

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
June 23, 2008 Session

DANNY RAY GIBBS, SR. v. SATURN CORPORATION ET AL.

**Direct Appeal from the Circuit Court for Williamson County
No. 05319 R.E. Lee Davies, Judge**

**No. M2007-02263-WC-R3-WC - Mailed - October 30, 2008
Filed - January 22, 2009**

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) (2008) for a hearing and a report of findings of fact and conclusions of law. It involves the efforts of a retired employee of an automobile manufacturer to obtain workers' compensation benefits for an injury to his right shoulder that was diagnosed after his retirement and also to obtain reconsideration of an earlier award of workers' compensation benefits for a work-related injury to his left shoulder. Following a bench trial, the Circuit Court for Williamson County concluded that the retired employee had sustained a compensable injury to his right shoulder and awarded him benefits based on a thirty-two percent permanent partial disability to the body as a whole. The trial court also determined that the employee was ineligible for reconsideration of the award for the injury to his left shoulder. On this appeal, the employer takes issue with the award for the injury to the employee's right shoulder, and the employee takes issue with the trial court's refusal to reconsider the award of benefits for the injury to his left shoulder. We have determined that the trial court properly declined to reconsider the award for the injury to the employee's left shoulder. We have also determined that the evidence does not preponderate against the trial court's conclusion that the injury to the employee's right shoulder was work-related. However, we have determined that the trial court erred by failing to limit the award of benefits for the injury to the right shoulder to the cap in Tenn. Code Ann. § 50-6-241(d)(1)(A) (2008).

**Tenn. Code Ann. § 50-6-225(e) (2008) Appeal as of Right; Judgment of the Circuit Court
Modified and Affirmed**

WILLIAM C. KOCH, JR., J., delivered the opinion of the court, in which JON KERRY BLACKWOOD and WALTER C. KURTZ, SR. JJ., joined.

Kenneth Marshall Switzer, Nashville, Tennessee, for the appellant, Saturn Corporation.

Ann Buntin Steiner, Nashville, Tennessee, for the appellee, Danny Ray Gibbs, Sr.

MEMORANDUM OPINION

I.

Danny Ray Gibbs, Sr. began working for General Motors Corporation in Flint, Michigan in 1985. In April 1991, he was transferred to the Saturn Corporation's ("Saturn") manufacturing plant in Spring Hill, Tennessee. His job at the Saturn plant, which entailed mounting roofs and sunroofs onto vehicles, required almost constant overhead work and involved frequent lifting and pushing with his shoulders. In addition to his work at the plant, Mr. Gibbs sold insurance on the side. In 1996, he became an ordained Baptist minister and pursued his ministry part-time.¹

In 2001, Reverend Gibbs sustained a work-related injury to his left shoulder that required surgery to repair. Eventually, Reverend Gibbs and Saturn settled his workers' compensation claim by agreeing that the injury to the left shoulder had resulted in a 14.25 percent permanent partial disability to the body as a whole.² When Reverend Gibbs returned to work at Saturn, he performed tasks that did not require overhead work. However, in early 2003, he was again assigned to jobs that involved overhead work. While he experienced some shoulder discomfort, he did not seek medical assistance or request assistance from Saturn.

When the Saturn plant opened in Spring Hill in 1990, its management practices were designed to break away from the traditional American automobile manufacturing model. The plant became known for its experiments in cooperation between labor and management, open communication, and flexibility. However, sometime after Reverend Gibbs returned to work, Saturn began the process of changing back to a more traditional General Motors work environment.³ Reverend Gibbs did not favor these changes because he believed that they would result in "overloading" the jobs and that he might injure his other shoulder and be forced to retire. He testified that he was "tired of all the games" and that getting up and going to work was "getting to be a grind." Because he desired to pursue his ministry full-time and because he believed that he could not keep up with the newly designed jobs at the plant, he decided to accept the next early retirement "package" Saturn offered him, as long as it included medical benefits.

In July 2004, Saturn offered a voluntary retirement package to employees at the Spring Hill plant. Reverend Gibbs accepted Saturn's offer, which included medical benefits, in September 2004. In the documents he executed on September 13, 2004, Reverend Gibbs stated that "I am able to work and suffer from no disability that would preclude me from doing my regularly assigned job. As such, I acknowledge that I am not entitled to disability pay or benefits." He also acknowledged that he understood "that Saturn, GM and the UAW may be considering and in the future may agree to amend Saturn and/or GM's benefit plans and make available different retirement, placement, or

¹We will henceforth refer to Mr. Gibbs as Reverend Gibbs.

