IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
April 21, 2008 Session

ROBERT EDWARDS v. SATURN CORPORATION

Direct Appeal from the Circuit Court for Maury County
No. 11596 Jim T. Hamilton, Judge

No. M2007-01955-WC-R3-WC - Mailed - July 30, 2008
Filed - September 25, 2008

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated section 50-6-225(e)(3) for a hearing and report of findings of fact and conclusions of law. The trial court determined that: (1) under Building Materials Corp. v. Britt, Employee's date of injury was his last day worked before having shoulder surgery, December 15, 2005; (2) Employee's meaningful return to work was not frustrated by a plant-wide lay-off; and (3) Employee's permanent partial disability award should be capped at 1.5 times the medical impairment rating. Because the evidence does not preponderate against the trial court's findings, we affirm the trial court's judgment.

Tenn. Code Ann. § 50-6-225(e) (Supp. 2007) Appeal as of Right;
Judgment of the Circuit Court Affirmed

CORNELIA A. CLARK, J., delivered the opinion of the court, in which DONALD P. HARRIS and ALLEN W. WALLACE, SR. JJ., joined.

Larry R. McElhaney, II, Nashville, Tennessee, for the appellant Robert Edwards.

Kenneth M. Switzer, Nashville, Tennessee, for the appellee Saturn Corporation.

MEMORANDUM OPINION

Factual and Procedural History

The facts in this case are not in dispute. Robert Edwards was forty-eight years old at the time of trial. He attended high school through the twelfth grade but does not have a high school diploma or a GED. Mr. Edwards attended mechanics school for one month but otherwise has no college or

vocational training. Other than his employment with General Motors,[1] Mr. Edwards has worked at a machine shop and has done independent carpentry work.

In 1979, Mr. Edwards began working for General Motors in their Ypsilanti, Michigan, plant. In 1991, Mr. Edwards moved to Saturn's Spring Hill facility in Spring Hill, Tennessee.[2] While at Saturn, Mr. Edwards worked on the assembly line, in powertrain, and on the chassis line. While working on the chassis line, Mr. Edwards was assigned the "towveyor job." As part of this job, Mr. Edwards would "line the pins up"[3] for every car on the line, approximately 350 cars per shift.

On April 12, 2003, Mr. Edwards was "[l]ining up the pin on the towveyor" when he "felt something really wrong" in his shoulder. He went to Saturn's onsite medical facility to report the injury.[4] Mr. Edwards explained his injury by stating, "[a]s I was trying to lineup a motor on towveyor 13[,] I had to pull hard to line it up because it did not lineup correctly." Mr. Edwards was treated with ice and ibuprofen. Mr. Edwards returned to Saturn's onsite medical facility six times in 2003 with shoulder pain complaints. In 2004, he visited Saturn's medical facility four more times with shoulder pain complaints. Mr. Edwards testified that, during these visits, he received a "biofreeze" treatment and ibuprofen.

On October 11, 2005, Mr. Edwards saw Dr. J. Fredrick Wade, an orthopaedic surgeon at the Mid-Tennessee Bone & Joint Clinic ("Clinic") in Columbia, Tennessee.[5] After taking a medical history and performing a physical examination, Dr. Wade ordered an MRI and referred Mr. Edwards to Dr. Jeffery T. Adams, another orthopaedic surgeon at the Clinic who specializes in shoulder injuries.

Mr. Edwards saw Dr. Adams for the first time on November 30, 2005. After reviewing the MRI and performing a physical examination, Dr. Adams decided that surgery was necessary. Dr. Adams performed right shoulder surgery on December 16, 2005. This was the first day that Mr. Edwards missed work for his shoulder injury.

Mr. Edwards remained off work for fifty-two days from the date of surgery. On February 6, 2006, Mr. Edwards returned to work at Saturn without any restrictions. Upon his return to work, Mr.

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[1]At the time of trial, Mr. Edwards had worked for General Motors for approximately twenty-eight years.

[2]Saturn is a subsidiary of General Motors.

[3]Apart from this description, the record does not clearly reflect Mr. Edwards' job responsibilities while working on the chassis line.

[4]Although disputed in the trial court, on appeal, Saturn does not challenge the trial court's finding that Mr. Edwards suffered a gradual shoulder injury during the course and scope of his employment. Saturn also does not challenge the trial court's findings with respect to notice.

[5]Prior to visiting Dr. Wade's office, Mr. Edwards also visited his primary care physician, Dr. Ben High, on October 7, 2005.

Edwards received a wage equal to or greater than the wage he was receiving on the last day he worked before his shoulder surgery.

On March 29, 2006, Mr. Edwards filed this workers' compensation claim. In the complaint, Mr. Edwards alleged that he suffered a work-related shoulder injury on April 12, 2003, and has a permanent disability, and therefore should be awarded temporary total and permanent partial disability benefits.

