

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

February 23, 2009 Session

KEVIN CLIFTON v. NISSAN NORTH AMERICA

Direct Appeal from the Chancery Court for Maury County
No. 07-269 Jim T. Hamilton, Judge

No. M2008-01640-WC-R3-WC - Mailed - July 17, 2009
Filed - August 18, 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. The employee filed a workers' compensation action in the Chancery Court for Maury County, alleging that he developed occupational asthma as a result of exposure to a substance in his workplace. The employer denied liability. Following a bench trial, the trial court awarded benefits for temporary total and permanent partial disability. The employer has appealed, contending that the trial court erred by finding that the employee sustained a compensable injury, by finding that the statutory notice requirement was satisfied, and by awarding temporary disability benefits. In the alternative, the employer asserts that the judgment is excessive. We have determined that the awards for temporary total and permanent partial disability should be reduced.

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

WILLIAM C. KOCH, JR., J., delivered the opinion of the court, in which DONALD P. HARRIS and ALLEN W. WALLACE, SR. JJ., joined.

Randolph A. Veazey and Janis O. Mize, Nashville, Tennessee, for the appellant, Nissan North America, Inc.

Joy Davis Collier, Franklin, Tennessee, for the appellee, Kevin Clifton.

MEMORANDUM OPINION

I.

Kevin Clifton began work in July 2002 as an assembly line worker for Nissan North America (hereinafter "Nissan"), an automobile manufacturer. Four years later, on July 19, 2006, Mr. Clifton felt pain in his chest and arm and then lost consciousness while performing his usual duties. Mr.

Clifton was taken to an on-site clinic and was then transported to a local emergency room. He was permitted to return to work shortly thereafter.

Over the next several weeks, Mr. Clifton attempted to return to work several times. On each occasion, he developed symptoms such as chest tightness, lightheadedness, or dizziness, and sought care at Nissan's on-site medical clinic. He was referred to cardiologists, but no heart problems were detected. Eventually Mr. Clifton was referred to Dr. Salim Mihyu, a pulmonary specialist. Dr. Mihyu administered pulmonary function tests that revealed diminished lung capacity. He treated Mr. Clifton with various medications. Mr. Clifton's lung function improved to a normal range; however, his symptoms reappeared whenever he returned to work. Dr. Mihyu performed a methacholine challenge test that revealed that Mr. Clifton did not have asthma. He also referred Mr. Clifton for allergy testing, but these tests did not reveal any particular substance to which Mr. Clifton was allergic. Dr. Mihyu's final diagnosis was "shortness of breath of unknown cause."

On April 30, 2007, Mr. Clifton filed a complaint seeking workers' compensation benefits in the Chancery Court for Maury County. At trial, he relied heavily on Dr. Mihyu's testimony to support his claim. Dr. Mihyu testified that Mr. Clifton did not have permanent lung damage but that his breathing problems were precipitated by exposure to some agent in the workplace. He based this opinion on the appearance of symptoms when Mr. Clifton returned to work, and the relative absence of symptoms when Mr. Clifton was not at work. Although Dr. Mihyu had very limited knowledge of the agents present in Mr. Clifton's workplace, he stated that a substance called Canopus 13, a lubricant for air tools used in the area where Mr. Clifton worked, could be a possible cause of Mr. Clifton's condition.

Dr. Mihyu recommended that Mr. Clifton avoid exposure to dust, fumes, and smoke. He also suggested that Mr. Clifton should work in temperatures between ninety-five degrees and forty degrees Fahrenheit. Dr. Mihyu testified during direct examination that Mr. Clifton retained a "Class 1" permanent impairment of between 2% and 10% to the body as a whole as a result of his condition. On cross-examination, he was asked to state where Mr. Clifton's impairment fell within that range. In response, he stated that the impairment was 4% to 5% to the body as a whole. He also conceded on cross-examination that it was possible that Mr. Clifton's condition was triggered by a substance outside the workplace.

Mr. Clifton was thirty years old at the time of trial. He was a high school graduate with no additional formal education. Prior to being hired by Nissan, he had worked in factories and had assembled trusses for steel buildings. Mr. Clifton had worked for Nissan for four years prior to July 2006. After he was unable to return to work at Nissan, he did not return to the workforce. He testified that he had applied for four jobs since leaving Nissan.