²*See Gibbs v. Saturn Corp.*, Maury Cir. No. 10717 (Order Nov. 8, 2007).

³Reverend Gibbs testified that "Saturn was going under a major reconstruction. You have to understand the history. We were going back under the old system of GM."

separation benefits for which I will not be eligible.” Reverend Gibbs’s retirement from Saturn became effective on November 1, 2004.

Reverend Gibbs’s right shoulder began to bother him in January 2005. On February 23, 2005, he was examined by Dr. Randall Davidson, the orthopaedic surgeon who had repaired his left shoulder in 2001. Dr. Davidson determined that Reverend Gibbs had sustained a partially torn rotator cuff and some tearing in the cartilage in his right shoulder. He performed surgery to repair Reverend Gibbs’s right shoulder on May 31, 2005. Based on Reverend Gibbs’s statement that his right shoulder began bothering him only one month earlier, Dr. Davidson concluded that the injury to Reverend Gibbs’s right shoulder was not work-related and sought payment for his services from Reverend Gibbs’s medical insurance provider.

Reverend Gibbs notified Saturn that he believed that the injury to his right shoulder was work-related; however, Saturn denied his claim. On May 27, 2005, Reverend Gibbs filed suit in the Circuit Court for Williamson County, seeking a workers’ compensation award for his right shoulder and an increased workers’ compensation award for his left shoulder. At the bench trial on July 16, 2006, Reverend Gibbs presented the deposition of Dr. David Gaw who opined that the injury to Reverend Gibbs’s right shoulder was work-related. Saturn presented the deposition of Dr. Davidson who testified that the injury was not work-related. Reverend Gibbs testified on his own behalf, as did several members of his family.

The trial court filed its final order on August 20, 2007. The court declined to reconsider the 2001 workers’ compensation award for the injury to Reverend Gibbs’s left shoulder. However, it concluded that Reverend Gibbs’s right shoulder injury was work-related and assigned an impairment rating of eight percent. Based on its decision that Reverend Gibbs “could not have returned to work and lasted very long,” the trial court determined that his recovery should not be subject to the cap in Tenn. Code Ann. § 50-6-241(d)(1)(A) (2008). Accordingly, the trial court awarded Reverend Gibbs a judgment for \$81,664, representing a thirty-two percent disability to the body as a whole. The court also awarded Reverend Gibbs \$15,312.00 in temporary total disability benefits, as well as \$19,395.20 in attorney’s fees.

After the trial court denied its Tenn. R. Civ. P. 59.04 motion, Saturn perfected an appeal, taking issue with the portion of the trial court’s judgment that determined that the injury to Reverend Gibbs’s right shoulder was work-related and its decision not to cap the recovery as required by Tenn. Code Ann. § 50-6-241(d)(1)(A). For his part, Reverend Gibbs takes issue on appeal with the trial court’s refusal to reconsider the 2001 workers’ compensation award for the injury to his left shoulder.

II.

Courts reviewing an award of workers’ compensation benefits must conduct an in-depth examination of the trial court’s factual findings and conclusions of law. *Wilhelm v. Krogers*, 235 S.W.3d 122, 126 (Tenn. 2007). When conducting this examination, Tenn. Code Ann. § 50-6-225(e)(2) (2008) requires the reviewing court to “[r]eview . . . the trial court’s findings of fact . . . de novo upon the record of the trial court, accompanied by a presumption of the correctness of the

finding, unless the preponderance of the evidence is otherwise.” The reviewing court must also give considerable deference to the trial court’s findings regarding the credibility of the live witnesses and to the trial court’s assessment of the weight that should be given to their testimony. *Tryon v. Saturn Corp.*, 254 S.W.3d 321, 327 (Tenn. 2008); *Whirlpool Corp. v. Nakhoneinh*, 69 S.W.3d 164, 167 (Tenn. 2002). However, the reviewing courts need not give similar deference to a trial court’s findings based upon documentary evidence such as depositions, *Orrick v. Bestway Trucking, Inc.*, 184 S.W.3d 211, 216 (Tenn. 2006); *Bohanan v. City of Knoxville*, 136 S.W.3d 621, 624 (Tenn. 2004), or to a trial court’s conclusions of law, *Perrin v. Gaylord Entm’t Co.*, 120 S.W.3d 823, 826 (Tenn. 2003).

