

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

(June 9, 1997 Session)

**FILED**  
**September 12, 1997**  
WILSON CHANCERY  
Cecil W. Crowson  
Appellate Court Clerk  
Hon. C. K. Smith,

ABIGAIL S. HACKETT, )

Plaintiff/Appellee, )

v. )

THE FIDELITY & CASUALTY )  
COMPANY OF NEW YORK and )  
G.F. OFFICE FURNITURE, )

Defendant/Appellant. )

WILSON CHANCERY )

Cecil W. Crowson )  
Appellate Court Clerk )  
Hon. C. K. Smith, )

Chancellor )

NO. 01S01-9701-CH-00003 )

For the Appellant:

Elaine Youngblood  
OTALE, KELLY, HERBERT & CRAWFORD  
Nashville, Tennessee

For the Appellees:

E. Guy Holliman  
Lafayette, Tennessee

MEMORANDUM OPINION

Members of the Panel:

Adolpho A. Birch, Jr., Chief Justice, Supreme Court  
Robert S. Brandt, Senior Judge  
Joe C. Loser, Jr., Special Judge

AFFIRMED

Brandt, Senior 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. § 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law.

This case presents the issue of whether permanent partial disability ("PPD") awards of 50% and 25% are excessive in light of anatomical disability ratings of 12% and 5%. We conclude that the awards were not excessive and affirm the trial court's decision.

The employee/appellee, Abigail Hackett, slipped and fell while coming off her shift at her employer's factory. She suffered extensive injury to both knees. Dr. Robert Landsberg, the orthopaedic surgeon who operated on her knees, testified that she had a 12% impairment in her left leg and a 5% impairment in her right leg.

Hackett, age 44, has a GED and has worked in the past as a maintenance worker, school bus driver and sewing machine operator. As a result of the injuries to her knees, she can no longer perform these jobs. After the surgery, Hackett returned to work as a fork lift driver. The employer, G.F. Office Furniture, has accommodated her disability by modifying assembly line procedures. The trial court awarded Hackett a lump sum of \$41,350.50, which represented a PPD assessment of 50% to her left leg and 25% to her right leg.

The employer/appellant argues that the trial court's award was excessive

because it far exceeded the anatomical disability ratings.

The relevant factor in determining a workers' compensation award is vocational disability. Anatomical disability ratings are but one factor to consider in measuring vocational disability. The test is whether there has been a decrease in the employee's capacity to earn wages in any line of work available to the employee. Corcoran v. Foster Auto GMC, Inc., 746 S.W.2d 452, 459 (Tenn. 1988). This capacity is determined by expert and lay testimony, employee's age, education, skills and training, local job opportunities, and capacity to work at the types of employment available in his disabled condition. Orman v. Williams Sonoma, 803 S.W.2d 672, 678 (Tenn. 1991).

In the present case, there has been a decrease in Hackett's capacity to earn wages. Specifically, the treating physician restricted her from lifting anything over twenty pounds. Also, Hackett's husband testified that she can no longer perform simple household chores like cleaning the bathroom or making the beds. Finally, Hackett's age, educational level and lack of training further detract from her capacity to earn wages. Thus, the employer's argument that the award was excessive simply because it exceeded the anatomical disability ratings is without merit.

The employer also argues that the award was excessive because the plaintiff has not lost any earning capacity. Specifically, the appellant cites Hackett's present income level and notes that it is higher than before she was injured.

The question is not whether the employee is able to return to the work being

performed when injured, but whether the employee's earning capacity in the *open labor market* has been diminished by residual impairment caused by a work-related injury. Corcoran, 746 S.W.2d at 458 (emphasis added).

While Hackett is currently employed, she would most certainly have a difficult time finding a job for which she is qualified if she were to lose her current job. Her inability to lift, climb, squat or crawl precludes her from any of her former occupations. Hackett's age and educational level further limit her job choices. Thus, her earning capacity on the open labor market has been substantially impaired by her injuries. For that reason, we affirm the trial court's damage award with costs to the defendant.

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Robert S. Brandt, Senior Judge

CONCUR:

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Adolpho A. Birch, Jr., Chief Justice

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Joe C. Loser, Jr., Special Judge

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ABIGAIL S. HACKETT,	}	WILSON CHANCERY
	}	No. 10036 Below
<i>Plaintiff/Appellee</i>	}	
	}	Hon. C. K. Smith,
vs.	}	Chancellor
	}	
THE FIDELITY & CASUALTY	}	
COMPANY OF NEW YORK and	}	No. 01S01-9701-CH-00003
G.F. OFFICE FURNITURE,	}	
	}	
<i>Defendant/Appellant</i>	}	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 Defendant/Appellant and Surety, for which execution may issue if necessary.*

*IT IS SO ORDERED on September 12, 1997.*

PER CURIAM