The trial court found that Mr. Clifton had sustained a compensable injury. It awarded benefits for 50% permanent partial disability and also seventy-six weeks of temporary total disability, from July 20, 2006, until January 1, 2008. After Nissan filed a notice of appeal, the trial court required payment of the temporary disability portion of the judgment as a condition of granting

a stay. Nissan has appealed, contending that the trial court erred by finding that Mr. Clifton sustained permanent disability; by finding that Mr. Clifton's alleged injury arose from his employment; by finding that Mr. Clifton provided sufficient notice of his alleged injury; by requiring Nissan to pay a portion of the judgment prior to the outcome of this appeal; and by awarding seventy-six weeks of temporary total disability benefits. In addition, Nissan contends that the award of benefits is excessive.

II.

Courts reviewing an award of workers' compensation benefits must conduct an in-depth examination of the trial court's factual findings and conclusions. *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.

THE EVIDENTIARY FOUNDATION FOR THE PERMANENT PARTIAL DISABILITY AWARD

Nissan first asserts that the evidence preponderates against the trial court's decision to award permanent partial disability benefits. It bases this assertion on Dr. Mihyu's testimony that Mr. Clifton's pulmonary function returned to normal levels following treatment with asthma medication and that Mr. Clifton did not sustain permanent damage to his lungs. In response, Mr. Clifton points to Dr. Mihyu's testimony that, although Mr. Clifton's lung function eventually returned to normal, he continues to be prone to episodes of shortness of breath. Although the particular substance(s) that induced these episodes was undetermined, it is not disputed that these episodes occurred. Dr. Mihyu also continued to prescribe medication to treat Mr. Clifton's symptoms and placed permanent restrictions upon his activities.

Permanency must be established by expert evidence in all but the most obvious circumstances. *Foreman v. Automatic Sys., Inc.*, 272 S.W.3d 560, 572 (Tenn. 2008); *Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 458 (Tenn. 1988). Testimony establishing that the employee's condition is chronic or persistent and the medical provider's assignment of permanent restrictions is sufficient to establish permanency. *See, e.g., Walker v. Saturn Corp.*, 986 S.W.2d 204, 207 (Tenn. 1998) (holding that physician's placement of permanent restrictions on employee and

testimony that condition was “chronic” established permanency); *Overton v. Regis Corp.*, No. M2007-00069-WC-R3-WC, 2008 WL 4809126, at *5 (Tenn. Workers’ Comp. Panel Nov. 4, 2008) (finding permanent impairment based on the medical provider placing permanent restrictions on the employee’s activities and on testimony from the provider and from lay witnesses that the employee has sustained permanent injury); *but see Martirez v. Meharry Med. Coll.*, 673 S.W.2d 141, 143 (Tenn. 1984) (finding no permanency based on plaintiff’s apparent recovery and despite doctor’s recommendation that patient continue to receive psychotherapy). Permanency can be found even in the absence of permanent restrictions. *See Barron v. State of Tenn. Dep’t of Human Servs.*, 184 S.W.3d 219, 222 (Tenn. 2006); *Richardson v. Coffee County Bd. of Educ.*, No. M2006-02371-WC-R3-WC, 2008 WL 918531, at *3-5 (Tenn. Workers’ Comp. Panel April 3, 2008) (finding permanency based on doctor’s testimony that condition which tended to “wax and wane” was chronic and permanent although no restrictions were assigned).

Nissan’s argument misconstrues the nature of the injury Mr. Clifton sustained. The permanent damage in this case was not the diminished lung capacity which first manifested during Mr. Clifton’s employment, but rather his permanent tendency to episodes of shortness of breath. Given the existence of permanent restrictions, Dr. Mihyu’s estimation that Mr. Clifton sustained a permanent impairment of 4% to 5% to the body as a whole, Dr. Mihyu’s testimony that Mr. Clifton had a permanent tendency to shortness of breath, and Mr. Clifton’s repeated episodes of breathing difficulty which occurred whenever he attempted to return to work and occasionally at other times, we conclude that the evidence does not preponderate against the trial court’s finding that Mr. Clifton’s condition was permanent.

