IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
June 1, 2005 Session

JOSEPH ALLEN LEDFORD v. AMERICAN MOTORIST INSURANCE COMPANY, ET AL.

Direct Appeal from the Circuit Court for Anderson County
No. ADLA0376 James B. Scott, Jr., Judge

Filed September 30, 2005

No. E2004-03008-WC-R3-CV - Mailed August 15, 2005

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 awarded the employee 20 percent permanent partial disability to the body as a whole. Plaintiff contends he should have received an award for total permanent disability. Judgment is affirmed.

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

ROGER E. THAYER, SP. J., delivered the opinion of the court, in which WILLIAM M. BARKER, J., and WILLIAM H. INMAN, SR. J., joined.

Roger L. Ridenour, Clinton, Tennessee, for Appellant, Joseph Allen Ledford.

Authur G. Seymour, Jr., Knoxville, Tennessee, for Appellees American Motorist Insurance Company and Vinylex Corporation.

MEMORANDUM OPINION

This appeal has been perfected by the employee, Joseph Allen Ledford, from the trial court's action in awarding plaintiff 20 percent permanent partial disability to the body as a whole. Plaintiff insists he is totally disabled.

Facts

Plaintiff, a forty-one year old employee with a tenth grade education, testified he was

employed as a forklift operator with Vinylex Corporation when he injured his back on June 5, 2000 while lifting. His work experience has been general labor jobs. He has not worked since the accident and says he cannot stand up very long and that his legs "go numb". His claim for total disability benefits is based on his back injury and his mental state of depression. During his testimony, he admitted he had been treated for back problems for about eight years prior to the accident and since the accident, he has been seen by many other doctors. Four doctors have testified by deposition in this proceeding.

Dr. Merrill White, an orthopedic surgeon, saw plaintiff shortly after the accident on June 13, 2000 and determined he had a soft tissue injury to the lumbar region which did not require surgery. The doctor's history indicated plaintiff had fallen from a roof about eight years prior and injured his back. Dr. White said he obtained a functional capacity evaluation which indicated the employee was capable of working at light to medium level with some restrictions on lifting. He was of the opinion plaintiff had a 5 percent medical impairment as a result of the lifting incident.

Dr. William B. Bingham, a family practice physician, saw plaintiff about one year later on June 8, 2001 for complaints of back pain and depression. He testified the MRI record indicated some bulging of a disc at L5-S1 level and a possible small herniation could not be excluded at that point, and also a bulging of the disc at L4-5. His diagnosis was chronic back pain and depression. When he saw him again in August of the same year, he recommended he enter a local psychiatric hospital for his symptoms and said he learned there had been a bipolar disorder diagnosis. As of that time, he opined he would not be able to do manual labor work.

Dr. Michael A. Fisher, a psychiatrist, performed an independent medical examination on August 13, 2003 and determined the employee was suffering from major depression, severe with psychotic features and that this condition was related to the accident in question. His history indicated plaintiff had been having hallucinations since he was ten years old. He also was asked about whether the condition was permanent and replied that he would not be able to give an opinion until he saw him for about a one year period.

Dr. Edward A. Workman, a neuropsychiatrist dealing in pain management, testified he examined plaintiff on March 4, 2004 and that he had received and reviewed numerous medical records of other doctors relating to his condition both before and after the accident in question. As to his physical condition before the accident on June 5, 2000, he said the medical records indicated a long history of low back pain, depression and anxiety disorders. He stated that the records disclosed that on June 2, 2000, three days prior to the time in question, plaintiff had received a narcotic pain killer, hydrocodone, from three different doctors and that during May 1998 he had been diagnosed with a depressive episode.

Dr. Workman testified plaintiff had ongoing hallucinations of voices from the dead and living family members and that he actually believed he could communicate with the dead. He had a drug screen on the employee which was positive for marijuana. The doctor's diagnosis was (1) serious border bipolar disorder and (2) serious personality disorder of long pre-injury standing. The doctor

said all of these problems made it difficult to determine if anything was related to the accident in question and his final conclusion was the plaintiff had no impairment from the events of June 5, 2000.

The trial court fixed the award of disability at 20 percent which was four times the medical impairment of 5 percent and within the cap imposed by Tenn. Code Ann. § 5-6-241(b).

Standard of Review

On appeal the issues are to be reviewed *de novo* accompanied by a presumption of the correctness of the findings of the trial court unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2).

Analysis

Plaintiff contends he is totally and permanently disabled and the trial court erred in only awarding 20 percent disability.

It may be that plaintiff is not able to work considering his age, qualifications and all of his physical and mental problems. However, at issue in this case is the question of how much of his disability has resulted from his lifting incident on June 5, 2000.

The general rule is that causation and permanency of an injury must be shown in most cases by expert medical evidence. ***Tindall v. Waring Park Ass'n.***, 725 S.W.2d 935 (Tenn. 1987). Although absolute certainty is not required, the medical proof must not be speculative or uncertain with reference to cause or permanency. ***Patterson v. Tucker Steel Co.***, 584 S.W.2d 792 (Tenn. 1979).

As to the claim for a mental injury resulting from the accident in question, two psychiatrists testified. Dr. Fisher was not able to render an opinion on permanent disability because he only saw him for an independent medical examination and Dr. Workman was of the opinion the employee had no impairment from the June 5, 2000 incident. Thus, there is no competent medical evidence establishing permanency of a mental injury from the work-related incident.

As to the physical injury, Dr. White found impairment to be 5 percent and recommended a program of physical therapy after which he opined he could do some type of light to medium work. Dr. Bingham did not give an opinion concerning permanent disability or impairment.

As a general rule an employer takes an employee as the employer finds him or her and is liable under the Workers' Compensation Act for disabilities which are the result of the activation or aggravation of a pre-existing weakness, condition or disease brought about by the occupation. ***Arnold v. Firestone Tire & Rubber Co.***, 686 S.W.2d 65 (Tenn. 1984). In the present appeal, there is no medical evidence that his prior physical condition was aggravated by the work-related incident

in question. In reading Dr. White's testimony, it is evident that his 5 percent impairment rating is limited to the employee's soft tissue injury which resulted from his work activity on June 5, 2000.

The trial court was faced with the difficult question of trying to determine whether the employee's physical and mental problems pre-existing the accident in question were involved to any extent in the more recent lifting incident. In this connection, the trial court saw and observed the plaintiff and was in a better position to judge his credibility. In our review of the record, we cannot say that the evidence preponderates against the award of disability fixed by the trial court.

Conclusion

The award of 20 percent permanent partial disability is affirmed. Costs of the appeal are taxed to the plaintiff and his surety.

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ROGER E. THAYER, SPECIAL JUDGE

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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 facts and conclusions of law are adopted and affirmed and the decision of the Panel is made the Judgment of the Court.

The costs on appeal are taxed to the appellant, Joseph Allen Ledford, for which execution may issue if necessary.