From February 6, 2006, until April 2007, Mr. Edwards continued to work for Saturn without any shoulder complications.[6] In April 2007, however, the Spring Hill manufacturing facility was shut down so that it could be "retooled" for a new product.[7] At the time of shut-down, it was expected that the facility would remained closed for eighteen months until October 2008.[8] As part of the shut-down, Mr. Edwards was laid off on April 16, 2007, along with almost all of the plant's 2,600 workers.

As of April 15, 2007, the day before he was laid off, Mr. Edwards was receiving an hourly wage of $28.50.[9] Additionally, Mr. Edwards was also receiving: (1) healthcare benefits; (2) life insurance benefits; (3) certain discount benefits on General Motors products; (4) disability insurance if he were to become disabled; (5) paid legal services as needed; (6) seniority for each day worked; and (7) time towards his retirement for each day worked.

During Mr. Edwards' lay-off period, he continued to receive the same benefits through the collective bargaining agreement between Saturn and The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("UAW"). Mr. Edwards' wage, however, was slightly different. Under the collective bargaining agreement, during times of lay-off, an employee's take home compensation is reduced by five percent.[10]

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[6]Mr. Edwards was temporarily laid off for approximately one month in April and May 2006.

[7]Mr. Dennis Finn, the Spring Hill Plant Personnel Director, wrote in a letter to the Tennessee Department of Labor & Workforce Development:

> [D]ue to a need to prepare the plant for potential future product build, [a] . . . plant rearrangement will commence at the end of production on March 30, 2007[,] impacting both the Saturn ION and VUE.

[8]Counsel for Saturn, however, represented to this Panel during oral argument on April 21, 2008, that the Spring Hill facility was no longer in shut-down.

[9]Mr. Edwards' wage was computed by taking a base wage rate of $26.73 and adding a cost of living adjustment of $1.77. During Mr. Edwards' lay-off, his cost of living adjustment increased from $1.77 to over $2.00.

[10]In this instance, at the time of Mr. Edwards' lay-off, his wage of $28.50 per hour was multiplied by a 40-hour work week. From this gross pay, $1,140.00, taxes totaling $200.75 were withheld. Mr. Edwards' after-tax pay of $939.25 was then multiplied by 95%. This amount, totaling $892.29, was then reduced by $30.00, a deduction for expenses not incurred by having to drive to and from work while in lay-off. The amount remaining, $862.29, was then reduced by the amount of money Mr. Edwards received as unemployment compensation. Although the state of

The trial in this matter was held on June 28, 2007. During the trial, Mr. Edwards argued that given his laid-off status, he was entitled to have his permanent disability award calculated without reference to the statutory caps found in either Tennessee Code Annotated subsections 50-6-241(a)(1) or 50-6-241(d)(1)(A). In the alternative, he argued that his date of injury was April 12, 2003, thus entitling him to the benefit of the two and one-half (2½) multiplier found in Tennessee Code Annotated section 50-6-241(a)(1). By order filed on August 9, 2007, the trial court determined that Mr. Edwards suffered a work-related shoulder injury and that, from this injury, Mr. Edwards has a nine (9) percent medical impairment rating. The trial court also determined, pursuant to the Tennessee Supreme Court's holding in Building Materials Corp. v. Britt, 211 S.W.3d 706 (Tenn. 2007), that Mr. Edwards' date of injury was his last day worked before having surgery, December 15, 2005. Finally, the trial court found that, although Mr. Edwards was in lay-off and not working at the Spring Hill facility, this "temporary lay-off period is not sufficient to remove the cap as the Court does not believe the situation is a loss of employment contemplated by the Legislature for allowing the plaintiff to exceed the cap." Accordingly, the trial court "capped" Mr. Edwards' lump sum award at one and one-half (1½) times his medical impairment rating, ordering a permanent partial disability award of thirteen and one-half (13½) percent.

Mr. Edwards timely filed his notice of appeal. Now before this Panel, Mr. Edwards asks us to reverse the trial court on two grounds. First, Mr. Edwards argues that the calculation of his permanent partial disability award is not subject to the statutory minimums of Tennessee Code Annotated section 50-6-241. In support of this argument, Mr. Edwards argues that he was unemployed at the time of trial, or in the alternative, even if employed he was not receiving a "wage equal to or greater than" his pre-injury wage. Tenn. Code Ann. §§ 50-6-241(b) & -241(d)(2)(A). Second, Mr. Edwards argues that his actual date of injury was the date he first reported the injury to Saturn, April 12, 2003.