IV. THE SUFFICIENCY OF THE CAUSATION EVIDENCE

Nissan also argues that Dr. Mihyu’s testimony was insufficient to support a finding of causation. Dr. Mihyu had very limited knowledge concerning the substances that Mr. Clifton had been exposed to on the job. However, he expressed the opinion, based upon his review of a Material Safety Data Sheet, that it was “possible” that exposure to Canopus 13 had caused or contributed to Mr. Clifton’s condition. Dr. Mihyu also testified that testing conducted at his order had not identified any particular substance which triggered the condition. However, the physician who performed the allergy testing stated in his report that “[t]he likelihood is that [Mr. Clifton] is having occupational asthma from aerosolized metals due to the welding in his environment.” Dr. Mihyu based his opinion that Mr. Clifton’s condition was related to his employment upon the “sequence of events,” i.e., that each return to the workplace caused an episode of shortness of breath.

The proof of a causal connection between the employment and a claimed injury may not be speculative, conjectural, or uncertain. *Clark v. Nashville Mach. Elevator Co.*, 129 S.W.3d 42, 47 (Tenn. 2004). Absolute certainty with respect to causation is not required, however, and the courts recognize that, in many cases, expert opinions in this area contain an element of uncertainty and speculation. *Fritts v. Safety Nat’l Cas. Corp.*, 163 S.W.3d 673, 678 (Tenn. 2005). All reasonable doubts as to the causation of an injury and whether the injury arose out of the employment should

be resolved in favor of the employee. *Phillips v. A&H Constr. Co.*, 134 S.W.3d 145, 150 (Tenn. 2004). Our courts have “consistently held that an award may properly be based upon medical testimony to the effect that a given incident ‘could be’ the cause of the employee’s injury, when there is also lay testimony from which it reasonably may be inferred that the incident was in fact the cause of the injury.” *Reeser v. Yellow Freight Sys., Inc.*, 938 S.W.2d 690, 692 (Tenn. 1997). The element of causation is satisfied where the “injury has a rational, causal connection to the work.” *Braden v. Sears, Roebuck & Co.*, 833 S.W.2d 496, 498 (Tenn. 1992).

Mr. Clifton had several episodes of respiratory distress, most of which occurred in the workplace. After his initial collapse, each return to work was accompanied by a return of his symptoms. A treating physician testified that a substance used in the workplace could have caused the hypersensitivity which precipitated those episodes. A consulting physician wrote that there was a “likelihood” of occupational asthma. While this evidence is not overwhelming, there is no contrary medical evidence in the record. We therefore conclude that the evidence does not preponderate against the trial court’s finding on the issue of causation.

V.

THE ADEQUACY OF THE NOTICE TO THE EMPLOYER

Nissan next argues that Mr. Clifton’s claim is actually for an occupational disease, rather than an injury, and that Mr. Clifton did not give notice that he was claiming an occupational disease within the statutorily required thirty-day period. Tenn. Code Ann. § 50-6-305(a) (2008) requires that “[w]ithin thirty (30) days after the first distinct manifestation of an occupational disease, the employee, or someone in the employee’s behalf, shall give written notice thereof to the employer in the same manner as is provided in the case of a compensable accidental injury.” The rationale behind requiring notice is (1) to allow the employer an opportunity to investigate the claim and (2) to enable the employer to treat the employee’s injury. *McCaleb v. Saturn Corp.*, 910 S.W.2d 412, 415 (Tenn. 1995).

The “first distinct manifestation” is when the employee knows or should know that the injury is an occupational disease. *Bituminous Cas. Corp. v. Lewis*, 538 S.W.2d 604, 606 (Tenn. 1976); *Christopher v. Consolidation Coal Co.*, 222 Tenn. 727, 737, 440 S.W.2d 281, 285 (1969) (finding first distinct manifestation when “a doctor would diagnose it as an occupational disease”). Actual notice of the manifestation of an occupational disease is sufficient. *Shelton v. Torrington Co.*, No. 01S01-9704-CV-00092, 1998 WL 107995, at *2 (Tenn. Workers’ Comp. Panel Mar. 13, 1998).

