IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE JANUARY 1999

CARL EDWARD LOVING,	)	
	)	CAMPBELL CHANCERY
Plaintiff/Appellee	)	
	)	
v.	)	NO. 03S01-9805-CH-00050
	)	
LIBERTY MUTUAL INSURANCE	)	
COMPANY,	)	HON. BILLY J. WHITE,
	)	CHANCELLOR
Defendant/Appellant	)	

For the Appellants:

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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
Senior Judge William H. Inman

AFFIRMED and
REMANDED.

INMAN, Senior 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 plaintiff suffered a back injury in a job-related accident on November 4, 1996. The contested issue was the extent of permanent disability, which the Chancellor found was 65 percent to the whole body. The defendant disagrees, appeals, and presents the issues of excessiveness and the allowance of discretionary costs for review, which is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the findings of fact, 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 plaintiff, age 48, has been married 26 years, is a high school graduate, and has worked as a car salesman most of his adult life. But on November 4, 1996, he was otherwise employed at a job which required heavy lifting. While lifting a barrel filled with liquid weighing about 60 pounds, he injured his lower back, which eventually required surgery. He was released to return to work and "just sat around answering the telephone" for two weeks before he was terminated as unable to do the required work. He testified that he has looked for work elsewhere, but that "it's hard to get a job when you can't hardly do anything."

He was initially seen by Dr. Steven Sanders, a neurological surgeon, on November 11, 1996. An MRI revealed a herniated disc. Conservative treatment proved ineffective, and Dr. Sanders performed a diskectomy on November 30, 1996. Based on the *AMA Guidelines*, he opined that the plaintiff had a ten percent impairment, and imposed permanent lifting restrictions.

The plaintiff was evaluated by Dr. Gilbert Hyde, orthopedic physician, on October 20, 1997. He opined that the plaintiff had a 24 percent impairment to his whole body as a result of the back injuries and subsequent surgery, based on the *Guidelines,* which he testified took into account not only the disc surgery but also the limited range of motion resulting from surgery, together with the lifting restrictions.

A rehabilitative expert examined the plaintiff briefly. His opinion is assailed as non-probative. The record does not indicate that the Chancellor relied upon the views of this expert.

The appellant argues that the Court should adopt the ten percent impairment assessment of Dr. Sanders because he was the sole treating physician, as contrasted to Dr. Hyde, who was employed by the plaintiff as his evaluator and advocate. There are numerous cases holding that, as a general proposition, the opinion of the treating physician should sometimes be accorded greater weight than the opinion of an independent medical examiner, who is frequently an advocate as well as evaluator. *See, e.g., Russell v. Harmon Automotive,* No. 02S01-9502-CH-00017, filed Oct. 13, 1995, 1995 WL 604609; *Teague v. Tecumseh Products, Inc.*, No. 02S01-9509-CV-00081, filed July 15, 1996, 1996 WL 392137. But the thrust of case law is directed to the obvious point that all of the medical experts' opinions should be considered objectively and appropriate weight and worth ascribed to each as the Court determines.

The appellant argues that the Chancellor failed to state the precise medical impairment rating on which the 65 percent permanent partial disability was based, and that the facts do not justify the multiplier of six times impairment.

After discussing the divergent views of Dr. Sanders and Dr. Hyde, the Chancellor commented

> "I'm not going to use entirely either doctor's percentage by multiplier . . . he was unable to return to meaningful employment . . ."

The Chancellor found that the plaintiff had no transferrable skills, but had some skills as a salesman of cars. He found that he could do other work, "if it's answering the telephone," and that he has "sustained a considerable difficulty." While he did not find a specific percentage of disability, we think that, in context, the ultimate finding was based on an impairment assessment of 17 percent with a multiplier of 3.8235, within the ambit of the statute.

The appellant complains of the allowance of discretionary costs for the expenses of the rehabilitation expert, Dr. Craig Colvin, whose testimony was brief, as was his examination of the plaintiff, and whose opinion was not considered by the Court. While the issue is close, we are unable to find that the Chancellor abused his discretion in awarding these expenses under Rule 54.04.

The motion of the plaintiff to declare this appeal frivolous and for an award of attorney fees is denied.

The judgment is affirmed at the costs of the appellant.

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William H. Inman, Senior Judge

CONCUR:

_____

Frank F. Drowota, III, Justice

_____

John K. Byers, Senior Judge

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

CARL EDWARD LOVING, APPELLEE v. LIBERTY MUTUAL INSURANCE COMPANY, APPELLANT	))))))))))	CAMPBELL COUNTY NO. 114319 HON. BILLY J. WHITE CHANCELLOR S. CT. NO. 03S01-9805-CH-00050

FILED

October 20, 1999

Cecil Crowson, Jr.
Appellate Court
Clerk

JUDGMENT

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 appellant, Liberty Mutual Insurance Company, for which execution may issue if necessary.

It is so ordered.

PER CURIAM

DROWOTA, J. NOT PARTICIPATING

APRIL 26, 1999

VIA E-MAIL ONLY

TO: CAROLYN WILLIAMS, DEPUTY CLERK, KNOXVILLE

FROM: WILLIAM M. BARKER, JUSTICE

RE: CARL EDWARD LOVING V. LIBERTY MUTUAL INSURANCE COMPANY - CAMPBELL COUNTY - NO. 03S01-9805-CH-00050

MOTION FOR REVIEW: DENIED

DISPOSITION OF RECORD: RETURNED VIA UPS