Standard of Review

We review factual issues in a workers' compensation case de novo upon the record of the trial court, accompanied by a presumption of correctness of the trial court's factual findings, unless the preponderance of the evidence is otherwise. See Tenn. Code Ann. § 50-6-225(e)(2) (Supp. 2007); see also Rhodes v. Capital City Ins. Co., 154 S.W.3d 43, 46 (Tenn. 2004); Perrin v. Gaylord Entm't Co., 120 S.W.3d 823, 825-26 (Tenn. 2003). Conclusions of law established by the trial court come to us without any presumption of correctness. Watt v. Lumbermens Mut. Cas. Ins. Co., 62 S.W.3d 123, 127 (Tenn. 2001).

Analysis

The parties do not dispute that Mr. Edwards has suffered a compensable injury and is entitled to a nine (9) percent medical impairment rating. Instead, the issues on appeal concern the application of the appropriate statutory multipliers found in Tennessee Code Annotated section 50-6-

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Tennessee provides Mr. Edwards with unemployment compensation, Saturn reimburses the State for any amounts paid to the Saturn employees during this lay-off. Thus, the entire amount of compensation received by Saturn employees during the lay-off is paid by Saturn.

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Effect of Plant-wide Lay-off on Mr. Edwards' Return to Work

An employee who sustains a permanent partial disability as the result of a work-related injury is entitled to receive permanent partial disability benefits in accordance with Tennessee Code Annotated section 50-6-241. Tryon v. Saturn Corp., 254 S.W.3d 321, 327 (Tenn. 2008). If "the pre-injury employer returns the employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of injury," the employee's permanent partial disability award is capped at two and one-half (2½) times, Tenn. Code Ann. § 50-6-241(a)(1), or one and one-half (1½) times, Tenn. Code Ann. § 50-6-241(d)(1)(A), the medical impairment rating. If a 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 the injury, the maximum permanent partial disability award that the employee may receive is six (6) times the medical impairment rating. Tenn. Code Ann. §§ 50-6-241(b) & -241(d)(2)(A).

In this instance, it is undisputed that Mr. Edwards returned to Saturn, his pre-injury employer, following his shoulder surgery. It is also undisputed that, at the time he returned to work, Mr. Edwards was receiving a wage equal to or greater than the wage he was receiving on his last day worked before surgery. Therefore, as of the date of his return to work, February 6, 2006, Mr. Edwards was subject to the permanent partial disability maximums of either Tennessee Code Annotated section 50-6-241(a)(1) or -241(d)(1)(A). These same multipliers were applicable up until Mr. Edwards, along with other Saturn employees, was laid off more than one year later on April 16, 2007.

Saturn employees, including Mr. Edwards, remained in lay-off from April 17, 2007, until some time in early 2008.[11] The trial in this matter was held on June 28, 2007. Given his laid-off status at the time, Mr. Edwards argued at trial that his permanent partial disability award was no longer capped by Tennessee Code Annotated sections 50-6-241(a)(1) and -241(d)(1)(A) because he was no longer employed at Saturn.

When an employee returns to work at his pre-injury employer but does not remain employed, the courts look to determine whether the employee made a "meaningful return to work." See, e.g., Lay v. Scott County Sheriff's Dept., 109 S.W.3d 293, 297-98 (Tenn. 2003); Hardin v. Royal & Sunalliance Ins., 104 S.W.3d 501, 506 (Tenn. 2003); Nelson v. Wal-Mart Stores, Inc., 8 S.W.3d 625, 630 (Tenn. 1999). If the employee made a meaningful return to work, employee's permanent partial

[11]Whether or when Mr. Edwards' returned to work after his lay-off is not contained in the record. However, during the April 21, 2008, oral argument before this Panel, counsel for General Motors represented that the Spring Hill facility was no longer in "shut-down." After oral argument, Saturn filed two motions asking this Panel to consider post-judgment facts, one asserting that Mr. Edwards requested a special leave of absence after being recalled from lay-off and the other alleging that Mr. Edwards took early retirement rather than return to work following his lay-off. Because our holding in this case does not depend on the proffered post-judgment facts, it is unnecessary to determine whether either motion complies with Rule 14, Tennessee Rules of Appellate Procedure. We therefore deny these motions as moot.

disability award is capped using the smaller multiplier as provided in either Tennessee Code Annotated section 50-6-241(a)(1) or -241(d)(1)(A). If the employee did not make a meaningful return to work, however, the employee's permanent partial disability award is calculated using the larger multiplier found in Tennessee Code Annotated sections 50-6-241(b) and -241(d)(2)(A).

