

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

AT JACKSON  
(February 6, 1997 Session)

HUBERT HOLCOMB, JR.,	)	OBION CHANCERY
	)	
Plaintiff-Appellee,	)	Hon. William Michael Maloan,
	)	Chancellor.
v.	)	
	)	No. 02S01-9610-CH-00091
AETNA LIFE AND CASUALTY	)	
COMPANY,	)	
	)	
Defendant-Appellant,	)	
	)	
and	)	
	)	
DINA TOBIN, DIRECTOR OF	)	
DIVISION OF WORKERS'	)	
COMPENSATION FOR THE STATE	)	
OF TENNESSEE, DEPARTMENT	)	
OF LABOR,	)	
	)	
Defendant-Appellee.	)	

**FILED**  
  
April 17, 1997  
  
Cecil Crowson, Jr.  
Appellate Court Clerk

For Appellant:

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For Appellee, Dina Tobin:

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Attorney General and Reporter  
  
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Assistant Attorney General  
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MEMORANDUM OPINION

Members of Panel:

Lyle Reid, Associate Justice, Supreme Court  
Joe C. Loser, Jr., Special Judge  
Leonard Watson Martin, Special Judge

AFFIRMED

Loser, Judge

## MEMORANDUM OPINION

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's insurer questions the allowance of certain credits to the Second Injury Fund (the Fund). As discussed below, the panel has concluded the judgment should be affirmed.

It is undisputed that the employee or claimant, Holcomb, is permanently and totally disabled from a compensable injury by accident, that his compensation rate is \$294.00 per week and that the maximum total benefit in effect on the date of the injury was \$117,600.00 (\$294.00 x 400 weeks). It is also undisputed he has received from the employer's insurer temporary total and temporary partial disability benefits totaling \$32,121.82 and permanent disability benefits totaling \$11,760.00.

From a previous compensable injury, the claimant was awarded permanent partial disability benefits equating to an award based on 21.875 percent to the body as a whole, or 87.5 weeks. Thus, under Tenn. Code Ann. section 50-6-208(b)<sup>1</sup>, the Fund's maximum liability is \$294.00 for 87.5 weeks (\$25,725.50), less any credit to which it may be entitled for payments already made by the employer or its insurer.

The trial court gave the Fund credit against its liability for \$25,725.00 of temporary disability benefits, thus holding the Fund had no further liability. It allowed the employer's insurer credit against any further liability for disability payments already made in excess of that number. Conclusions of law are subject to de novo review without any presumption of correctness. Presley v. Bennett, 860 S.W.2d 857 (Tenn. 1993).

Compensable disabilities are divided into four separate classifications: (1) temporary total disability, (2) temporary partial disability, (3)

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<sup>1</sup> T.C.A. 50-6-208(b)(1)(A) In cases where the injured employee has received or will receive a workers' compensation award or awards for permanent disability to the body as a whole, and the combination of such awards equals or exceeds one hundred percent (100%) permanent disability to the body as a whole, the employee shall not be entitled to receive from the employer or its insurance carrier any compensation for **permanent** disability to the body as a whole that would be in excess of one hundred percent (100%) permanent disability to the body as a whole, after combining awards.

(B) Benefits which may be due the employee for **permanent** disability to the body as a whole in excess of one hundred percent (100%) permanent disability to the body as a whole, after combining awards, shall be paid by the second injury fund.

(Emphasis supplied)

permanent partial disability and (4) permanent total disability. Tenn. Code Ann. section 50-6-207. Each class of disability is separate and distinct and separately compensated for by different methods; and compensation benefits are allowable for an injured employee, separately, for each class of disability which results from a single compensable injury. Redmond v. McMinn County, 209 Tenn. 463, 354 S.W.2d 435 (1962). The total sum which may be recovered as disability benefits is, however, subject to a statutory limitation, and the total of all disability compensation for a single injury may not exceed such limitation. Tenn Code Ann. section 50-6-205(b)(1), Woodall v. Hamlett, 872 S.W.2d 677 (Tenn. 1994).

Temporary total disability refers to the injured employee's condition while disabled to work because of his injury and until he recovers as far as the nature of his injury permits. Redmond v. McMinn County, supra. Temporary partial disability refers to the time, if any, during which the injured employee is able to resume some gainful employment but has not reached maximum recovery. We find nothing in the statutory scheme or case law which could fairly be construed as placing any liability on the Fund for temporary total or temporary partial disability benefits.

An employee who has previously become disabled and who, as a result of a later compensable injury, becomes permanently and totally disabled, may receive disability benefits from his employer or its insurer only for the disability that would have resulted from the subsequent injury. Tenn. Code Ann. section 50-6-208. Cameron v. Kite Painting Co., 860 S.W.2d 41 (Tenn. 1993). However, such employee may be entitled to recover the remainder of the benefits allowable for permanent total disability from the Second Injury Fund. Id.

The obligation of the employer is determined first and paid first, and any credit for payment of temporary disability benefits is deducted from the Fund's liability. Id.; see also Wiseman v. E'con Mills, Inc., 517 S.W.2d 191 (Tenn. 1974) and Hedges Manufacturing Company v. Worley, 223 Tenn. 102, 442 S.W.2d 624 (1969). Consequently, the Fund has no liability under the circumstances of this case.

The judgment of the trial court is affirmed. Costs on appeal are taxed to Aetna Life and Casualty Company.

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Joe C. Loser, Jr., Judge

CONCUR:

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Lyle Reid, Associate Justice

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Leonard Watson Martin, Judge

IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

HUBERT HOLCOMB, JR.,	)	OBION CHANCERY
	)	NO. 18,538
Plaintiff/Appellee,	)	
	)	Hon. William Michael Maloan,
vs.	)	Chancellor
	)	
AETNA LIFE AND CASUALTY COMPANY,	)	NO. 02S01-9610-CH-00091
	)	
Defendant/Appellant.	)	AFFIRMED.
	)	
DINA TOBIN, DIRECTOR OF DIVISION OF	)	
WORKERS' COMPENSATION FOR THE	)	
STATE OF TENNESSEE, DEPARTMENT	)	
OF LABOR,	)	
	)	
Defendant/Appellee.	)	

<p><b>FILED</b></p> <p><b>April 17, 1997</b></p> <p><b>Cecil Crowson, Jr.</b> Appellate Court Clerk</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 Appellant, and surety, for which execution may issue if necessary.

IT IS SO ORDERED this 17th day of April, 1997.

PER CURIAM

(Reid, J., not participating)

