

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

AT NASHVILLE  
(March 14, 1996 Session)

ROBIN SLOAN, ) WARREN GENERAL SESSIONS  
)  
Plaintiff-Appellee, ) Hon. Barry Medley,  
) Judge  
v. )  
) No. 01S01-9509-GS-00157  
BRIDGESTONE/FIRESTONE, INC., )  
)  
Defendant-Appellant. )

**FILED**  
July 8, 1996  
Cecil Crowson, Jr.  
Appellate Court Clerk

For Appellant:

Michael Lee Parsons  
Gracey, Ruth, Howard, Tate & Sowell  
Nashville, Tennessee

For Appellee:

David W. Martalla  
McMinnville, Tennessee

MEMORANDUM OPINION

Members of Panel:

Adolpho A. Birch, Jr., Associate Justice, Supreme Court  
Jerry Smith, Special Judge  
Joe C. Loser, Jr., Special Judge

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 that the award of disability benefits is excessive; and the employee contends the trial court erred in finding that she did not suffer a disabling work-related neck injury. The panel has concluded that the judgment should be modified as provided herein.

On July 5, 1992, the claimant, Robin Sloan, strained her back at work. She reported the injury to her employer and was referred to Dr. G. Jackson Jacobs, who referred her to Dr. David Bratton, an orthopedic surgeon, who, on July 15, 1992, diagnosed lumbar strain and released her to light duty for two weeks.

She saw Dr. Daniel Phillips on October 23, 1992 and two other occasions. Dr. Phillips found no permanent disability to the claimant's back or neck caused by a work-related injury.

Her attorney referred her to Dr. Richard Fishbein. Dr. Fishbein, on the strength of the history related to him by the claimant, agreed with the original diagnosis and assessed a permanent impairment of five percent to the whole body.

The claimant is thirty-four years old with a high school education and an associates degree in education from Motlow State Community College. She has experience in office work, as a restaurant manager and in business. She quit working for the employer shortly after the accident and was not working at the time of the trial. She was able to work, according to Dr. Bratton's note on and after July 15, 1992.

The trial judge awarded permanent partial disability benefits on the basis of thirty-five percent to the body as a whole and temporary total disability benefits from July 5, 1992 to January 7, 1993. 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). This tribunal is required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. Galloway v. Memphis Drum Service, 822 S.W.2d 584, 586 (Tenn. 1991).

The party claiming the benefits of the Workers' Compensation Act (the Act) has the burden of proof to establish her claim by a preponderance of the evidence. Parker v. Ryder Truck Lines, Inc., 591 S.W.2d 755 (Tenn. 1979). Under the Act, temporary total disability refers to the employee's condition while disabled to work because of her injury and until she recovers as far as the nature

of her injury permits. Redmond v. McMinn County, 209 Tenn. 463, 354 S.W.2d 435 (1962).

The undisputed proof is that this claimant was able to return to work ten days after her injury. Thus the evidence preponderates against the trial court's award of temporary total disability benefits and in favor of an award of such benefits for ten days, or one and three/sevenths weeks. The judgment of the trial court is modified accordingly.

In determining the extent of a claimant's permanent industrial disability, a trial judge may consider many pertinent factors, including age, job skills, education, training, duration of disability and job opportunities for the disabled, in addition to medical impairment, for the purpose of evaluating the extent of a claimant's permanent disability. McCaleb v. Saturn Corp., 910 S.W.2d 412 (Tenn. 1995). From a consideration of the pertinent factors in this case, the panel finds that the evidence preponderates against an award based on thirty-five percent permanent partial disability and in favor of one based on ten percent permanent partial disability. The judgment is modified accordingly.

The evidence fails to preponderate against the trial judge's finding that the claimant has not suffered a work-related neck injury.

As modified with respect to disability benefits, the judgment of the trial court is affirmed. Costs on appeal are taxed one-half to the plaintiff-appellee and one-half to the defendant-appellant.

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Joe C. Loser, Jr., Judge

CONCUR:

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Adolpho A. Birch, Jr., Associate Justice

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Jerry Smith, Special Judge