The Tennessee Supreme Court has recently addressed the concept of "meaningful return to work" in Tryon v. Saturn Corp.:

> When determining whether a particular employee had a meaningful return to work, the courts must assess the reasonableness of the employer in attempting to return the employee to work and the reasonableness of the employee in failing to either return to or remain at work. The determination of the reasonableness of the actions of the employer and the employee depends on the facts of each case.
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> [Previous Supreme Court and Appeals Panel decisions] provide that an employee has not had a meaningful return to work if he or she returns to work but later resigns or retires for reasons that are reasonably related to his or her workplace injury. . . . If, however, the employee later retires or resigns for personal reasons or other reasons that are not reasonably related to his or her workplace injury, the employee has had a meaningful return to work.

254 S.W.3d at 328-29 (citation omitted).

In a typical "no meaningful return to work" case the employee is no longer working for the pre-injury employer because the employee has either been medically unable to return, resigned, retired, or been fired. Id; see Lay, 109 S.W.3d at 299; Nelson, 8 S.W.3d at 630. The factual issues in such cases revolve around the relationship of the employee's injury to his departure. In this instance, however, Mr. Edwards did not fail to recover, resign, retire, or get fired. Instead, he returned to work for over one year without incident until he and the other 2,600 Saturn employees were laid off while the plant was being retooled for a new product. Accordingly, the issue before this Court concerns whether an otherwise meaningful return to work is automatically frustrated by a subsequent lengthy plant-wide lay-off.

A review of prior workers' compensation cases reveals that discussion of lay-offs occurs in three instances: (1) to provide a time-line of an employee's work and medical history, see Fisher v. Plus Mark, Inc., No. E2005-00992-WC-R3-CV, 2006 WL 1703761, at *3 (Tenn. Workers' Comp. Panel June 22, 2006); Hayes v. Sch. Calendar Co., No. 03S01-9609-CV-00093, 1997 WL 459126, at *1 (Tenn. Workers' Comp. Panel Aug. 13, 1997); (2) as a reason for reconsideration under Tennessee Code Annotated section 50-6-241(a)(2), see Niziol v. Lockheed Martin Energy Sys., Inc., 8 S.W.3d 622, 624 (Tenn. 1999); and (3) for the purposes of determining whether the employee made a meaningful return to work, see Haney, No. E2004-01941-WC-R3-CV, 2006 WL 2423430, at *1 (Tenn. Workers' Comp. Panel Aug. 23, 2006). We therefore limit our focus to this last group of cases.

In Haney, the employee hurt his back on August 24, 2000. After seeking medical treatment, Mr. Haney returned to work with restrictions. Shortly thereafter, Mr. Haney was laid off on November 23, 2000. He was called back to work on January 2, 2001, but was one of five percent of the workforce laid off again on February 5, with no guaranteed recall date and, apparently, no benefits being paid during lay-off. At this time, Mr. Haney sought and accepted another job with a different employer. Six months later, on August 6, 2001, Mr. Haney's pre-injury employer offered to recall him to his former "light-duty" job. He declined the offer.

Based on these facts, Mr. Haney attempted to exceed the statutory caps of Tennessee Code Annotated section 50-6-241 by arguing that he did not make a meaningful return to work. After reviewing the record, the Panel determined that: (1) Five Rivers "initially offered [Mr.] Haney 'light duty' employment that he performed even though . . . it aggravated his injury and violated the [medical] restrictions placed by his physician"; (2) Five Rivers twice terminated Mr. Haney from even that light duty employment; (3) although Five Rivers testified that "some ninety to ninety-five percent of the employees would have been retained during this layoff period . . . [Mr.] Haney was not one of them"; and (4) Mr. Haney had no assurance that he would be re-employed in the future. Id. at *4. Accordingly, the Panel found that Mr. Haney had not made a meaningful return to work. Id. at *5.

In Haywood v. Ormet Aluminum Mill Products Corporation, No. 3939, 2002 WL 927440 (Tenn. Workers' Comp. Panel May 1, 2002), Mr. Haywood injured his left arm, lower back, and head when he slipped at work in July 1998. Mr. Haywood returned to light duty work that same month, gradually returning to full duty, without restrictions, over a longer period of time. In March 2000, Mr. Haywood had surgery on his left arm. He returned to work in April 2000, where he remained working until he was laid off in November 2000. The trial court found that Mr. Haywood, who was working with another employer at the time of trial, did not have a meaningful return to work with Ormet Aluminum and therefore was not limited by the lower statutory caps of Tennessee Code Annotated section 50-6-241. Id. at *4. On appeal, Ormet Aluminum argued that Mr. Haywood "returned to work at Ormet for almost two years and five months following his [July 1998] injury and during that period, [Mr. Haywood] was working without restrictions for two years. Thus, [Mr. Haywood] had a meaningful return to work." Id. at *3. Mr. Haywood countered with the fact that he had ongoing medical problems after the initial July 1998 injury that were not resolved until surgery in March 2000 and that he did not reach maximum medical improvement until September 2000, only two months before he was laid-off. Id. Moreover, Mr. Haywood argued that his wages steadily declined from the date of injury until he was laid off. Id. Accordingly, Mr. Haywood argued that he did not have a meaningful return to work. The panel agreed with Mr. Haywood, finding that the evidence did not preponderate against the trial court's finding that: (1) Mr. Haywood was no longer working for his pre-injury employer; (2) he has significant vocational problems; (3) he has not been returned to work at a same or higher wage; and (4) his injury "affect[s] his ability to fulfill his regular work duties." Id. at *3-4. Additionally, the panel noted that Mr. Haywood's ability to earn the same annual salary was reduced because of his work-injury. Id. at *4.

