

IN THE SUPREME COURT OF TENNESSEE
WORKERS' COMPENSATION APPEALS PANEL
KNOXVILLE, SEPTEMBER 1997 SESSION

FILED

February 18, 1998

Cecil Crowson, Jr.
Appellate Court Clerk

JACQUELINE MARIE REDDEN)	HAMILTON CIRCUIT
)	
Plaintiff/Appellant)	
)	
VS.)	Hon. Arnold A. Stulce, Jr.
)	Special Circuit Judge
)	
SYNTHETIC INDUSTRIES and)	
THE HOME INSURANCE COMPANY)	
)	
Defendants/Appellees)	NO. 03S01-9703-CV-00025

For the Appellant:

Morgan G. Adams
428 McCallie Avenue
Chattanooga, Tenn. 37402

For the Appellee:

Jeffrey L. Cleary
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Chattanooga, Tenn. 37402

MEMORANDUM OPINION

Members of Panel:

E. Riley Anderson, Chief Justice
John K. Byers, Senior Judge
Roger E. Thayer, Special Judge

REVERSED.

THAYER, Special 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 to the Supreme Court of findings of fact and conclusions of law.

This appeal has been perfected by plaintiff, Jacqueline Marie Redden, from the trial court's decision in declining to increase an original award of 20% permanent partial disability to the body as a whole after a reconsideration hearing conducted pursuant to the provisions of T.C.A. § 50-6-241(a)(2).

Plaintiff contends the evidence preponderates against the finding of the trial court. Defendants, Synthetic Industries and The Home Insurance Company, argue the evidence before the court was insufficient to support an increased award.

The facts are not in great dispute. Employee Redden sustained a work-related injury on August 9, 1992, while pushing a dolly loaded with yarn. The injury was to her low back. A final decree was entered in the Circuit Court of Hamilton County on January 19, 1995, approving a settlement agreement providing for a 20% permanent partial disability award to the body as a whole. Since the accident occurred shortly after the effective date of the 1992 amendments to the Workers' Compensation Act and the employee had returned to work at a wage equal to or greater than that received before the accident, the award was capped at 2 ½ times the medical impairment rating of 8%.

Upon returning to work, plaintiff was given a job "reeling denies", which she testified involved hooking yarn to a machine and was lighter duty work. However, this job was only of a temporary nature. Later she was asked if she could do office work to which she replied she could perform. A job of this nature never materialized. She was later offered a job "doffing" and was told that this was all the company had to offer. The job involved considerable physical activity and defendant employer sent her to see a physical therapist for the purpose of determining whether she could perform the required duties of bending, lifting, etc. The therapist concluded she was not able to do this type of work because of her injury. Since there was no other job available that she could handle with her restrictions, she was eventually terminated. The record is silent as to the exact termination date but it was sometime during or after February, 1995.

This action, asserting a new claim or cause of action for an increased award of disability, was filed on August 29, 1995, which was within the one year period of her loss of employment. She meets all of the requirements of T.C.A. § 50-6-241(a)(2) for a rehearing concerning the original award and this is not an issue in the case.

The trial court made a number of findings. The court concluded that the record established (1) the employee had sustained a work-related injury, (2) as a result of the injury, she had an 8% medical impairment which capped the award at 20% disability to the body as a whole, (3) the entry of the agreed judgment approving the settlement established her injury was causally connected to her employment and the injury was of a permanent nature, (4) there was a causal connection between her injury and her subsequent loss of employment, (5) the employer had offered her a job which she could not physically perform because of her injury, (6) her condition at the time of the reconsideration hearing had not worsened but was the same and she had not sought medical treatment since the approval of the workers' compensation settlement, and (7) the original award of 20% disability should not be increased under the evidence submitted.

The review of the case is de novo accompanied by a presumption of the correctness of the findings of fact unless we find from our review the preponderance of the evidence is otherwise. T.C.A. § 50-6-225(e)(2).

The general rule is that while expert testimony is usually necessary to establish causation and permanency of an injury, the extent of the permanent disability can be determined from both expert and lay testimony. *Perkins v. Enterprise Truck Lines, Inc.*, 896 S.W.2d 123 (Tenn. 1995); *Bond v. American Air Filter*, 692 S.W.2d 638 (Tenn. 1985); *Hinson v. Wal-Mart Stores, Inc.*, 654 S.W.2d 675 (Tenn. 1983).

In the present case the only real issue is the extent or degree of permanent disability. We fully concur with all of the trial court's findings except the decision to leave the award capped at 20% disability. In this respect, we are of the opinion the evidence, which is based upon a somewhat meager record, preponderates against the decision to not increase the award. We find the record is sufficient to establish her ability to find employment in the open labor market has been affected to such

extent that the multiplier of 2 ½ times the medical impairment should not control the final adjudication of her claim but the award should be increased under and subject to the limitations of subsection (b) of the statute (not to exceed 6 times the medical impairment).¹

The record indicates that after plaintiff was seen by the physical therapist at the Chattanooga Rehabilitation Center for evaluation of the last job position, a letter dated June 2, 1995, was written to the employer advising that her job restrictions of no repetitive bending or stooping, a maximum lift of 25 pounds occasionally and no repetitive lifting of more than 10 pounds would preclude her from being able to handle the position. The letter went on to state she had a herniated nucleus pulposus and she moved cautiously and slowly at times due to pain and that returning to a standing position from even a partial squat was difficult. The employer relied upon this information in concluding she was unable to perform the job and in reaching the decision to terminate her.

Thomas Waymire, a certified vocational rehabilitation counselor, conducted the usual study necessary to give an opinion concerning vocational disability. He testified he considered available medical information and interviewed plaintiff to obtain her background, education, work history, etc. He said he then gave her some tests to substantiate her educational level. His conclusion was that her injury resulted in a 65% loss of job opportunities.

Plaintiff's husband, Dale Redden, testified her ability to function as a housewife was very limited as she could not perform many household duties. He said she could not stand long without complaints of pain.

At the time of trial, plaintiff was working in the office of Proffitts department store where she was taking payments, wrapping gifts, etc. at a wage rate of \$6.00 an hour. Prior to this work, she had worked for awhile in another department store doing similar work earning \$5.00 an hour.

The record does not indicate plaintiff's exact age or last grade of education she completed. However, we do note that Mr. Redden testified they had been married almost twenty years. While the case could be remanded back to the trial

¹ The employee only seeks to increase the award by a 4.9 multiplier instead of the maximum cap of 6 times the impairment. See plaintiff's brief, page 15.

court for precise answers to these questions, we are of the opinion the wheels of justice should move faster. We find the record sufficient to hold the award of disability should be increased to 39.2% permanent partial disability to the body as a whole, which is the maximum request for relief. The defendants are to receive a credit for all prior benefits paid to the employee.

The judgment is reversed and judgment is awarded for 39.2% permanent disability to the body as a whole. Costs of the appeal are taxed to defendants.

Roger E. Thayer, Special Judge

CONCUR:

E. Riley Anderson, Chief Justice

John K. Byers, Senior Judge

IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE

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JACQUELINE MARIE REDDEN

Plaintiff/Appellant

v.

SYNTHETIC INDUSTRIES and
THE HOME INSURANCE COMPANY

Defendants/Appellees

) Hamilton Circuit No. 95CV1626
)
) Hon. Arnold A. Stulce, Jr.
) Judge
)
) Supreme Court No.
) 03-S-01-9703-CV-00025
)
) Reversed
)

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.

Cost will be paid by defendants/appellees, for which execution may issue if necessary.

It is so ordered this 18th day of February, 1998.

PER CURIAM

Anderson, C. J.; Reid, J., not participating