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

GERALDINE HARRIS	)	WASHINGTON CHANCERY
	)	
Plaintiff/Appellant	)	
	)	
V.	)	
	)	Hon. G. Richard Johnson,
SABH-MOR FLO INDUSTRIES, AMERICAN WATER HEATER GROUP, d/b/a AMERICAN WATER HEATERS EAST, INC. and ZURICH AMERICAN INSURANCE	)	Chancellor
	)	
Defendants/Appellees	)	No. 03S01-9712-CH-00142

For the Appellant:

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Seaton, Holt & Herrin
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For the Appellees:

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& McKee
104 E. Main Street
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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

REVERSED and REMANDED. 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.

The employee, Geraldine Harris, has appealed from the action of the trial court in dismissing her claim against her employer, Sabh-Mor Flo Industries.

Plaintiff sustained a work-related injury during October 1994 to her arm and shoulder. After receiving some treatment, she returned to work at a wage equal to or greater than she had been receiving prior to the accident. In determining her entitlement to permanent disability benefits, the trial court found her return to work was meaningful within the scope of our statute, T.C.A. § 50-6-241(a)(1), and that since her medical impairment rating was 11%, the award of permanent disability was capped at 2 ½ times the medical impairment, which resulted in a 27.5% disability award to the body as a whole.

Upon her return to work, she was given another job where she worked for four or five weeks. When this job ended, she was assigned a job classified as a "service agent." This position involved her understanding the basic parts of a water heater in order to handle telephone customer complaints. She was also required to operate a computer. She received several weeks of training and attempted to perform her new duties. The record is quite clear she did not perform satisfactorily. She testified she could not do the work and needed more training and her employer also felt she could not do the work. She testified that after several days attempting to do the work, she was called to the office and was told, "we don't think you are going to make it." She was terminated on April 3, 1997 which was less than two months after the February 13th trial.

The present action seeking a reconsideration of the original award of 27.5% disability under T.C.A. § 50-6-241(a)(2) was instituted on May 2, 1997. At this hearing there was a dispute between the parties as to the exact reason for plaintiff's discharge. Plaintiff contended she was terminated because she could not perform the duties she was asked to do. Defendant-employer contended she fell asleep on the job and was terminated for refusing to obey a direct order.

The Chancellor found she could not do the job because it was beyond her capabilities. On the issue of reason for termination of employment, we find the record makes the following findings:

> "I find, according to the plaintiff's own proof, that the reason that she lost this so-called subsequent employment was simply because she was unable to do it mentally."
>
> *
>
> "She doesn't have the education, the background, the experience, the skill, the training, or the mental capacity to do that computer job, ..."

At the conclusion of plaintiff's proof, the trial court dismissed the case for reconsideration of the 27.5% disability award because the proof did not establish a causal connection between her injury and the loss of employment. In support of this conclusion, the court stated that the termination of employment "was not the result of the arm or shoulder injury" and that she could perform her last job without bothering her injury. The court went on to observe that this result (dismissal of the reconsideration claim) did not appear to be right but the court or counsel was not aware of any case dispensing with the requirement of establishing a causal connection between the injury and the subsequent loss of employment.

The case is to be reviewed 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, the 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 first issue presents a question of whether the evidence preponderates against the factual findings by the trial court in concluding the employee was discharged from her employment for reasons not connected or associated with her work-related injury. On this issue, we are of the opinion the greater weight of the evidence supports the trial court's findings.

The main issue presented is whether the trial court was in error in applying T.C.A. § 50-6-241(a)(2) to the employee's claim for a reconsideration of the award of disability.

Defendant-employer argues the trial court was correct in dismissing the case and cites the case of *Brown v. State of Tennessee,* Special Workers' Compensation

Appeals Panel, No. 01S01-9502-BC-00020, filed November 22, 1995 at Nashville. In this case the employee returned to work after sustaining a work-related injury and after some period of time, he voluntarily resigned. On appeal the Panel ruled that in order to activate subsection (a)(2) of T.C.A. § 50-6-241, there must be a causal connection between the injury and the subsequent loss of employment and that the employee could not activate subsection (a)(2) by his voluntary act of resignation which had no connection to his work-related injury.

The employee contends this rule must not have any application to the facts of the present case and if the rule does apply, the employer will be permitted to frustrate the intent of the statute. We are inclined to agree with this argument.

The multiplier statute, T.C.A. § 50-6-241, has been the subject of much litigation since its enactment during 1992. This is not because of any vague or ambiguous language but because of the difficulty of applying the general principles to so many different factual circumstances many of which could not reasonably be anticipated.

Usually in applying the statute, a court must first determine whether the return to work was meaningful in the sense of the statute. Various Panel decisions have held that the action of the employee and/or employer is subject to the "reasonableness test." *See Newton v. Scott Health Care Center,* 914 S.W.2d 884 (Tenn. 1995).

We are of the opinion that the statute should not be used by either the employee or employer as a mere devise to reach a result inconsistent with its legislative intent. Thus, an employee may not avoid the 2 ½ times cap by voluntarily terminating employment for personal or insubstantial reasons. Conversely, the employer should not be allowed to unfairly limit an award of disability by accepting the employee back to impose a 2 ½ times cap and then discharge the employee under circumstances where the return to work did not appear to be meaningful.

We do not find the *Brown* case, supra, to control the issue in the present case. In *Brown* the employee was attempting to remove the 2 ½ times cap by his own action which was not related to his injury. In the present case the employer has terminated the employment. Under these circumstances, we hold that the causal connection rule is not a factor to be considered and that the employer's act of

discharging the employee is sufficient to activate the provisions of subsection (a)(2). This part of the statute specifically provides for a new cause of action when (1) the employee is no longer employed by the pre-injury employer, (2) application for reconsideration of the award is made to the appropriate court within one year of the employee's loss of employment, and (3) the loss of employment is within 400 weeks of the day the employee returned to work. All of these requirements have been met.

We believe this part of the statute was enacted to protect an employee under the exact circumstances in present case. The trial judge sensed the injustice which could occur in applying the "causal connection rule" but felt bound by previous Panel decisions which did not appear to create any exceptions to the general rule.

The judgment of the trial court is reversed and the case is remanded for further proceedings. Costs of the appeal are taxed to defendant-employer.

_____
Roger E. Thayer, Special Judge

CONCUR:

_____
E. Riley Anderson, Chief Justice

_____
John K. Byers, Senior Judge

--IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE

GERALDINE HARRIS,	)	WASHINGTON CHANCERY
	)	No. 30935
Plaintiff-Appellant,	)	
	)	
	)	No. 03S01-9712-CH -00142
v.	)	
	)	
SABH-MOR FLO INDUSTRIES,	)	Hon. G. Richard Johnson.
AMERICAN WATER HEATER	)	Judge
GROUP, dba AMERICAN WATER	)	
HEATERS EAST, INC. and ZURICH	)	
AMERICAN INSURANCE	)	
	)	
Defendantst/Appellees	)	
	)	

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 defendant-employer,for which execution may issue if necessary.

04/22/99