

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT KNOXVILLE
(November 19, 1997 Session)

FILED
February 24, 1998
Cecil Crowson, Jr.
Appellate Court Clerk

MICHAEL LEE PROFFITT,)	WASHINGTON CHANCERY
)	Cecil Crowson, Jr.
Plaintiff-Appellee,)	Appellate Court Clerk
)	Hon. G. Richard Johnson,
v.)	Chancellor.
)	No. 03S01-9701-CH-00008.
SUPERIOR INDUSTRIES, INC.,)	
)	
Defendant-Appellant.)	

For Appellant:

Steven H. Trent
Baker, Donelson, Bearman & Caldwell
Johnson City, Tennessee

For Appellee:

Greg Holt
Seaton, Holt & Herrin
Johnson City, Tennessee

MEMORANDUM OPINION

Members of Panel:

Frank F. Drowota, III, Associate Justice, Supreme Court
William H. Inman, Senior Judge
Joe C. Loser, Jr., Special Judge

AFFIRMED AND REMANDED

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. The employer has appealed from an adverse judgment, contending the award of permanent partial disability benefits is excessive. The employee contends the appeal is frivolous. As discussed below, the panel has concluded the judgment should be affirmed.

The employee or claimant, Proffitt, is 37 years old with a fifth grade education and experience as a mason's helper, a painter, a farm worker and a sawmill operator. He began working for the employer in 1993 as a janitor. On April 25, 1994, he was assisting another worker to empty a heavy trash barrel when he felt a sudden pulling sensation in his back. He continues to have sharp pain in his back and numbness in his back and legs. He no longer works for Superior Industries.

Four medical doctors testified at the trial. Dr. Henry J. Williams treated the claimant in the emergency room shortly after the accident and diagnosed lumbar strain. The doctor first assigned no permanent impairment. After further visits, however, he assessed a permanent impairment of one percent to the body as a whole.

Dr. Matthew Wood, Jr. examined the claimant and found no permanent impairment. Dr. Fred Killefer agreed with Dr. Wood.

Dr. Calvin J. Johnson examined the claimant and found objective evidence of injury in the form of muscle spasm. He diagnosed chronic low back syndrome with facet arthritis and assessed ten percent permanent impairment to the whole body. He restricted the claimant from repetitively bending, stooping, squatting or lifting more than twenty pounds.

The trial judge awarded permanent partial disability benefits on the basis of twenty-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).

Once the causation and permanency of an injury have been

established by expert testimony, the 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 anatomical impairment, for the purpose of evaluating the extent of a claimant's permanent disability. Tenn. Code Ann. section 50-6-241(a)(2); Hill v. Royal Ins. Co., 937 S.W.2d 873 (Tenn. 1996). From a consideration of the pertinent factors established by the proof in this case, particularly the claimant's lack of education, training and job skills, as well as the conflicting medical evidence, the panel is not persuaded that the evidence preponderates against the judgment of the trial court.

When it appears that an appeal in a workers' compensation case is frivolous or taken solely for delay, the reviewing court may, upon motion of either party or on its own initiative, award damages against the appellant and in favor of the appellee without remand, for a liquidated amount. Tenn. Code Ann. section 50-6-225(e)(2). We do not find this appeal to be frivolous, but remand the case to the Chancery Court for Washington County for an award of interest on accrued but unpaid benefits and such further proceedings, if any, as may be appropriate.

The judgment of the trial court is affirmed. Costs are taxed to the appellant.

Joe C. Loser, Jr., Special Judge

CONCUR:

Frank F. Drowota, III, Associate Justice

William H. Inman, Senior Judge

IN THE SUPREME COURT OF TENNESSEE

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MICHAEL LEE PROFETT)	WASHINGTON CHANCERY
)	No. 30616
Plaintiff/Appellee,)	
)	
vs.)	Hon. G. Richard Johnson,
)	Chancellor
)	
SUPERIOR INDUSTRIES, INC.)	
)	No. 03S01-9701-CH-00008
Defendant/Appellant.)	

JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation 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 on appeal are taxed to the defendant/appellant, Superior Industries, Inc. and Steven H. Trent,, Surety, for which execution may issue if necessary.

02/24/98

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 plaintiff-appellant and sureties, for which execution may issue if necessary.

IT IS SO ORDERED this ____ day of June, 1997.

PER CURIAM

Anderson, J. - Not Participating

al to the Special Worker' Compensation 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 act and conclusions of law are adopted and affirmed, and the decision of the Panel is made the Judgment of the Court.

Costs on appeal are taxed to the plaintiff-appellant, Vernon Harris and Gilbert and Faulkner. surety, for which execution may issue if necessary.

06/03//97

