

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

AT JACKSON
(June 27, 1996 Session)

ANTHONY S. HOPSON,) SHELBY CIRCUIT
)
Plaintiff-Appellee,) Hon. James Swearingen,
) Judge.
v.)
) No. 02S01-9603-CV-00027
PROTEIN TECHNOLOGIES,)
)
Defendant-Appellant.)

FILED

September 11, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

For Appellant:

Kenneth R. Rudstrom
Spicer, Flynn & Rudstrom
Memphis, Tennessee

For Appellee:

Tim Edwards
Lori J. Keen
Glassman, Jeter, Edwards & Wade
Memphis, Tennessee

MEMORANDUM OPINION

Members of Panel:

Lyle Reid, Associate Justice, Supreme Court
Joe C. Loser, Jr., Special Judge
Billy Joe White, Special Judge

AFFIRMED AS MODIFIED

Loser, 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 employer contends only that the award of permanent partial disability benefits on the basis of fifty percent to the arm is excessive. The panels finds the award should be reduced to one based on thirty-five percent to the arm.

The employee or claimant, Hopson, is forty-three with a high school education, one year of college and three years of military service as an aviation ordinance mechanic. On April 14, 1994, while working for Protein Technologies, he injured his left arm lifting a product weighing forty-four pounds.

His doctor diagnosed lateral epicondylitis and acute olecranon bursitis, and prescribed injections, medication and physical therapy. The claimant reached maximum medical improvement on August 1, 1994, when the doctor assessed his permanent impairment at five percent to the left arm and released him to return to work with a weight lifting restriction of twenty pounds. The claimant first returned to light duty, then to a position earning as much as or more than before the injury.

The trial judge awarded, among other things, permanent partial disability benefits based on fifty percent to the arm. Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. section 50-6-225(e)(2).

Once the causation and permanency of an injury have been established by expert testimony, the courts may consider many pertinent factors, including age, job skills, education, training, duration of disability, and job opportunities for the disabled, in addition to anatomical impairment, for the purpose of evaluating the extent of a claimant's permanent disability. Tenn. Code Ann. section 50-6-241(a)(2); McCaleb v. Saturn Corp., 910 S.W.2d 412 (Tenn. 1995). From a consideration of the pertinent factors established by the proof in this case, the panel finds that the evidence preponderates against an award based on fifty percent to the arm and in favor of one based on thirty-five percent to the arm.

The judgment of the trial court is modified accordingly, but otherwise affirmed. Costs on appeal are taxed to the plaintiff-appellee.

Joe C. Loser, Jr., Judge

CONCUR:

Lyle Reid, Associate Justice

Billy Joe White, Judge