability to each foot. The judgment will be modified accordingly."

After the case was remanded to the trial court for enforcement, the trial court entered an order compelling Carrier to respond to Mr. Thrasher's discovery requests on assets to pay the judgment. The court noted that the parties had a disagreement about the opinion issued by the Panel. However, the trial court specifically found that according to the Panel's opinion, Mr. Thrasher was entitled to

---

[1] In *Ivey v. Trans Global Gas & Oil*, 3 S.W.3d 441, 447 (Tenn.1999), our Supreme Court ruled that vocational disability for an injury to a scheduled member cannot be adjudged as permanent and total under the workers' compensation law.

recover 40% permanent partial disability for two feet pursuant to *Tenn. Code Ann.* § 50-6-207(3)(a)(z) resulting in 160 weeks of permanent partial disability benefits.

Carrier filed this second appeal to the Panel and raises the issue of whether the trial court erred in interpreting the judgment from the Tennessee Supreme Court approving and accepting the "Memorandum Opinion" of the Special Workers' Compensation Appeals Panel modifying the award from 100% to both feet to 40% to each foot.

Our review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of correctness, unless the preponderance of the evidence is otherwise. *Tenn. Code Ann.* § 50-6-225(e)(2). The application of this standard requires this Court to weigh in more depth the factual findings and conclusions of the trial courts in workers' compensation cases. *See Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988). Conclusions of law are reviewed *de novo* without any presumption of correctness. *Ivey v. Trans Global Gas & Oil*, 3 S.W.3d 441, 446 (Tenn. 1999).

Tennessee Code Annotated § 50-6-207(3)(A) provides in pertinent part:

> (3) Permanent Partial Disability.
>
> (A) In case of disability partial in character but adjudged to be permanent, there shall be paid to the injured employee, in addition to the benefits provided by § 50-6-204, the following:
>
> * * *
>
> (n) For the loss of a foot, sixty-six and two-thirds percent (66 2/3%) of average weekly wages for one hundred twenty-five (125) weeks;
>
> * * *
>
> (z) For the loss of two (2) feet, sixty-six and two-thirds percent (66 2/3%) average weekly wages during four hundred (400) weeks;

Tenn. Code Ann. § 50-6-207(3)(A)(n),(z).

In support of its contention that the Panel's opinion applied section (n) to this case, Carrier points to the following portion of the Panel opinion:

> The evidence preponderates against a finding of 100 percent disability to both feet, and in favor of a finding of 40 percent permanent, partial disability to each foot. The judgment will be modified accordingly.

Carrier acknowledges in its brief that if section (z) applies, Mr. Thrasher is entitled to at least an additional 60 weeks of compensation at the rate of $515.00 per week or $30,900. Carrier tendered and Mr. Thrasher withdrew $51,500.00 and $7,916.63 from the Clerk of the Court in partial satisfaction of the judgment pending appeal.

It is well-settled that when the injury is to a scheduled member, the disability award is exclusively controlled by the impairment rating established by the General Assembly for that member. *McIlvain v. Russell Stover*, 996 S.W.2d 179, 185 (Tenn. 1999). Injury to "a foot" or "two feet" are both scheduled injuries.

In *Tennlite v. Lassiter*, 561 S.W.2d 157 (Tenn. 1978) our Supreme Court stated:

> By providing specific formulas for combined injuries to certain members, the legislature has recognized the virtually uncontrovertible fact that a combination of injuries to members of the body has a greater disabling effect than the mere arithmetical sum of individual scheduled awards would reflect. T.C.A. § 50-1007©). The award for a simultaneous injury to a leg and hand (based on 400 weeks) is greater, for example, than the sum of awards for injury to a leg (200 weeks) and a hand (150 weeks).

561 S.W.2d at 158.[2]

After reviewing the Panel's opinion we find no evidence to support Carrier's contention that the Panel modified the judgment so that the 40% disability rating applied to each foot pursuant to section (n). *Tennessee Code Annotated* § 50-6-207(3)(A)(ii)(z) provides scheduled benefits for the loss of two feet. It is undisputed that Mr. Thatcher injured "two feet" within the course and scope of his employment with Carrier, therefore section (z) applies. The Panel's opinion modifying the award from 100% to 40% centered on its finding that according to the evidence he was not 100% disabled.

Based on the above authorities and the entire record in this case, we find that the trial court did not err in interpreting the Panel's previous judgment.

After carefully reviewing the record, we find that although Carrier's appeal lacks merit it does not rise to the level of frivolous appeal in light of the wording of the Panel's opinion discussed above. We also find the issue of bad faith effort to avoid paying benefits raised by Mr. Thrasher to be without merit.

Tenn. Code Ann. § 50-6-225(h)(1) provides:

> If the judgment or decree of a court is appealed pursuant to subsection (e), interest on the judgment or decree shall be computed from the date that the judgment or

---

[2] *See Marable v. Key Industries*, 1998 Tenn. LEXIS 678 (Tenn. Workers' Comp Panel, Nov. 10, 1998)("If an employee suffers permanent partial disability to two members listed together as a scheduled injury, it is proper to compute the period of disability according to the schedule.")(citing. *Queen v. New York Underwriters*, 222 Tenn. 235, 435 S.W.2d 122 (1968)

> decree is entered by the trial court at an annual rate of interest five (5) percentage points above the average prime loan rate for the most recent week for which such an average rate has been published by the board of governors of the federal reserve system on the total judgment awarded by the supreme court. For purposes of calculating the accrual of interest pursuant to this subdivision, the average prime loan rate on the day the judgment or decree is entered by the trial court shall be used.

Acknowledging the remedial nature of the Workers' Compensation Law our Supreme Court stated:

> The statute is clear that when the case is appealed to this Court interest is to be calculated "from the date that the judgment or decree is entered." The legislature obviously envisioned modifications of awards by the Supreme Court because the statute reads that interest shall accrue "on the total amount awarded by the Supreme Court." **But regardless whether the judgment or decree is modified, the clear legislative mandate is that interest be computed on the judgment from the date it is originally determined that an injured employee is entitled to benefits.** If the legislature had intended for post-judgment interest to begin accruing on the date of a modification by this Court, no doubt it would have indicated as much.

McClain v. Henry I. Siegel Co., 834 S.W.2d 295 (Tenn. 1992). *See Eddlemon v. Tecumseh Products*, 101 S.W.3d 57 (Tenn. 1999); *West American Insur. Co. v. Montgomery*, 861 S.W.2d 230 (Tenn. 1993).

Therefore we find that the plaintiff, Mr. Thrasher is entitled to interest on accrued but unpaid disability benefits on the judgment from which he was originally determined entitled to benefits.

CONCLUSION

The judgment of the trial court finding that Mr. Thrasher is entitled to 40% permanent partial impairment to two feet pursuant to *Tenn. Code Ann.* § 50-6-207(3)(A)(z) resulting in 160 weeks permanent partial disability is affirmed. This case is remanded to the trial court for the calculation of interest and any further proceedings consistent with this opinion. Costs are taxed to the appellant.

_____

JAMES L. WEATHERFORD, SR.J.

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
JUNE 2004 SESSION

LARRY THRASHER v. CARRIER CORPORATION, ET AL

Chancery Court for Coffee County
No. 99-401

No. M2003-01217-WC-R3-CV - Filed - November 19, 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, Carrier Corporation and Insurance Company of the State of Pennsylvania, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM