IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
September 22, 2008 Session

STEVE IACONO v. SATURN CORPORATION

Direct Appeal from the Circuit Court for Maury County
No. 12016 Robert L. Jones, Judge

No. M2008-00139-WC-R3-WC - Mailed - January 12, 2009
Filed - March 12, 2009

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 hearing and reporting to the Supreme Court of findings of fact and conclusions of law. On appeal, Employee contends that the trial court erred in finding that Employee's permanent partial disability award should be capped at one and one-half times his medical impairment rating. Because the evidence does not preponderate against the findings, we affirm the judgment of the trial court.

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

JON KERRY BLACKWOOD, SR. J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., J., and ALLEN W. WALLACE, SR. J., joined.

Larry R. McElhaney, II, Nashville, Tennessee, for the appellant Steve Iacono.

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

MEMORANDUM OPINION

Factual and Procedural History

Steve Iacono ("Employee") was 51 years old at the time of trial. He has a high school degree but no college or vocational training. In 1976, Employee began working at General Motors' New Jersey facility, Fisher Guide. While at Fisher Guide, he worked as "a stock person, a machine operator, roller mill operator, bender, welder, all kinds of different assembling jobs." All of those jobs, Employee testified, required him to lift more than five pounds and to use his arms at shoulder height.

Employee transferred to the Saturn plant in April 1993 where he was placed "on the car side,

general assembly." Employee described his duties on "general assembly" as "[e]verything between putting quarter panels on, trunks, fascia on top, riveting and screwing, that kind of nature, working on the body of a car, underneath, on the side panels, things like that." He worked "on the car side" for six years. Employee testified that during this time he was required to lift overhead and pull "at least 10 to 15 pounds." He further testified that he worked with his arms at or above shoulder level "always" during this six-year period.

In late 1999, Employee moved from general assembly to "the other side" where he worked on building the sports utility vehicle "the Vue." There, he was "the op-tech on the line." The jobs on the Vue line required Employee to lift more than five pounds and use his arms at or above shoulder level. Employee noted that he elected to transfer from general assembly car side to general assembly on the Vue. Employee also noted that the parts for the Vue were heavier given the larger size of the vehicle.

On January 18, 2006, Employee reported a right shoulder injury.[1] On February 22, 2006, Employee reported a left shoulder injury. After suffering injuries to both of his shoulders, Employee returned to work. On February 28, Employee reported to work with restrictions of no work at all with his right arm[2] and a two-pound lifting restriction on his left arm. The duration of these restrictions was noted as, "until surgery." After an evaluation through Saturn's ADAPT program,[3] Employee was placed in the "cockpit." This was a light duty job that required Employee to place foam, weighing less than one pound, in cars. Employee continued to work "cockpit" until having right shoulder surgery on March 17, 2006.

After his surgery, on April 11, 2006, Employee returned to Saturn with new medical restrictions of "no lifting over one pound with the left arm and no work at all with the right arm." The duration of these restrictions was noted as "4 weeks." Saturn denied Employee placement within the plant, noting that employee was disabled and that there was no job available that would comply with these restrictions.

That same day, Employee attended a meeting with union representatives. In the meeting, at which more than 100 employees were present, Employee was presented with the option of taking early retirement. Employee was given a "Special Attrition Plan Conditions of Participation Release Form" to review and consider. The form explained that Employee had 45 days to make a decision. The form also advised Employee to consult his attorney before signing it. Employee did not take 45 days and did not consult with an attorney. Instead, on the same day the option was presented, Employee signed the necessary paperwork to take early retirement. Under the terms of the agreement, Employee's retirement took effect June 1, 2006.

---

[1] Notice is not an issue in this case.

[2] At this time, Employee's right arm was in a sling.

[3] Derri Adkison, the former ADAPT coordinator, explained that Saturn's ADAPT program "looks at disabled or restricted team members and reviews jobs in order to place them in a position where they would be fully functional and fully rotational."

On May 8, 2006, Employee was given new medical restrictions of no lifting over five pounds with either arm and no working with arms bilaterally at or above shoulder level. Again, the duration of these restrictions was noted as "4 weeks." At this time, Saturn did not attempt to place Employee, because, in their opinion, it was unnecessary. Anthony Mills, a UAW representative for the ADAPT program, testified that the employment office notified the ADAPT program that Employee had accepted early retirement, therefore it was not necessary to place him. As Mr. Mills explained: "It was determined, based on two things, one, [Employee] making a decision to go ahead and retire and, number two, that it was taking us anywhere from two to four weeks to do a job evaluation, that we did not do a job evaluation" for the May 8 restrictions because Employee's retirement date was only three weeks away. On May 30, 2006, Employee was given another set of restrictions which included no lifting more than 10 pounds with either arm and no working with either arm at or above shoulder level. Again, the duration of these restrictions was noted as "4 weeks."[4] Two days later, Employee retired never having returned to work after his March 17 surgery.

In July 2006, Employee had surgery on his left shoulder. He was released by Dr. Cook in November 2006. Dr. Cook assigned permanent restrictions of no lifting more than five pounds and no work with either arm at or above shoulder height.

On April 11, 2007, Employee filed a complaint for workers' compensation benefits. Employee plead that he had suffered two shoulder injuries during the course and scope of his employment, his injuries have caused permanent partial impairment, and as such, he was entitled to benefits under the Tennessee Workers' Compensation Act. Employee also alleged that he was not subject to the one and one-half multiplier found in Tennessee Code Annotated section 50-6-241(d)(1)(A) because he was no longer employed by Employer.

In its answer, Employer denied that Employee's injuries arouse out of and in the course and scope of employment.[5] Additionally, Employer alleged that if the trial court found that Employee suffered one or more compensable injuries that his award was subject to the one and one-half multiplier found in Tennessee Code Annotated section 50-6-241(d)(1)(A) because Employee is not allowed to exceed the lower multiplier when he voluntarily retires.

A hearing on the matter was held on November 2, 2007. During the hearing, Employee testified that, although his retirement was a "voluntary quit," he retired "because of [his] injuries." Employee testified that he decided to retire early "[b]ecause [he] couldn't work and perform at 100 percent with the jobs and tasks that they wanted.[6] You have to be 100 percent functionally at Saturn or else they will get rid of you and they'll put you in disability." He insisted that, "If I didn't have

---

[4] It is unclear from the record whether the May 30 medical restrictions were ever given to Saturn.

[5] At trial, parties stipulated that both shoulder injuries occurred in the course and scope of Employee's employment. The parties also stipulated to Employee's combined impairment rating of 17% for both injuries, and a weekly compensation rate of $663.00.

[6] We note that Employee, at the time he signed the paperwork to retire early, had not yet been either: (1) released, by his doctor, from the right shoulder surgery; or (2) had his left shoulder surgery.

these injuries, I wouldn't have retired."

On cross-examination, Employee admitted that he "made the decision to retire sometime between January 18, 2006 (right shoulder injury) and February 22, 2006 (left shoulder injury). Employee further agreed that he had made the decision to retire before his first shoulder surgery on March 17, 2006. Employee also testified that he understood the terms of the early retirement package, that he agreed to the terms, and that he was not forced to accept the early retirement package. Employee also stated that if, after he recovered from his shoulder surgeries, Saturn had been able to place him in a job, he would have accepted the job. But, he argued that he took early retirement because he did not believe that a job would be available due to his medical restrictions.[7] Finally, Employee testified that he was eligible for retirement after thirty years of service and that his "30 year anniversary" was May 16, 2006, fifteen days before his June 1 retirement date.

Orthopedic surgeon Greg Cook testified that he treated Employee for his work-related shoulder injuries. Dr. Cook performed surgery on both shoulders and released Employee in November 2006 after he attained maximum medical improvement. Dr. Cook opined that Employee "has a fourteen percent upper extremity impairment of his left arm and a seventeen percent upper extremity of the right arm, which is a combined seventeen percent whole person impairment." These ratings were based on Employee's loss of range of motion. Dr. Cook testified that Employee's permanent restrictions are "no working with either shoulder at or above shoulder height [and] no lifting over five pounds." Dr. Cook acknowledged, however, that the lifting restriction was more extreme than usual. He explained that the restriction was based in part on what Employee told him he could lift.

Derri Adkinson, a former ADAPT coordinator, testified that seniority[8] plays a role in determining where to place an injured worker. As Ms. Adkinson explained:

> We first look at a team member's restrictions to determine if we have a job to place them into. Once we define a job that they can be fully rotational in all aspects of that team, then we would look at their seniority to see if they hold seniority, and if they did, then we would place them in a team.

Additionally, while admitting that it would be difficult to place Employee, given his restrictions, Ms. Adkinson testified that there were jobs at Saturn that would comply with Employee's restrictions.

Dana Stoller, a vocational rehabilitation counselor, testified on behalf of Employee. Ms. Stoller performed a vocational rehabilitation assessment of Employee. She testified that the

---

[7] We note, however, that nothing in the record indicates that Employee knew what permanent restrictions, if any, he would have at the time he decided to accept the retirement package.

[8] Although Employee had worked for General Motors for thirty years, his seniority within Saturn's Spring Hill plant only dated back to 1993, the year he began working at the facility. Importantly, the plant opened in 1989 and a majority of the employees began their tenure at the plant between 1989 and 1991.

restrictions placed on Employee by Dr. Cook "absolutely" precluded Employee from returning to his prior work. She stated that the restrictions limited Employee to "sedentary" positions in the labor market, which make up approximately 11% of jobs. And, as Ms. Stoller explained, since many of those "sedentary" jobs require an employee to lift up to ten pounds, the number of positions that Employee might be qualified for is further reduced. Considering Employee's age and education level in conjunction with his physical limitations, Ms. Stoller opined that Employee is 100% disabled from the open labor market.

Anthony Mills testified for Employer. He explained that the ADAPT program is aimed at accommodating workers who develop medical restrictions. Mr. Mills explained Employee's medical restrictions and the ability of the ADAPT program to place Employee with his restrictions. Mr. Mills explained that workers with seniority are easier to place but also noted that it would have been possible to place Employee given his permanent restrictions. As Mr. Mills explained, Employee was given permanent restrictions in November 2006. From May 2006 until the end of the year, "400 or 500 [higher seniority employees left] the Saturn facility" as part of the retirement program. Therefore, by the time Employee was given permanent restrictions, it would have been possible to place Employee because his seniority would have been higher. On cross-examination, however, Mr. Mills testified that he could not be 100% positive that Employee would have been placed, but he believed that he could have placed Employee.

John Whitaker, a vocational rehabilitation case manager with Genex Services, testified on behalf of Employer. He met with Employee and reviewed Dr. Cook's records. He assigned Employee "a fifty-five (55) percent vocational impairment as a result of the right shoulder surgery and a final eighty-five (85) percent impairment after his bilateral surgeries." Employee's final restrictions rendered him unable to return to his previous work. Mr. Whitaker testified, however, that Employee could possibly be employed as a "small parts assembler" or as an "electronics job setter."

After all proof had been presented, the trial court found that Employee has sustained a 17 percent impairment to the body as a whole arising from injuries to both shoulders. Additionally, the trial court found that Employee quit his employment voluntarily by taking early retirement "and did not reasonably offer the employer an opportunity to return him to the equal or greater pay that he had before the injury." The trial court, therefore, capped Employee's award at 25.5 percent, or one and one-half (1½) times Employee's medical impairment rating, see Tenn. Code Ann. § 50-6-241(d)(1)(a), for a lump sum award of $67,626. The trial court specifically found that "the injury has influenced [Employee's] decision [to take early retirement] as . . . age and other factors did as well. But [the court does not] find that it was caused by the injuries sufficiently for him to avoid the consequences of [Tennessee Code Annotated section] 50-6-241." The court also expressed "serious credibility" concerns about the five pound lifting restriction because of Dr. Cook's testimony that this restriction was based, at least in part, on what Employee told him he could lift.

Employee filed a timely notice of appeal, asking this Panel to determine whether the trial court erred in applying the lower statutory cap of section 50-6-241(d)(1)(A) when Employee is no longer working for his pre-injury Employer.

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) (2008); Rhodes v. Capital City Ins. Co., 154 S.W.3d 43, 46 (Tenn. 2004). 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

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) (injury before July 1, 2004), or one and one-half (1½) times, Id. § 50-6-241(d)(1)(A) (injury on or after July 1, 2004), 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 determining whether to apply the lower statutory caps of Tennessee Code Annotated section 50-6-241, both the Supreme Court and Appeals Panels have looked to determine whether the employee has made a "meaningful return to work." See Tryon, 254 S.W.3d at 328; Kellow v. TML Risk Mgmt. Pool, No. M2006-01573-WC-R3-WC, 2007 WL 5447468, at *4 (Tenn. Workers' Comp. Panel Oct. 29, 2007); Eldridge v. Putnam County Bd. of Educ., No. M2006-02046-WC-R3-WC, 2007 WL 2333036, at *5 (Tenn. Workers' Comp. Panel Aug. 17, 2007). Most recently, the Tennessee Supreme Court addressed the concept of "meaningful return to work" in Tryon:

> 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.
>
> . . .
>
> [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.

Tryon, 254 S.W.3d at 328-29. (internal citation omitted); see Tenn. Code Ann. § 50-6-241(d)(1)(B)(iii)(a) (2005). For example, the Supreme Court and Appeals Panel have found that an employee, who resigned or retired after suffering a work-related injury, did not have a meaningful return to work when: (1) the employee was told by his physician to resign; (2) "the employee's workplace injury rendered the employee unable to perform his or her job"; (3) "the employer refused to accommodate the employee's work restrictions arising from the workplace injury"; and (4) "the employee's workplace injury caused too much pain to permit the employee to continue working." Tryon, 254 S.W.3d at 329 (footnotes omitted). In each of these instances, the court found that employee's retirement or resignation was "reasonably related" to the employee's workplace injury. Conversely, the Supreme Court and Appeals Panel have found that an employee, who resigned or retired after suffering a work-related injury, did have a meaningful return to work when the employee's decision to retire or resign was based on: (1) "the employee's unfounded anxiety about being transferred to a position that would exceed work restrictions"; (2) "the employee's belief that the employer was going to sell the business to someone who would fire the employee"; (3) the employee's interpersonal conflicts with co-workers"; (4) "a salary dispute unrelated to the employee's medical problems"; (5) "an employer's refusal for reasons unrelated to employee's workplace injury to accommodate the schedule of the employee's second job"; and (6) "the employee's decision to accept a better job." Id. at 329-330. In these instances, it was determined that the employee's departure from employment was not reasonably related to the workplace injury.

In light of Tennessee's "meaningful return to work jurisprudence," the pivotal question in this case is whether Employee's voluntary early retirement was "reasonably related" to his bilateral shoulder injuries. Tryon, 254 S.W.3d at 333; Hardin v. Royal & Sunalliance Ins., 104 S.W.3d 501, 505-06 (Tenn. 2003). The trial court found that Employee's retirement was not "sufficiently related" to his workplace injuries such that he could avoid the statutory cap. Although we recognize that the trial court mistakenly implied that Employee's retirement had to be "sufficiently related" to his workplace injury in order to exceed the lower statutory cap, upon review of the record we find that the evidence does not appear to preponderate against the trial court's findings that the lower statutory cap should apply.

Employee testified that he decided to retire early "[b]ecause [he] couldn't work and perform at 100 percent with the jobs and tasks that they wanted. You have to be 100 percent functionally at Saturn or else they will get rid of you and they'll put you in disability." Given the facts of the case, the trial court was not persuaded by this explanation. Neither are we. Employee committed to taking early retirement less than a month after his right shoulder surgery and before having his left shoulder surgery. As such, Employee determined, even before knowing the full extent of his injuries or what permanent restrictions, if any, he might have, that he would be unable to perform at Saturn. Without knowing the full extent of his injuries, this Panel is of the opinion that Employee's decision to retire was not reasonably related to his workplace injury.

Moreover, nothing in the record suggests that Employee's treating physician, Dr. Cook, informed Employee that he should retire or that he would not be able to continue working at Saturn after his two shoulder surgeries. Cf. Bailey v. Krueger Ringier, Inc., No. 02S01-9409-CH-00061, 1995 WL 572056, at *3-4 (Tenn. Workers' Comp. Panel May 17, 1995) (in determining that employee did not have a meaningful return to work, the Panel noted that employee's physician

advised employee to resign). To the contrary, Dr. Cook returned Employee to work, with restrictions, up until and after Employee reached maximum medical improvement in November 2006. Except for the period of March 28-April 10, 2006, Dr. Cook never limited Employee from returning to work with restrictions.

Finally, given the trial court's "serious credibility" concerns about the five pound lifting restriction, this Panel does not find that the evidence preponderates against the trial court's findings. Because Employee foreclosed the possibility of allowing Employer the opportunity to return Employee to work, we are not able to determine whether Employee could of had a meaningful return to work. However, we are mindful of the deference which we afford the trial court regarding its determination of witness credibility and therefore give considerable consideration to the trial court's finding that Employee's was capable of lifting more than five pounds. With the ability to lift more than five pounds, Employer would have been more likely to return Employee to work following his shoulder injuries; thus allowing Employee to have a meaningful return to work.

CONCLUSION

For the reasons stated above, we affirm the trial court's finding that Employee's permanent partial disability award should be capped at 1.5 times his medical impairment rating. Costs of this appeal are taxed to Employee, and his surety, for which execution may issue if necessary.

_____

JON KERRY BLACKWOOD, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

STEVE IACONO v. SATURN CORPORATION AND GENERAL MOTORS CORPORTION

Circuit Court for Maury County

No. 12016

No. M2008-00139-SC-WCM-WC - Filed - March 12, 2009

JUDGMENT ORDER

This case is before the Court upon the motion for review filed by Steve Iacono, pursuant to Tenn. Code Ann. § 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 Steve Iacono and his surety, for which execution may issue if necessary. It is so ORDERED.

PER CURIAM

Koch, William C., Jr., J., Not Participating