III.

Saturn first asserts that the evidence does not support the trial court’s conclusion that the injury to Reverend Gibbs’s right shoulder was work-related. Reverend Gibbs asserts that the evidence does not preponderate against the trial court’s conclusion. We have determined that Reverend Gibbs has the better argument.

To be compensable under Tennessee’s workers’ compensation statutes, an injury must arise out of and occur in the course of employment in order to be compensable. Tenn. Code Ann. § 50-6-103(a) (2008). “[A]rising out of” refers to the origin or cause of the injury, and “in the course of” refers to the “time, place, and circumstances” of the injury. *Wait v. Travelers Indem. Co. of Ill.*, 240 S.W.3d 220, 225 (Tenn. 2007). Although causation must be proved through medical evidence, the plaintiff is not required to prove causation with absolute certainty. *Crew v. First Source Furniture Group*, 259 S.W.3d 656, 664 (Tenn. 2008). Workers’ compensation benefits may be awarded when the medical evidence shows that the claimant’s employment “could or might have been the cause” of the injury when the lay testimony reasonably supports the conclusion that the injury was work-related. *Fitzgerald v. BTR Sealing Sys. N. Am. - Tenn. Operations*, 205 S.W.3d 400, 404 (Tenn. 2006) (quoting *Clark v. Nashville Mach. Elevator Co.*, 129 S.W.3d 42, 47 (Tenn. 2004)).

The parties’ medical experts essentially agreed regarding the nature of the injury to Reverend Gibbs’s right shoulder and the extent of his impairment. Dr. Gaw determined that Reverend Gibbs had a thirteen percent impairment based on a loss of movement that was so slight that it could only be detected using a goniometer. Dr. Davidson gave Reverend Gibbs a ten percent impairment rating without using a goniometer.

While Reverend Gibbs told Dr. Davidson in February 2005 that he began experiencing problems with his right shoulder in January 2005, he testified that he had experienced pain and stiffness in his right shoulder prior to retirement. He also testified that he assumed that the stiffness and pain would resolve themselves after he retired. When they did not, he sought assistance from Dr. Davidson. Both Dr. Davidson and Dr. Gaw testified that the injury to Reverend Gibbs’s right shoulder was an injury commonly sustained by Saturn’s workers and that it was caused by performing repetitive, overhead tasks, similar to the tasks performed by Reverend Gibbs. The members of Reverend Gibbs’s family corroborated his testimony regarding the stiffness in his right shoulder and the onset of pain in his right shoulder, and the trial court expressly determined that Reverend Gibbs was a credible witness. Based on this evidence, we have no grounds to second-

guess the trial court's conclusion that the injury to Reverend Gibbs's right shoulder was work-related. Accordingly, we affirm the trial court's findings that the injury to Reverend Gibbs's right shoulder was work-related and that it resulted in an impairment of eight percent to the body as a whole.

IV.

Saturn also asserts that the trial court erred by determining that Reverend Gibbs's recovery was not subject to the cap in Tenn. Code Ann. § 50-6-241(d)(1)(A) because Reverend Gibbs had not had a meaningful return to work.⁴ Reverend Gibbs responds that the evidence does not preponderate against that trial court's conclusion that he could not have had a meaningful return to work at Saturn following the injury to his right shoulder. Saturn prevails on this issue.