In this case, Mr. Edwards argued at trial that he had no guarantee of being recalled to work, like Mr. Haney, and that he was receiving a reduced wage, like Mr. Haywood. Mr. Edwards' lay-off

situation is, however, drastically different than that of either Mr. Haney or Mr. Haywood. First, Mr. Edwards returned to work without any medical restrictions and continued to work without any shoulder complication. Second, nothing in the record reflects that Mr. Edwards' shoulder injury would have prevented him from seeking other employment as needed during his lay-off period.[12] Third, unlike Mr. Haywood, Mr. Edwards' wage was not reduced because of his injury and his wage did not steadily decline after returning to work post-surgery. To the contrary, Mr. Edwards returned to work after his shoulder surgery without restrictions, continued to work up until his lay-off without complaint, and received at least two pay increases after he returned to work in February 2006. Fourth, and most important, this Panel does not find, as both the Haney and Haywood panels did, that Mr. Edwards was terminated from his employment when placed on lay-off status.

Apart from the fact that Mr. Edwards was not physically going to work every day, every other fact in the record suggests that Mr. Edwards was an employee of General Motors during his lay-off period. In April 2007, the entire General Motors Saturn plant was shut down so that its assembly lines could be retooled to produce new automobiles. The shutdown was scheduled to last more than one year. Virtually all of the plant's 2,600 employees were affected. However, under the terms of the labor contract then in effect between General Motors and the UAW, all employees in lay-off status continued to receive virtually all of the same benefits they received while working: (1) healthcare benefits; (2) life insurance benefits; (3) certain discount benefits on General Motors products; (4) disability insurance as needed; (5) paid legal services as needed; (6) seniority for each day worked; and (7) time towards retirement for each day worked.[13] Additionally, Mr. Edwards continued to receive pay based on a wage of $28.50 an hour, and received one cost-of-living rate increase during his lay-off. Moreover, when asked during trial whether he considered himself to be a General Motors employee, Mr Edwards testified: "I consider myself to be laid off but I'm working at GM, yes." Accordingly, based on the facts in this case, Mr. Edwards' return to work after his shoulder surgery was "meaningful" because he remained employed by General Motors even during his lay-off. See Blankenship v. Am. Ordnance Sys., LLS, 164 S.W.3d 350, 353 (Tenn. 2005) (recognizing that pursuant to a collective bargaining agreement, employee on temporary lay-off status was still regarded as an employee).

Previous decisions involving lay-offs do not persuade this Panel to reach a different conclusion because they are factually distinguishable. In every case where the laid-off employee was allowed to exceed the lower statutory multipliers of Tennessee Code Annotated section 50-6-241, the opinions are devoid of any discussion of compensation and other benefits the employee continued to receive during lay-off. See Haney, 2006 WL 2423430; Petitt v. Assoc. Gen.

[12]Importantly, however, Don Ingram, the Administrator for the Division of Employment Security for the State of Tennessee, testified that the Saturn employees, because they were "subject to be recalled," were classified as "job attached." Under this designation, the Saturn employees, including Mr. Edwards, were not required to actively pursue other employment opportunities in order to remain eligible for unemployment benefits.

[13]The terms of the collective bargaining agreement were gleaned from the testimony of the respective parties and a UAW brochure, "What You Should Know About Your Benefits Summary Plan Description," that is included in the record. The agreement itself was not made part of the record.

Contractors Self-Insured Workers' Comp. Trust, No. E1999-00367-WC-R3-CV, 2000 WL 1134353 (Tenn. Workers' Comp. Panel Aug. 11, 2000). Instead, the assumption in those cases was that the employee had been terminated from employment. See, e.g., Haywood, 2002 WL 927440; Brewer v. Seaman Corp., No. E2000-00842-WC-R3-CV, 2001 WL 12415 (Tenn. Workers' Comp. Panel Jan. 5, 2001). The unique facts of this case and the collective bargaining agreement at issue, however, prevent this Panel from doing the same. The benefits package that General Motors provided to its employees while retooling the Spring Hill plant distinguishes this case from other lay-off cases.

