IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE

FILED

September 24, 1999

Cecil Crowson, Jr.
Appellate Court
Clerk

PHILIP STEVEN FANN, Plaintiff/Appellee	)	MORGAN CHANCERY
v.	)	NO. 03S01-9811-CH-00124
ADVANCE TRANSFORMER COMPANY, Defendant/Appellant	)	HON. FRANK V. WILLIAMS, III, CHANCELLOR

For the Appellant:

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For the Appellee:

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

Members of Panel:

Justice Frank F. Drowota, III
Senior Judge John K. Byers
Special Judge Roger E. Thayer

AFFIRMED

BYERS, Senior Judge

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. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

Review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2); *Stone v. City of McMinnville,* 896 S.W.2d 548, 550 (Tenn. 1995). The application of this standard requires this Court to weigh in more depth the factual findings and conclusions of the trial court in a workers' compensation case. *See Corcoran v. Foster Auto GMC, Inc.,* 746 S.W.2d 452, 456 (Tenn. 1988).

The trial judge found the plaintiff had suffered 40 percent permanent partial disability to both upper arms.

The defendant raises two issues on appeal: (1) whether the trial judge erred in awarding disability benefits against the defendant and (2) whether the award of disability benefits to the plaintiff was contrary to the preponderance of the evidence.

We affirm the judgment.

The plaintiff began employment with the defendant in July or August of 1996. The plaintiff used computers, calculators, typewriters, word processors, fax machines, copiers, forklifts, micrometers, calipers, and other gauges in various jobs he performed for the defendant.

In November 1996, the plaintiff began to experience problems with his hands. Dr. Cletus J. McMahon treated the plaintiff and in July 1997 did carpal tunnel surgery on both arms. After the surgery, the plaintiff returned to work for the defendant but was laid off two days later. The plaintiff was not recalled when other employees were recalled to work by the defendant.

On January 14, 1998, the plaintiff went to work for a company named Breed Technologies or BAICO. The plaintiff was required to do repetitive type work at BAICO, and the problems with his hands continued.[1]

On January 24, 1998, Dr. McMahon was asked to give an opinion on the plaintiff's impairment from carpal tunnel syndrome. Dr. McMahon relied upon an October 16, 1997 examination to make an assessment of the impairment. He fixed the plaintiff's impairment at 5 percent with no need for restrictions.

On March 27, 1998, Dr. McMahon saw the plaintiff and sometime after was asked to fill out a C-32 Department of Labor form. In this report, Dr. McMahon found the plaintiff suffered a 10 percent impairment to both arms because of the carpal tunnel syndrome.

Dr. McMahon testified by deposition also in this case. He testified that on the March 27, 1998 examination he determined the disability rating should be raised from 5 percent to 10 percent for each arm. Dr. McMahon testified the reason for this elevation was because the plaintiff was suffering pain while doing repetitive type work.

Further, Dr. McMahon testified that if the plaintiff were doing repetitive work it would account for the increase in the amount of disability from 5 percent to 10 percent. The plaintiff was doing this repetitive work at BAICO, and the defendant insists this relieves it totally or partially from liability to the plaintiff.

We are not convinced by this claim. Dr. McMahon further testified that when he released the plaintiff to return to work without restrictions, he did so to test his ability to work without pain. The record shows the plaintiff only remained an employee of the defendant for two days and he did not perform any repetitive work during that time.

Dr. McMahon testified that had the plaintiff been working for the defendant and had experienced the same symptoms as he experienced after working for BAICO he would have given a 10 percent impairment rating.

It seems from this record the treating physician's attempt to fully determine the plaintiff's disability by returning him to work with the defendant was frustrated by the

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[1] The plaintiff was making more money at BAICO than he made with the defendant.

defendant's termination of the plaintiff. When the plaintiff did return to work, the doctor was able to make a final determination of the impairment to the plaintiff's arms. This impairment, as we read the testimony, is attributable to the carpal tunnel syndrome suffered by the plaintiff while working for the defendant.

Based upon this record, we find the trial court correctly found the defendant to be liable for the total disability suffered by the plaintiff and we affirm the judgment. Costs of this appeal are taxed to the defendant.

_____
John K. Byers, Senior Judge

CONCUR:

_____
Frank F. Drowota, III, Justice

_____
Roger E. Thayer, Special Judge

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PHILIP STEVEN FANN,	)	Morgan County Chancery
	)	No. 98-84
Plaintiff/Appellee,	)	
	)	S. Ct. No. 03-S-01-9811-CH-00124
v.	)	
	)	Hon. Frank V. Williams, III,
ADVANCE TRANSFORMER COMPANY,	)	Judge
	)	
Defendant/Appellant.	)	Affirmed

JUDGMENT ORDER

This case is before the Court upon defendants' 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 defendant/appellant, for which execution may issue if necessary.

PER CURIAM

Drowota, J., not participating