Tenn. Code Ann. § 50-6-201 (2008) governs the employee’s obligation to give notice in the case of accidental injury:

- (a) Every injured employee or the injured employee’s representative shall, immediately upon the occurrence of an injury, or as soon thereafter as is reasonable and practicable, give or cause to be given to the employer who has no actual notice, written notice of the injury,

and the employee shall not be entitled to physician's fees or to any compensation that may have accrued under this chapter, from the date of the accident to the giving of notice, unless it can be shown that the employer had actual knowledge of the accident. No compensation shall be payable under this chapter, unless the written notice is given the employer within thirty (30) days after the occurrence of the accident, unless reasonable excuse for failure to give the notice is made to the satisfaction of the tribunal to which the claim for compensation may be presented.

Notice of an injury is tolled if an employee is reasonably unaware that the condition is work-related. In that circumstance, initial notice of the facts surrounding the injury of which the employee reasonably should have been aware is sufficient. *Whirlpool Corp. v. Nakhoneinh*, 69 S.W.3d at 169; *Pentecost v. Anchor Wire Corp.*, 695 S.W.2d 183, 185 (Tenn. 1985). Written notice is excused if the employer had actual knowledge. *George v. Bldg. Materials Corp. of Am.*, 44 S.W.3d 481, 485 n.1 (Tenn. 2001). Based on these principles, Mr. Clifton was not required to give notice until he was aware his condition was work-related. Furthermore, written notice is excused if Nissan had actual knowledge of his condition.

Mr. Clifton testified that he first learned in October 2006 that his injury was work-related. Likewise, Dr. Mihyu testified he suspected occupational asthma on October 16, 2006. While Dr. Mihyu's letter to Nissan conveying this diagnosis was not written until November 21, 2006, Mr. Clifton testified that he first requested the Department of Labor's assistance in reporting the injury on November 3, 2006, and that both he and Dr. Mihyu had notified the plant of his condition prior to that time.

There is no dispute that Nissan was aware of the July 19, 2006 event and the episodes that occurred thereafter and that Nissan provided treatment at its on-site facility. During Mr. Clifton's first episode, Nissan's employees escorted him to the emergency room because of the apparent seriousness of his symptoms. By September 18, 2006, the employer had been notified that Mr. Clifton would require a mask and a controlled temperature environment in order to safely return to work. Nissan was aware that Mr. Clifton had not returned to work following his collapse on October 10, 2006. Nothing in the record contradicts Mr. Clifton's testimony that Nissan had actual knowledge that his condition was work-related soon after he himself learned that his symptoms had an occupational cause.

We find that the trial court was correct in finding that Nissan had actual knowledge of Mr. Clifton's condition, whether characterized as an injury or an occupational disease, and therefore this claim is not barred by the notice requirement. *See, e.g., Raines v. Shelby Williams Indus., Inc.*, 814 S.W.2d 346, 349 (Tenn. 1991) (holding there was a clear inference of actual notice from trial court's findings that supervisor allowed employee to leave production, visit an on-site medical provider, and perform modified work when she returned).

VI.
**THE PAYMENT OF THE TEMPORARY TOTAL DISABILITY AWARD AS A CONDITION TO
GRANTING A STAY PENDING APPEAL**

The trial court required Nissan to pay Mr. Clifton the award for temporary total disability benefits as a condition of obtaining a stay pending appeal. Nissan requested an interlocutory appeal from this decision, but we denied its request based on the limited amount of information provided by the company and because the company failed to provide specific arguments regarding how the trial court's order amounted to an abuse of discretion. Nissan has again raised this issue in its brief, but again has provided no authority and little explanation to support its argument. Mr. Clifton has responded by asserting that *McCall v. Nat'l Health Corp.*, 100 S.W.3d 209, 213 (Tenn. 2003) empowers trial courts to order the payment of temporary total disability benefits and medical expenses while a case is pending in the trial court and that the trial court's action in this case is consistent with that authority.

Tennessee Rule of Civil Procedure 62 provides in pertinent part:

62.04. Except as otherwise provided in Rule 62.01, when an appeal is taken the appellant by giving a bond may obtain a stay. The bond may be given at or after the time of filing the notice of appeal. The stay is effective when the bond is approved by the court.

62.05. A bond for stay shall have sufficient surety and: (1) if an appeal is from a judgment directing the payment of money, the bond shall be conditioned to secure the payment of the judgment in full, interest, damages for delay, and costs on appeal; in cases involving judgments payable in periodic installments, bond shall be fixed in such a manner as the court shall deem sufficient.