In making this determination, this Panel places great emphasis on the specific terms of the contract between the UAW and General Motors that allowed Mr. Edwards to continue to receive almost the exact same benefits and compensation that he was receiving prior to his lay-off.[14] Specifically, during this retooling, General Motors did not provide benefits to only those employees who did not have workers' compensation claims, nor did they provide different compensation and benefits to employees who had workers' compensation claims. To the contrary, all Saturn employees were subject to the same terms and conditions of the collective bargaining agreement between the UAW and General Motors. Accordingly, under the particular circumstances of this case, this Panel finds that Mr. Edwards both made and maintained a meaningful return to work following his shoulder surgery because, although laid off, he remained an employee of General Motors. Therefore, Mr. Edwards is subject to the statutory minimums of either Tennessee Code Annotated section 50-6-241(a)(1) or -241(d)(1)(A).

In reaching this determination, we do not ignore Mr. Edwards' contention that the collective bargaining agreement entered into by General Motors and the UAW violates Tennessee Code Annotated section 50-6-114(a) (2005), which states:

> No contract or agreement, written or implied, or rule, regulation or other devise, shall in any manner operate to relieve any employer, in whole or in part, of any obligation created by this chapter.

As Mr. Edwards argues, General Motors relies upon the collective bargaining agreement to relieve it of a portion of its obligation under the Workers' Compensation Law. After reviewing prior case law and the public policy reasons associated with this code section, we respectfully disagree.

Prior case law discussing Tennessee Code Annotated section 50-6-114(a) has focused on contracts and agreements where: (1) the employee either waived a right to benefits or a reconsideration of those benefits; or (2) the employer attempted either to deny the employee a remedy or offset the amount of benefits owed under the workers' compensation statutes. See, e.g., Overman v. Altama Delta Corp., 193 S.W.3d 540, 542 (Tenn. 2006); Warner v. Barney Potts, No.

[14]This Panel expresses no opinion as to other factual situations, including but not limited to situations where the laid-off employee is receiving significantly less compensation and benefits during his or her lay-off period or where the employee is laid off after his or her initial workers' compensation case has been decided.

M2003-02494-SC-WCM-CV, 2005 WL 995236, at *1 (Tenn. Workers' Comp. Panel Apr. 29, 2005). In each case, the Court gave particular attention to the public policy considerations of section 50-6-114 in determining whether the underlying contract or agreement violated the Workers' Compensation Law. In Barney Potts, the Appeals Panel stated that the purpose of section 50-6-114 was to "prohibit[] the use by an employer of any 'contract or agreement, written or implied, or rule regulation or other device' to evade its workers' compensation obligations." 2005 WL 995236 at *4 (quoting Tenn. Code Ann. § 50-6-114(a)). In Stief v. Madaris Exteriors, Inc., No. M2006-01703-WC-R3-WC, 2008 WL 902969, at *3 (Tenn. Workers' Comp. Panel Apr. 2, 2008), the Appeals Panel stated that section 50-6-114 "clearly establishes the public policy against the making of any agreement which would reduce an employers liability for permanent disability benefits under the Act."

The collective bargaining agreement at issue in this case clearly was not intended, and does not allow, General Motors to reduce or evade its workers' compensation obligations. To the contrary, even under the terms of the collective bargaining agreement, General Motors is still liable for payment of Mr. Edwards' permanent disability benefits. Nothing in the collective bargaining agreement reduces or offsets the benefits that Mr. Edwards is entitled to under the Workers' Compensation Law. Instead, the agreement merely insures Mr. Edwards and the other 2,600 laid-off Saturn employees that they are employed and will continue to receive nearly the same benefits during shut-down that they were receiving before the Spring Hill facility closed for retooling purposes. The agreement actually secures more liberal benefits than are usually provided in such situations. That this Panel finds the terms of this collective bargaining agreement to constitute the functional equivalent of continued employment does not equate to an evasion by General Motors of its legal obligation. Instead, because this Panel finds that Mr. Edwards, even though laid off, is an employee of General Motors, General Motors has no obligation above the statutory minimums of either Tennessee Code Annotated section 50-6-241(a)(1) or (d)(1)(A), and the collective bargaining agreement does not attempt to reduce that obligation. Accordingly, this Panel does not find that the collective bargaining agreement violates the Workers' Compensation Law.