The statutory cap for a permanent partial disability award is determined by whether the injured employee had a meaningful return to work. *Tryon v. Saturn Corp.*, 254 S.W.3d at 327-28 & n.8. If the injured employee had a meaningful return to work at a wage "equal to or greater than the wage the employee was receiving at the time of the injury," the award may not exceed one and one-half times his medical impairment rating. Tenn. Code Ann. § 50-6-241(d)(1)(A). If, however, the injured employee did not have a meaningful return to work, the award may not exceed six times the disability impairment rating. Tenn. Code Ann. § 50-6-241(d)(2)(A). Where an employee voluntarily retires, whether the employee had a meaningful return to work depends on the employee's reason for retiring. *Tryon v. Saturn Corp.*, 254 S.W.3d at 328-29, 333-34. If the employee retired for reasons that are reasonably related to his or her workplace injury, the employee did not have a meaningful return to work. *Tryon v. Saturn Corp.*, 254 S.W.3d at 328-29; *Lay v. Scott County Sheriff's Dep't*, 109 S.W.3d 293, 298 (Tenn. 2003); *Hardin v. Royal & Sunalliance Ins.*, 104 S.W.3d 501, 505-06 (Tenn. 2003). However, if the employee voluntarily retires for reasons unrelated to an injury, the employee is deemed to have had a meaningful return to work. *Tryon v. Saturn Corp.*, 254 S.W.3d at 329-30.

Saturn contends that Reverend Gibbs retired primarily because he desired to pursue the ministry full-time. Reverend Gibbs agreed that was a motivating factor and stated that he was waiting for a retirement package offer that would include medical benefits. Saturn also points to the release agreement Reverend Gibbs signed, agreeing that he was under no physical disability. While no such waiver could have indemnified Saturn against a workers' compensation claim, *see* Tenn. Code Ann. § 50-6-114(a), (b) (2008), it does provide relevant insight into whether or not Reverend Gibbs's retirement was reasonably related to the problems with his right shoulder. The trial court found Reverend Gibbs to be a very credible witness, and we have no reason to disagree with that finding. However, the evidence simply does not establish that Reverend Gibbs retired for reasons relating to his right shoulder – which he himself admits was merely stiff and not painful at the time

⁴Injuries occurring on or after July 1, 2004 are capped by the 1.5 times multiplier in Tenn. Code Ann. § 50-6-241(d)(1)(A). However, injuries occurring before July 1, 2004 are capped by the 2.5 times multiplier in Tenn. Code Ann. § 50-6-241(a)(1). Saturn has asserted throughout this litigation that the smaller multiplier in Tenn. Code Ann. § 50-6-241(d)(1)(A) applies in this case, and Reverend Gibbs has not taken issue with this assertion. Accordingly, we need not decide whether the injury to Reverend Gibbs's right shoulder occurred before or after July 1, 2004.

of his retirement. Furthermore, both physicians testified that Reverend Gibbs could have returned to work at Saturn following the surgery to his right shoulder without significant restrictions. Accordingly, we have determined that Reverend Gibbs's retirement was not reasonably related to the injury to his right shoulder, and the trial court should have capped Reverend Gibbs's impairment at the statutory maximum of twelve percent.

V.

Reverend Gibbs takes issue with the trial court's refusal to reopen the award for the injury to his left shoulder. Saturn responds that the trial court's decision is correct because the evidence does not preponderate against the trial court's conclusion that Reverend Gibbs's retirement was not reasonably related to his left shoulder injury that occurred in 2001. The record supports Saturn's argument.

When an employee voluntarily resigns, "a trial court may reconsider [and increase a] previous award . . . only if the resignation was reasonably related to the injury." *Hardin Royal & Sunalliance Ins.*, 104 S.W.3d at 505-06. As we have previously determined, Reverend Gibbs's decision to retire was primarily related to his desire to pursue his ministry full-time while securing health benefits, not because of an existing injury. Therefore, the trial court was precluded from reconsidering Reverend Gibbs's prior award for his work-related, left shoulder injury, and so are we.

VI.

We modify the August 20, 2007 judgment by reducing Reverend Gibbs's permanent partial disability benefits from thirty-two percent to twelve percent to the body as a whole and affirm the judgment as so modified. We tax the costs of this appeal in equal proportions to Danny Ray Gibbs and to Saturn Corporation and its surety, for which execution, if necessary, may issue.

WILLIAM C. KOCH, JR., JUSTICE

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

DANNY RAY GIBBS, SR. v. SATURN CORPORATION

**Circuit Court for Williamson County
No. 05319**

No. M2007-02263-SC-WCM-WC - Filed - January 22, 2009

JUDGMENT ORDER

This case is before the Court upon the motion for review filed by Danny Ray Gibbs, Sr., 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 Danny Ray Gibbs, Sr., for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

WILLIAM C. KOCH, JR., J., not participating.