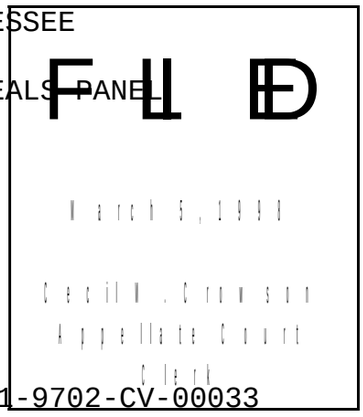
IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE



TOBY HEDGECOTH,, Plaintiff/Appellee	)	No. 01S01-9702-CV-00033
v.	)	CIRCUIT COURT MAURY COUNTY
HAROLD MOORE & ASSOCIATES and JEFF CASWELL d/b/a/ CASWELL & SONS CARPENTRY, Defendants/Appellants	)	HON. JIM T. HAMILTON, JUDGE

FOR THE APPELLANTS:

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MEMORANDUM OPINION

MEMBERS OF PANEL

LYLE REID, ASSOCIATE JUSTICE, SUPREME COURT
W. MICHAEL MALOAN, CHANCELLOR, SPECIAL JUDGE
WILLIAM S. RUSSELL, RETIRED JUDGE

AFFIRMED AND REMANDED RUSSELL, SP. J.

This appeal in a workers' compensation case has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated Section 50-6-225 (e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

Toby Hedgecoth, in the course and scope of his employment, fell from a rooftop on December 18, 1994. His right foot struck a brick and was severely injured. He has been unable to return to physically demanding work and at the time of trial was enrolled in vocational school studying electronics.

The trial judge awarded temporary total disability compensation from the date of the accident until December 11, 1995; permanent partial disability of 75% to the body as a whole and future medical expenses.

The employer/appellant contends that the permanent partial disability should not have been to the whole body because the injury was to a scheduled member, that the award of 75% vocational disability to the body as a whole is excessive and that temporary total disability payments should terminate as of June, 1995.

The employee/appellee seeks clarification of the judgment

with regard to its being paid in a lump sum and an award of interest upon the judgment.

The scope of our review upon the issues of fact is de novo upon the record of the trial court, accompanied by a presumption of the correctness of the findings, unless the preponderance of evidence is otherwise. Tennessee Code Annotated Section 50-6-225 (e)(2) (1996 Supplement); Lollar v. Wal-Mart Stores, Inc., 767 S.W. 2d 143 (Tenn. 1989). When a trial court has seen and heard witnesses, especially where issues of credibility and weight of oral testimony are involved, considerable deference must be accorded

the trial court's factual findings. Humphrey v. David Witherspoon, Inc., 734 S.W. 2d 315 (Tenn. 1987). However, where the issues involve expert medical testimony which is contained in the record by deposition, as it is in this case, then all impressions of weight and credibility must be drawn from the contents of the depositions, and the reviewing court may draw its own impression as to weight and credibility from the contents of the depositions. Orman v. Williams Sonoma, Inc., 803 S.W. 2d 672, 676-77 (Tenn. 1991).

Permanent disability resulting from an injury to a scheduled member may be apportioned to the body as a whole if the injury extends beyond the scheduled member and causes a permanent injury to an unscheduled portion of the body. Thompson v. Leon Russell Enterprises, 834 S.W. 2d 927, 929 (Tenn. 1992).

Mr. Hedgecoth was treated by Dr. Susan M. Pick, M.D., an

orthopaedic surgeon. She first saw him on February 1, 1995, for follow-up treatment. Surgery to hold his fractures in place had been done by others immediately after his fall. Dr. Pick testified that Mr. Hedgecoth was still on crutches, had quite a bit of pain about his foot and was still having some drainage about the surgical incision and swelling of his foot. X-rays revealed that his foot had not been restored to a normal alignment.

When next seen on March 21, 1995, his swelling had decreased somewhat and Dr. Pick allowed him for the first time to start bearing weight on his injured foot. When next seen six weeks later he was still using a cane. He had pain and swelling in the foot, and still had an area of open wound. Dr. Pick testified that he had some impingement on the nerves laterally. When he was next seen on June 13, 1995, he still had swelling and pain and numbness around his surgical incision site. He still had not totally healed in his wound. When seen on August 29 and September 26, 1995, he was having chronic pain. On November 7, 1995, he was still having pain and swelling with activities. Dr. Pick opined that on December 5, 1995, he had then reached maximum medical improvement. He still had swelling about the foot, which she opined was going to be a permanent condition. His foot was in a valgus mal alignment, which caused increased stresses on his foot. She opined that he had a 52% lower extremity impairment; that he would not be able to do any significant climbing of ladders, scaffolding, long distance walking and standing for long periods of time. His foot would swell after prolonged standing, and probably cause more pain. He could require surgical treatment for uncontrolled pain, which would be a fusion of his subtalar foot

joint.

Mr. Hedgecoth testified that his heel injury causes him to limp, which causes his back to hurt if he has to walk too much or stay up too much.

Appellant contends that temporary total disability should have been terminated in June of 1995, because on cross-examination Dr.Pick testified:

> I would have said that, you know, if he could work in a sitting position, he probably could have gone back to work when I first saw him. And it would have had to have been entirely sitting, and not using his foot.

She testified that she would have "released" him "when I got him off his cane. Probably around June".

Given the nature of Mr. Hedgecoth's injury, the nature of his occupation, and the absence of any proof that he could do sedentary work, we hold that his temporary total disability period was properly pegged to the date of maximum medical improvement, and not the June 1995 date advocated by the appellant. A careful review of his medical treatment does not reflect a time when he was able to do any work that he was qualified to do, so the trial judge correctly looked to the date of his maximum medical improvement as the terminal date. It is well established that eligibility for temporary total benefits ceases when the injured employee either is able to return to work or attains maximum recovery. Simpson v. Satterfield, 564 S.W. 2d 953, 955 (Tenn. 1978).

We hold that the effects of this foot injury went beyond the

scheduled member and justified the holding that the disability was to the body as a whole. We further hold that the 75% permanent partial whole body disability is well supported by the evidence.

As to the appellee's contention for a lump sum judgment, we hold that the trial judge granted the motion when he calculated the lump sum and decreed that the 75% permanent partial disability to the body as a whole "translates to a money judgment of forty-three thousand seven hundred twenty-two dollars ($43,722.00)". The record supports the proposition that this is in the best interest of the injured employee. Tennessee Code Annotated Section 50-6-229.

We affirm the judgment of the trial court and remand the case for the calculation of interest upon the judgment. Cost on appeal are assessed to the appellant.

WILLIAM S. RUSSELL, SPECIAL JUDGE

CONCUR:

LYLE REID, ASSOCIATE JUSTICE

W. MICHAEL MALOAN, SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

FILED

March 5, 1998

Cecil W. Crowson
Appellate Court
Clerk

TONY HENDERSON,	Maury Circuit
	No. 653
Plaintiff-Appellee,	
v.	Hon. Jim T. Hamilton, Judge
HAROLD MOORE & ASSOCIATES and JEFF CASWELL d/b/a CASWELL & SONS CARPENTRY,	No. 01S01-9712-CV-00283
Defendants-Appellants.	Affirmed and Remanded

JUDGMENT ORDER

This case is before the Court upon motion for review pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), 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 motion for review is not well-taken and should be denied; 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 the defendant-appellant and its surety, for which execution may issue if necessary.

It is so ordered this 5th day of March, 1981.

PER CURIAM

Reid, J., not participating