Mr. Edwards' "Wage" During Lay-off

Mr. Edwards next argues that even if he was employed during his lay-off period, he was not receiving "a wage equal to or greater than the wage [he] was receiving at the time of the injury," Tenn. Code Ann. §§ 50-6-241(b) & -241(d)(2)(A), and therefore, he should be able to exceed the statutory minimums of Tennessee Code Annotated section 50-6-241. In making this argument, Mr. Edwards raises two issues: first, because he is not physically going to the Saturn plant and working, Mr. Edwards argues that he is not earning a "wage"; or second, and in the alternative, while in lay-off he is only receiving 95% of his pre-layoff wage.

We now turn to Mr. Edwards' first argument. Mr. Edwards argues that in the absence of a definition from the General Assembly, this Panel should adopt the definition of "wage" as provided in Black's Law Dictionary, 1610 (8th Ed. 2004): "[p]ayment for labor or services, usu[ally] based on time worked or quantity produced; specif[ically] compensation of an employee based on time worked or output of production." Under this definition, Mr. Edwards' asserts that he is not receiving

a "wage." Although Mr. Edwards correctly asserts that the term "wage" is undefined in the workers' compensation statute, the term has been previously defined by the Tennessee Supreme Court. In Powell v. Blalock Plumbing & Elec. & HVAC, Inc., 78 S.W.3d 893, 897 (Tenn. 2002), the Court defined wage, for an employee who is compensated on an hourly basis, as "the employee's hourly rate of pay." Applying this definition to the facts of this case, we find that Mr. Edwards was receiving a wage during his lay-off period. Prior to his lay-off, Mr. Edwards' hourly rate of pay was $28.50. After being laid off, Mr. Edward continued to receive compensation based on a forty hour work week at the same hourly rate. Thus, during his lay-off period, Mr Edwards continued to receive an hourly rate of pay and as such continued to receive a wage as envisioned in Tennessee Code Annotated section 50-6-241.

Having determined that Mr. Edwards received a "wage" during his lay-off period, we now turn to Mr. Edwards' second argument that he was not receiving a "wage equal to or greater than the wage [he] was receiving at the time of the injury." Tenn. Code Ann. §§ 50-6-241(b) & -241(d)(2)(A). This argument stems from the fact that during his lay-off, Mr. Edwards is only receiving 95% of the wage he received before lay-off.

Upon review of the Workers' Compensation Act and previous case law interpreting the Act, we do not find that the Legislature intended for the statutory minimums to be removed in this situation. Instead, we find that the reduction in Mr. Edwards' and the other 2,600 Saturn employees' take-home pay is analogous to an employer deciding to reduce the wages of its entire workforce by five percent because of economic hardship. It does not appear to this Panel that this is the type of situation that the General Assembly envisioned when it drafted the workers' compensation laws. See W.S. Dickey Mfg. Co. v. Moore, 208 Tenn. 576, 581, 347 S.W.2d 493, 495 (1961) (stating that one of the purposes of the workers' compensation system is to increase the right of employees to be *compensated for injuries* growing out of their employment); Mathis v. J.L. Forrest & Sons, 188 Tenn. 128, 130, 216 S.W.2d 967, 967 (1949) (stating that the general purpose of the workers' compensation statutes is to provide compensation for loss of earning power or capacity sustained by workers through injuries in industry); see also Tenn. Code Ann. § 50-6-116 (stating "[t]he rule of common law requiring strict construction of statutes on derogation of common law shall not be applicable to the provisions of the Workers' Compensation Law, compiled in this chapter but the same is declared to be a remedial statute, which shall be given an equitable construction by the courts, to the end that the objects and purposes of this chapter may be realized and attained"). The plant-wide reduction in pay imposed on all employees as a result of the shutdown does not result in a finding that the employer failed to meet the requirements of Tennessee Code Annotated sections 50-6-241(a) or -241(d)(1)(A). Accordingly, under the particular circumstances of this case, this Panel finds that Mr. Edwards is subject to the statutory minimums of either Tennessee Code Annotated section 50-6-241(a)(1) or -241(d)(1)(A).

Application of 2004 Amended Caps

Having determined that Mr. Edwards is not entitled to the application of Tennessee Code Annotated subsections 50-6-241(b) or -241(d)(1), we must now determine which lower caps provision does apply. Mr. Edwards argues that his date of injury should be April 12, 2003, the date

he first notified Saturn that he had a shoulder injury. Conversely, Saturn argues that Mr. Edwards' date of injury should be the last day he worked prior to having shoulder surgery, December 15, 2005. The date of injury is important because it determines whether Mr. Edwards' permanent partial disability is "capped" at one and one-half (1½) times his impairment rating, Tenn. Code Ann. § 50-6-241(d)(1)(A), or two and one-half (2½) times his impairment rating, id. § 50-6-241(a)(1).