* * *

62.07. Nothing in this Rule shall be construed to limit the power of the court in exceptional cases to stay proceedings on any other terms or conditions as the court deems proper.

The language of the rule explicitly grants to the trial court the authority to review a proposed appeal bond to determine whether it fully secures the judgment to be appealed from. With the exception of appeals in the proceedings covered by Tenn. R. Civ. P. 62.01 and 62.03, Tenn. R. Civ. P. 62.04 suggests that once sufficient surety has been provided, an appellant is entitled to a stay pending appeal, absent extraordinary circumstances. 4 Nancy F. MacLean, *Tennessee Practice: Rules of Civil Procedure Annotated* § AC 62:4, at 712 (4th ed. 2005) (noting that "a party filing an appeal may post a bond at or after the time of filing the notice of appeal and obtain as a matter of

right a stay pending appeal” in actions not in one of the excepted categories of Tenn. R. Civ. P. 62.01 or 62.03).

The Tennessee Supreme Court has indeed recognized that the trial courts have the authority to award preliminary relief in workers’ compensation cases and that the enactment of Tenn. Code Ann. §§ 50-6-236, -238 (2008) does not undermine this authority. *McCall v. Nat’l Health Corp.*, 100 S.W.3d at 213. The circumstances before us in this case differ from the circumstances at issue in the *McCall* case. In this case, the trial court entered a final judgment without first granting preliminary relief to the employee. While ordering the immediate payment of a portion of a disputed workers’ compensation judgment provides a benefit to the employee, it can also amount to a two-edged sword if the appellate court later reduces or reverses the judgment.

This record contains none of the evidence that would generally support a trial court’s decision to grant an employee preliminary relief in the form of temporary total disability benefits or the payment of medical expenses. In addition, we find no evidence of the sort envisioned by Tenn. R. Civ. P. 62.07 that supports a conclusion that this case is one of those “exceptional cases” requiring a departure from the general rule regarding the bonds to secure an appeal. Accordingly, we have determined that the trial court erred by conditioning Nissan’s request for a stay pending an appeal on its immediate payment of the portion of the judgment awarding Mr. Clifton temporary total disability benefits. Based on the facts of this case, we have also determined that the trial court’s error is harmless because Nissan will be entitled to a credit for the payments it has been required to make against the permanent disability portion of the judgment.

VII.

THE AMOUNT OF THE TEMPORARY TOTAL DISABILITY AWARD

Nissan also takes issue with the trial court’s decision to award Mr. Clifton seventy-six weeks of temporary total disability benefits. Mr. Clifton responds that the award is appropriate because he remained temporarily disabled as long as his episodes of shortness of breath continued to occur. We disagree. Based on Mr. Clifton’s flawed logic, an employee whose work-related injury causes occasional flair-ups would never reach maximum medical improvement.

An employee may establish a prima facie claim to temporary total disability benefits by proving (1) total inability to work due to a compensable injury, (2) a causal connection between the injury and the inability to work, and (3) the duration of the disability. *Cleek v. Wal-Mart Stores, Inc.*, 19 S.W.3d 770, 776 (Tenn. 2000). Temporary total disability ends when the employee is able to return to work or reaches maximum medical improvement. *Gray v. Cullom Mach., Tool & Die, Inc.*, 152 S.W.3d 439, 443 (Tenn. 2004); *Fagg v. Hutch Mfg. Co.*, 755 S.W.2d 446, 452 (Tenn. 1988). Maximum medical improvement is attained when the employee has recovered to the extent possible given the nature of the injury. See *Gray v. Cullom Machine, Tool & Die, Inc.*, 152 S.W.3d at 443; *Roberson v. Loretto Casket Co.*, 722 S.W.2d 380, 383 (Tenn. 1986).

Dr. Mihyu's testimony on the subject of maximum medical improvement is convoluted and self-contradictory. He testified initially that the "safest thing" for Mr. Clifton to do was to remain out of the work environment "until evaluation was completed" because Mr. Clifton's symptoms had not been precisely identified. The evaluation was "completed" in January 2008, although Dr. Mihyu did not provide any specific evaluation procedures that were undertaken between November 2006 and January 2008. On cross-examination, Dr. Mihyu conceded that Mr. Clifton's pulmonary function was normal by October 4, 2006, and that Mr. Clifton reached maximum medical improvement on that date. On redirect, Dr. Mihyu emphasized that Mr. Clifton continued to have recurring spells of shortness of breath. However, when he was cross-examined a second time, Dr. Mihyu stated that Mr. Clifton's lung function studies were normal on November 16, 2006 and, therefore, that Mr. Clifton had reached maximum medical improvement by that date.

