IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
KNOXVILLE, DECEMBER 1998 SESSION

CHARLINE SUERTH CHANCERY	)	MORGAN
	)	
Plaintiff/Appellant	)	
	)	
V.	)	Hon. Frank V. Williams, III, Chancellor
RED KAP INDUSTRIES, INC.	)	
	)	
Defendant/Appellee	)	No. 03S01-9803-CH-00024

For the Appellant:

Roger L. Ridenour
Ridenour, Ridenour & Fox
P.O. Box 530
Clinton, Tenn. 37717-0530

For the Appellee:

Robert R. Ramey
Upchurch, Colvard, York & Ramey
P.O. Box 3549
Crossville, Tenn. 38557-3549

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

Members of Panel:

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

MODIFIED and AFFIRMED. 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.

Plaintiff, Charline Suerth, has perfected this appeal from the action of the trial court in awarding her 7 ½% permanent partial disability benefits to the body as a whole from her employer, Red Kap Industries, Inc.

Plaintiff sustained a work-related injury during October 1995 to her right shoulder. The orthopedic surgeon who treated her testified by deposition and stated she had a 3% medical impairment to the body as a whole as a result of a small ruptured rotator cuff tear and adhesive capsulitis. Surgery was performed and she made a real good recovery and returned to work at a wage equal to or in excess of wages paid to her prior to the accident. Her return to work was subject to restrictions of not lifting over ten pounds and no overhead work so her elbow would remain below her shoulder height.

The trial court found the provisions of T.C.A. § 50-6-241(a)(1) controlled the determination of the award of permanent disability and capped the award at 2 ½ times the medical impairment of 3%.

Plaintiff concedes this application of the statute was proper but contends the trial court was in error in failing to find that the employee met three out of the four conditions set forth in T.C.A. § 50-6-242.

Review of the case on appeal is de novo on the record accompanied by a presumption of the correctness of the findings of fact unless the preponderance of the evidence is otherwise. T.C.A. § 50-6-225(e)(2). However, de novo review does not carry a presumption of correctness to a trial court's conclusion of law but is confined to factual findings. *Union Carbide v. Huddleston,* 854 S.W.2d 87, 91 (Tenn. 1993).

The statute in question allows additional benefits "in appropriate cases where permanent medical impairment is found and the employee is eligible to receive the maximum disability award under § 50-6-241(a)(2) or (b)." In such cases the court must find by clear and convincing evidence at least three of the following four items:

(1) The employee lacks a high school diploma or general equivalency diploma or the employee cannot read or write on a grade eight (8) level;

(2) The employee is age fifty-five (55) or older;

(3) The employee has no reasonably transferable job skills from prior vocational background and training; and

(4) The employee has no reasonable employment opportunities available locally considering the employee's permanent medical condition.

The record indicates plaintiff was 63 years of age and had completed the eighth grade. She did not have any vocational training but in the past she had worked in a bakery, as a cashier and a general factory worker. At the time of the accident and at the trial below, she was a sewing machine operator.

Two vocational consultants testified in person before the trial court. Witness Rodney Caldwell testified plaintiff did not have any skills transferable to any other type of work except work she had performed in the past. Witness Mike Galloway testified plaintiff had skills transferable only within the industry she was working and that there were jobs outside the industry she could perform. These would be kitchen worker, housekeeper, hostess, laundry worker, cashier, parking lot attendant, etc.

Thus, it is clear from the evidence plaintiff qualifies under the first two conditions as she is over 55 years of age and only has an eighth grade education. It is also apparent she does not qualify under the fourth condition as other jobs are available which she can perform.

This appeal has resulted over the trial court's ruling that she does not qualify under the third condition. The arguments on appeal as well as those before the trial court centered on questions regarding the meaning of the words "skill" and "transferable."

We do not find these issues to be determinative of the appeal. Our close reading of the statute leads us to the conclusion that T.C.A. § 50-6-242 has no application to the facts of the instant case. At the time of the trial below, Ms. Suerth had returned to work at a wage equal to or greater than wages she was receiving prior to her sustaining the injury. Since her disability was to her shoulder, the award had to be fixed to the body as a whole and the trial court correctly applied the 2 ½ times cap set forth in subsection (a)(1) of T.C.A. § 50-6-241.

The language of T.C.A. § 50-6-242 is clear that it only has application to cases where the employee is eligible to receive the maximum disability award under subsections (a)(2) or (b) of T.C.A. § 50-6-241. The maximum cap under these sections of the statute is six times the medical impairment and this would only result when the trial court determines the employee has not returned to work after the injury or where a reconsideration is appropriate under section (a)(2) after an award was initially capped under subsection (a)(1).

Since this appeal does not arise from a maximum award of six times the medical impairment under subsection (a)(2) or (b) of T.C.A. § 50-6-241, the statute which plaintiff relies upon has no application.

Legislative intent or purpose is to be ascertained primarily from the natural and ordinary meaning of the language used, without forced or subtle construction that would limit or extend the meaning of the language. *Carson Creek Resorts v. Dept. of Revenue,* 865 S.W.2d 1 (Tenn. 1993); *National Gas Distributors, Inc. v. State,* 804 S.W.2d 66 (Tenn. 1991). Where the language contained within the four corners of a statute is plain, clear and unambiguous and the enactment is within legislative competency, "the duty of the courts is simple and obvious, namely, to say sic lex scripta, and obey it." *Miller v. Childress,* 21 Tenn. (2 Hum.) 319, 321-22 (1841).

We find the language of the statute in question is clear and unambiguous and hold that T.C.A. § 50-6-242 does not apply to awards of disability which are initially capped at 2 ½ times the medical impairment under section (a)(1) of the statute.

The judgment is modified and affirmed. Costs of the appeal are taxed to plaintiff-appellant.

_____
Roger E. Thayer, Special Judge

CONCUR:

_____
E. Riley Anderson, Chief Justice

_____
John K. Byers, Senior Judge

IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE

FILED

March 10, 1999

Cecil Crowson, Jr.
Appellate Court
Clerk

CHARLINE SUERTH,	)	MORGAN CHANCERY
	)	No. 96-59
Plaintiff-Appellant,	)	
	)	
	)	No. 03S01-9803-CH -00024
v.	)	
	)	
RED KAP INDUSTRIES, INC.	)	Y,
	)	Hon. Frank V. Williams, III.
Defendant-Appellee.	)	

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 facts 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 appellant, Charline Suerth, and Roger L. Ridenour,surety,for which execution may issue if necessary.

03/10/99