Tennessee Code Annotated section 50-6-241(a)(1) applies to injuries which occurred on or after August 1, 1992, but before July 1, 2004. In this instance, if, as Mr. Edwards argues, his date of injury is April 12, 2003, he would be subject to the "caps" provisions in this section:

> in cases were an injured employee is eligible to receive any permanent partial disability benefits . . . and the pre-injury employer returns 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 *two and one-half* (2½) times the medical impairment rating.

Tenn. Code Ann. § 50-6-241(a)(1) (emphasis added).

Alternatively, Tennessee Code Annotated section 50-6-241(d) applies to injuries which occurred on or after July 1, 2004. Therefore, if, as Saturn argues, Mr. Edwards' date of injury is his last day worked before having to miss work for his shoulder injury, December 15, 2005, he would be subject to the "caps" provisions of this section:

> in cases in which an injured employee is eligible to receive any permanent partial disability benefits . . . and the pre-injury employer returns 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 *one and one-half* (1½) times the medical impairment rating.

Tenn. Code Ann. § 50-6-241(d)(1)(A) (emphasis added).

It has long been held that the date of injury in a gradually occurring injury context is when the employee is no longer able to work. Barker v. Home-Crest Corp., 805 S.W.2d 373, 373-74 (Tenn. 1991). "This is the so-called last day worked rule." Mathenia v. Milan Seating Sys., 254 S.W.3d 313, 320 (Tenn. Workers' Comp. Panel 2007). The last day worked is determined by referencing the date upon which the employee could no longer perform his or her work duties. Id.; Lawson v. Lear Seating Corp., 944 S.W.2d 340, 341 (Tenn. 1997). The Supreme Court recently re-emphasized the application of this rule in Building Materials Corp. v. Britt, 211 S.W.3d 706, 713 (Tenn. 2007).

In Britt, the Tennessee Supreme Court overruled Bone v. Saturn Corp., 148 S.W.3d 69 (Tenn. 2004), insofar as Bone held that the last day worked rule was inapplicable when the employee gave the employer actual notice of a gradually occurring injury. Britt, 211 S.W.3d at 713. Specifically, the Britt court stated:

> At the time we decided Bone, we were persuaded that a retreat from the bright line last-day-worked rule established in Barker and Lawson was appropriate. After further consideration and application of the Bone rule, however, we are convinced that the "first notice" rule we announced in Bone is unfair in its application and conflicts with the purposes of our Workers' Compensation Law.

Id.

In this case, Mr. Edwards first reported his injury to Saturn on April 12, 2003. However, he continued to work up until December 16, 2005, more than two and one-half years after reporting the initial injury. He missed no work on account of his injury during that time. Therefore, under Britt, it is clear that Mr. Edwards' date of injury is December 15, 2005, the last day he worked before having shoulder surgery.

Mr. Edwards, however, argues that his workers' compensation claim was filed before Britt was decided, and as such, Bone, and not Britt, should apply. Specifically, Mr. Edwards argues that Britt should not be given retrospective application because to do so would deny Mr. Edwards a vested right, which is constitutionally forbidden. Tenn. Const. art. 1 § 20; see Collier v. Memphis Light, Gas & Water Div., 657 S.W.2d 771, 775 (Tenn. Ct. App. 1983). Mr. Edwards argues that retrospective application of Britt would "work a hardship" because he would receive less compensation under the new law than the old law.

During the course of this appeal, this issue of Britt's retrospective application was resolved in Mathenia, 254 S.W.3d at 320 n.5. As the Mathenia panel stated, "Generally, judicial decisions overruling prior decisions are given retroactive effect. Because Britt overruled a previous decision, we determine that it does apply retroactively and that the rule announced in Bone is inapplicable." Id. (internal citation omitted). Accordingly, we determine that Mr. Edwards' date of injury was his last day worked before having shoulder surgery, December 15, 2005. And as such, Mr. Edwards' permanent partial disability award is capped at one and one-half (1½) times his medical impairment rating of nine (9) percent for a permanent partial disability award of thirteen and one-half (13 ½) percent.

CONCLUSION

For the reasons stated above, we cannot say that the evidence preponderates against the determinations of the trial court. We therefore affirm the decision of the trial court in all respects. Costs of this appeal are taxed to Robert Edwards, and his surety, for which execution may issue if necessary.

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CORNELIA A. CLARK, JUSTICE

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

ROBERT EDWARDS v. SATURN CORPORATION

Circuit Court for Maury County
No. 11596

No. M2007-01955-SC-WCM-WC - Filed - September 25, 2008

JUDGMENT ORDER

This case is before the Court upon the motion for review filed by Robert Edwards pursuant to Tennessee Code Annotated section 50-6-225(e)(5)(B), 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.

It appears to the Court that the motion for review is not well-taken and is therefore denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to Robert Edwards, and his surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

Cornelia A. Clark, J., not participating