The evidence shows that Mr. Clifton's lung function had returned to normal in the fall of 2006. The restrictions which Dr. Mihyu placed on Mr. Clifton at or near that time appear to be the same restrictions in effect at the time of the trial, and so must be considered to be permanent. There is no evidence of a significant permanent change in his condition after that date. While Dr. Mihyu testified to some continued, unspecified temporary restrictions, the preponderance of the evidence shows that Mr. Clifton's physical condition did not change after that point and that he had recovered as far as the nature of his injury permitted. For those reasons, we conclude that the trial court erred by awarding temporary total disability beyond November 16, 2006. *See Fagg v. Hutch Mfg. Co.*, 755 S.W.2d at 452 (reducing trial court's award but awarding temporary total disability for the "latest possible date" employee reached maximum improvement when the same doctor testified to maximum improvement on two different dates).

VIII. THE APPLICATION OF THE STATUTORY CAP

Nissan's final argument is that the trial court's award exceeds the upper "cap" set by Tenn. Code Ann. § 50-6-241(d)(2)(B) (2008). This argument is premised upon Dr. Mihyu's testimony that Mr. Clifton's impairment rating "[fell] within that category of two to ten percent." On cross examination, he was asked: "[Where] would [the impairment] fall within the two to ten percent?" Dr. Mihyu responded that it was "[p]robably around four or five percent." Nissan argues that this more precise testimony should be used to determine the award. Mr. Clifton argues that the trial court acted correctly in using the initial testimony to select an impairment.

This is not a case in which the trial court, or the reviewing court, is faced with the task of resolving conflicting testimony between two medical experts. *See, e.g., Kellerman v. Food Lion, Inc.*, 929 S.W.2d 333, 335 (Tenn. Workers' Comp. Panel 1996). The task presented in this case is to reconcile the apparent conflicts of the testimony of a single expert witness.

Tenn. Code Ann. § 50-6-204(d)(3)(A) (2008) states in pertinent part:

To provide uniformity and fairness for all parties in determining the degree of anatomical impairment sustained by the employee, a physician, chiropractor or medical practitioner who is permitted to give expert testimony in a Tennessee court of law and who has provided medical treatment to an employee or who has examined or evaluated an employee seeking workers' compensation benefits shall utilize the applicable edition of the AMA Guides

In our view, use of the more specific testimony is consistent with the stated purpose of "uniformity and fairness" underlying the requirement that the American Medical Association Guides to the Evaluation of Permanent Impairment be used in workers' compensation cases. We note that, although not directly applicable here, the rules of construction applicable to both statutes and contracts expressly give precedence to specific language and terms over more general language. *See Arnwine v. Union County Bd. of Educ.*, 120 S.W.3d 804, 809 (Tenn. 2003); *Cocke County Bd. of Highway Comm'rs v. Newport Utils. Bd.*, 690 S.W.2d 231, 237 (Tenn. 1985). We therefore conclude that the trial court erred by basing its award of permanent disability benefits upon a 10% anatomical impairment. The judgment will therefore be modified to award 25% permanent partial disability to the body as a whole, consistent with the use of a 5% anatomical impairment and application of Tenn. Code Ann. § 50-6-241(d)(2)(B).

IX.

We modify the judgment to award temporary total disability benefits through November 16, 2006, and to award permanent partial disability benefits in the amount of 25% to the body as a whole. We tax one-half of the costs of this appeal to Kevin Clifton and one-half to Nissan North America and its surety, for which execution, if necessary, may issue.

WILLIAM C. KOCH, JR., JUSTICE

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
FEBRUARY 23, 2009 SESSION

KEVIN CLIFTON v. NISSAN NORTH AMERICA

Chancery Court for Maury County
No. 07-269

No. M2008-01640-WC-R3-WC - Filed - August 18, 2009

JUDGMENT

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appeals to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid one-half to Kevin Clifton and one-half to Nissan North America and its surety, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM