

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

AT NASHVILLE

(June 25, 1996 Session)

FILED
November 14, 1996
Cecil W. Crowson
Appellate Court Clerk

CLINT EVARD,)
)
Plaintiff-Appellant,)
)
vs.)
)
SATURN CORPORATION,)
)
Defendant-Appellee)

MAURY CIRCUIT
Hon. JIM T. HAMILTON
No. 01S01-9601-CV-00019

For Appellant:

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MEMORANDUM OPINION

Members of Panel:

Frank F. Drowota, III, Associate Justice, Supreme Court
Joe C. Loser, Jr., Special Judge
Hamilton V. Gayden, Jr., Special Judge

AFFIRMED AND MODIFIED

Gayden, Judge

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme court in accordance with Tenn. Code Ann. Section 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. In this appeal, the claimant contends that the trial court erred by averaging two permanent partial disability ratings for two scheduled members. Claimant also contends that the final anatomical impairment award was inadequate. The panel concludes that the methodology utilized by the trial court in arriving at the percentage of permanent partial disability was proper; however, the panel is of the opinion the final award was inadequate.

In accordance with T.C.A. 506-225(e), the standard of review in this case is *de novo* upon the record of the trial court, accompanied by a presumption of correctness of the findings. It is the claimant's burden to show by a preponderance that the evidence is otherwise.

The claimant developed bilateral carpal tunnel syndrome as a result of his work at Saturn where his job involves repetitive grasping of small metal clips which are placed on a car door as it passes along the assembly line. When he began installing around 6,000 clips/day, his hands began to swell so severely that on one occasion he could not tell that he had cut his hand. Subsequently, he was diagnosed with carpal tunnel syndrome and carpal tunnel release surgery was performed on his right wrist.

The claimant filed this workers compensation lawsuit on February 27, 1995. At trial in 1995, the trial court awarded the claimant a 10% permanent partial disability to his right arm and a 5% permanent partial disability to his left arm which at his compensation rate of \$382.79 per week amounts to \$14,354.03. The percentage disabilities were established by one of the claimant's doctors, Dr. Gaw.

The claimant argues that the trial court erred in assessing a percentage of disability to each arm separately under T.C.A. 50-6-207(3)(A)(ii)(m) rather than as one scheduled injury under T.C.A.

50-6-207(3)(A)(ii)(w). Section 50-6-207 (3)(A)(ii)(m) provides for 200 weeks of benefits for each arm. The claimant claims that the court should have utilized section (3)(A)(ii)(w) which provides for 400 weeks of benefits for the loss of two (2) arms. The claimant contends that averaging the impairment ratings would result in an inadequate judgment mainly because the anatomical ratings of both arms equals a 9% permanent impairment to the body as a whole according to the American Medical Association guidelines.

Claimant's argument is not consistent with current case law holding that the fact that a scheduled injury can be converted from a medical impairment rating to a percentage disability to the body as a whole is not a basis upon which to sustain an award to the body as a whole. To determine the percentage of disability courts generally average the percentage of disability for each individual scheduled award. The term "scheduled member" refers to all members or combination of members provided for in T.C.A. 50-6-207(3)(A)(ii)(a) to (ff). Thompson v. Leon Russell Enters, 834 S.W. 2d 927 (S Ct 1992). (When an injury is to a scheduled member, the award is determined "exclusively by the impairment rating assigned by the General Assembly for that member and may not properly be apportioned to the body as a whole." Reagan v. Tennessee Mun. League, 751 S.W.2d 842, 843 (Tenn 1988).)

In Reagan, the employee sustained an injury to his right leg and foot resulting in a disability rating of 50% permanent partial disability to the right foot and ankle. The trial court awarded the employee a permanent partial disability to the body as a whole. The employer appealed claiming that the injuries were to a scheduled member and therefore the permanent disability rating must be in accordance with the schedules in the Workers' Compensation Act. The appellee/employee contended that an award to the body as a whole was authorized because based on American Medical Association guidelines, a 50% impairment to the foot was equivalent to a 14% medical impairment to the body as a whole. The court noted that medical ratings and statutory schedule ratings are not equivalent and held that the fact that the medical ratings "to a particular member may translate into a disability rating to the body as a whole does not alter the rule that if an injury is to a scheduled member only, the statutory schedules must control the disability award."

Thus, in the instant case, the awards of disability (10% for the right arm & 5% for the left arm) would average to 7.5% for both arms. In Lock v. National Union Fire Ins. Co., 809S.W. 2d 483, 486 (Tenn. 1991), the trial court based the claimant's award of 35% disability to the arm and 25% to the foot on T.C.A. section (3)(A)(ii)(m) and (n), respectively (325 weeks). The claimant appealed contending that she was entitled to an award based upon 400 weeks for a combination of injuries to an arm and a foot under section (3)(A)(ii)(dd). The Supreme Court of Tennessee in applying subsection (dd) averaged the percentage disabilities to 30%.

In the instant case, the claimant will receive 400 weeks of benefits regardless of whether subsection (m) is applied separately to each arm or subsection (w) is applied to both arms. However, the claimant contends that an average of 7.5% disability is inadequate because the medical impairment rating to the body as a whole for the loss of both arms (10% and 5%) is 9%.

Nevertheless, averaging the separate percentage disabilities is an appropriate method to determine the resulting permanent partial disability under subsection (w). Simply because the medical impairment rating to the body as a whole provides a greater percent disability does not authorize an increase in the total award.

However, the panel finds that the final award, although authorized by averaging the two scheduled members, was inadequate under the circumstances.

At the time of the trial, Mr. Evard was 37 years old. He dropped out of high school in the eleventh grade and received his general equivalency diploma ten years later. Mr. Evard lacks any other vocational training. Mr. Evard held several jobs prior to his employment at Saturn. These consisted of cattle farming and manual assembly-line work.

Since Mr. Evard returned to work at Saturn, he has been limited in the tasks which he is capable of performing and has been reassigned teams twice in an effort to find work compatible with his condition. Any activity which requires a lot of gripping will cause his hands to swell within an hour. Mr. Evard also claims he finds it difficult to play softball, fish or lift weights.

From these facts, it appears as though the award is inadequate. Most of the work and job opportunities available to Mr. Evard require him to use his hands. Considering that his hands will swell after an hour, the tasks he can undertake are limited.

The trial court may consider several factors in arriving at an anatomical impairment including the claimant's job skills, training and job opportunities for the purpose of evaluating the extent of claimant's permanent disability. Tenn. Code Ann. Section 50-6-241(a)(2). From a consideration of those factors in this case, the panel finds that the evidence fails to support the minimal finding of permanent disability by the trial court and the panel finds the permanent disability to be 15%.

The judgment of the trial court is therefore affirmed and modified. Costs on appeal are taxed to to the plaintiff.

Hamilton V. Gayden , Jr., Special Judge

CONCUR:

Frank F. Drowota, III, Associate Justice

Joe C. Loser, Jr., Special Judge

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

<p>FILED</p> <p>November 14, 1996</p> <p>Cecil W. Crowson Appellate Court Clerk</p>
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<p>CLINT EVARD,</p> <p style="padding-left: 40px;"><i>Plaintiff/Appellant</i></p> <p>vs.</p> <p>SATURN CORPORATION,</p> <p style="padding-left: 40px;"><i>Defendant/Appellee</i></p>	<p>} } } } } } } }</p>	<p>MAURY CIRCUIT COURT</p> <p><i>No. 6487 Below</i></p> <p><i>Hon. Jim T. Hamilton,</i> <i>Judge</i></p> <p><i>No. 01S01-9601-CV-00019</i></p> <p>AFFIRMED AND MODIFIED</p>
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JUDGMENT ORDER

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

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

It is, therefore, ordered that the Panel's findings of 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 by Plaintiff/Appellant and Surety for which execution may issue if necessary.

IT IS SO ORDERED on November 14, 1996.

PER CURIAM

