IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT JACKSON
(February 6, 1997 Session)

HAROLD E. MOONEY,	)	SHELBY CIRCUIT
	)	
Plaintiff-Appellee,	)	Hon. Kay S. Robilio,
	)	Judge,
v.	)	Hon. Robert A. Lanier,
	)	Judge.
BRECON KNITTING MILLS,	)	No. 02S01-9610-CV-00094
INCORPORATED and AETNA	)	
LIFE AND CASUALTY COMPANY,	)	
Defendants-Appellants.	)	

For Appellant:

John R. Cannon, Jr.
The Hardison Law Firm
Memphis, Tennessee

For Appellee:

Jack V. Delany
Memphis, Tennessee

M E M O R A N D U M O P I N I O N

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 and its insurer contend the claimant's injury did not arise out of the employment and the award of permanent partial disability benefits is excessive. As discussed below, the panel has concluded the judgment should be affirmed.

The claimant, Mooney, is sixty-six years old and has three years of college and some vocational training. His primary vocation has been that of a traveling salesman. At the time of the accident, he was employed as regional sales manager for the employer and used his car to call on customers. On or about May 20, 1993, he was involved in an accident and received a blow to his chest. It is undisputed that he was on his employer's business at the time of the accident.

A cardiologist diagnosed his injury as undiagnosed coronary artery disease exacerbated by chest wall trauma. When conservative care failed to produce the desired result, surgery was performed. The operating surgeon assigned a permanent impairment rating of from thirty to fifty percent and advised the claimant to retire. A vocational expert opined the claimant had a vocational opportunity decrease of ninety percent. He has not returned to work.

The parties agreed to bifurcate the trial. After the first bifurcated trial, the trial judge found the claimant's injury to be compensable. After the second bifurcated trial, another trial judge awarded permanent partial disability benefits based on seventy-five percent to the body as a whole. 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).

Under the Tennessee Workers' Compensation Law, injuries by accident arising out of and in the course of employment are compensable. Tenn. Code Ann. section 50-6-102(a)(5). An injury is compensable, even though the claimant may have been suffering from a serious pre-existing condition or disability, if a work-connected accident can be fairly said to be a contributing cause of such injury. An employer takes an employee as he is and assumes the risk of having a weakened condition aggravated or exacerbated by an injury which might not affect a normal person. Harlan v. McClellan, 572 S.W.2d 641 (Tenn. 1978).

An accidental injury arises out of one's employment when there is apparent to the rational mind, upon a consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Fink v. Caudle, 856 S.W.2d 952 (Tenn. 1993). If injury or death occurs in the course of one's employment and if the employment exposes the employee to a foreseeable risk or danger incident to and inherent to the employment, and a causal connection exists between the injury or death and such foreseeable hazard, then such injury or death may be one arising out of the employment. Carter v. Hodges, 175 Tenn. 96, 132 S.W.2d 211 (1939). Any reasonable doubt as to whether or not an injury arose out of the employment is to be resolved in favor of the employee. Hall v. Auburntown Industries, Inc., 684 S.W.2d 614 (Tenn. 1985).

From our independent examination of the evidence and a consideration of the above principles of law, the evidence fails to preponderate against the trial court's finding that the claimant's injury was causally connected to his employment.

The courts may consider many pertinent factors, including age, job skills, education, training, duration of disability, job opportunities and anatomical impairment for the purpose of evaluating the extent of a claimant's permanent disability. Tenn. Code Ann. section 50-6-241(a)(2). From a consideration of those factors, as established by the evidence in this case, we cannot say the evidence preponderates against an award based on seventy-five percent permanent partial disability to the body as a whole.

The judgment of the trial court is affirmed. Costs on appeal are taxed to the defendants-appellants.

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Joe C. Loser, Jr., Judge

CONCUR:

_____

Lyle Reid, Associate Justice

_____

Leonard Watson Martin, Judge

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AT JACKSON

HAROLD E. MOONEY,	)	SHELBY CIRCUIT
	)	NO. 60011 T.D.
Plaintiff/Appellee,	)	
	)	Hon. Kay S. Robilio,
vs.	)	Judge
	)	Hon. Robert A. Lanier,
	)	Judge
BRECON KNITTING MILLS,	)	
INCORPORATED	)	NO. 02S01-9610-CV-00094
and AETNA LIFE AND CASUALTY	)	
COMPANY,	)	
	)	
Defendants/Appellants.	)	AFFIRMED.

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 the 17th day of April, 1997.

PER CURIAM

(Reid, J., not participating)