IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
(July 12, 1999 Session)

WILLIE LANE SHANNON,	)	
	)	
Plaintiff/Appellee,	)	
	)	**BENTON CHANCERY**
v.	)	
	)	**NO. 02S01-9902-CH-00013**
SIPCO SERVICES & MARINE, INC. and	)	
AMERICAN HOME ASSURANCE COMPANY	)	**HON. C. CREED MCGINLEY,**
	)	**JUDGE**
Defendants/Appellants.	)	

FOR THE APPELLANTS:

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FILED

October 6, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

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

Members of Panel:

Justice Janice M. Holder
Senior Judge F. Lloyd Tatum
Senior Judge L. T. Lafferty

MODIFIED AND REMANDED

F. LLOYD TATUM, SENIOR JUDGE

OPINION

This workers' compensation appeal was referred to the Special Workers' Compensation Appeals Panel of the Supreme Court pursuant to Tenn. Code Ann. § 50-6-225(e)(3) (Supp. 1998) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

The standard of review of factual issues in workers' compensation cases is de novo upon the record of the trial court with a presumption of correctness, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (1991 & Supp. 1998); Henson v. City of Lawrenceburg, 851 S.W.2d 809, 812 (Tenn. 1993). Under this standard, we are required to conduct an in-depth examination of the trial court's findings of fact and conclusions of law to determine where the preponderance of the evidence lies. See Thomas v. Aetna Life & Cas. Co., 812 S.W.2d 278, 282 (Tenn. 1991) (quoting Humphrey v. David Witherspoon, Inc., 734 S.W.2d 315 (Tenn. 1987)); King v. Jones Truck Lines, 814 S.W.2d 23, 25 (Tenn. 1991). In making such a determination, this Court must give considerable deference to the trial judge's findings regarding the weight and credibility of any oral testimony received. Townsend v. State, 826 S.W.2d 434, 437 (Tenn. 1992); Thomas, 812 S.W.2d at 283. All medical evidence consists of medical reports and letters. This Court may draw its own conclusions about the weight, credibility, and significance of such evidence. Seiber v. Greenbrier Indus., Inc., 906 S.W.2d 444, 446 (Tenn. 1995).

This case involves chemical burns to an employee's leg. After hearing all of the evidence, the trial court found that plaintiff's injury should not be confined to a scheduled member, because of the severe damage to the skin, and awarded plaintiff benefits for an 80 percent permanent partial disability to the body as a whole. Defendants have assigned two issues for our consideration: (1) whether the trial court erred in finding that plaintiff suffered an injury to the body as a whole; and (2) whether the trial court erred in determining plaintiff's vocational disability rating. The plaintiff argues that the skin is a separate organ and an unscheduled member, so injuries to the skin should be compensated under Tenn. Code Ann. § 50-6-207(3)(F) governing injuries to the body as a whole. This argument is based largely on the fact that the medical records introduced

into evidence rated plaintiff's injuries to the body as a whole under the AMA Guidelines. The record is silent as to the disability rating of the leg. We find that the plaintiff's impairment is restricted to the leg.

At the time of trial, plaintiff, Willie Lane Shannon, was a 45 year old father of three with a tenth grade education, a G.E.D., and two years of basic community college courses. His prior employment included jobs in production, construction and painting, at a sawmill, and as an owner of a painting company. Plaintiff began working for defendant, Sipco Services and Marine, Incorporated (Sipco) in 1994. Sipco is a company that engages in contract maintenance for large companies. While employed by defendant, plaintiff's job responsibilities included commercial painting, waterblasting, and sandblasting. On October 13, 1996, plaintiff accidentally put his right leg into sulphuric acid while preparing cells at a company that produces the metal for batteries. Plaintiff's leg was severely burned below the knee and on the top portion of the foot. He was subsequently hospitalized for nine days and received skin grafts for the chemical burns. Plaintiff returned to light duty work on January 3, 1997, with restrictions on climbing and exposure to chemicals, but he experienced extreme leg pain two or three days after his return to work. As a result, plaintiff's doctor limited him to five hours work per day. During this period, exposure to chemicals caused quarter size blisters to appear on the area of plaintiff's leg where the grafting had occurred. He was also treated at the Vanderbilt Pain Clinic. Plaintiff's last day at Sipco was November 24, 1997, when he was sent home, because he could not work more than five hours per day. Since leaving defendant's employ, plaintiff had applied for jobs at two companies. He attempted to work at a convenience store but was unable to stand on his leg continuously.

Plaintiff testified that he cannot walk very far without experiencing a stinging sensation between his right knee and foot. At other times, his right leg will suddenly give way, causing him to fall. Plaintiff stated that he cannot stand or sit for over an hour without causing pain in his leg. His right ankle causes him pain when he squats, and his left leg becomes sore from using it to compensate for his injured right leg. Cold and heat cause plaintiff discomfort as well. The pain medication that he takes three times per day makes plaintiff feel "drunk," which prevents him from driving a car and affects his ability to

concentrate and perform daily activities. He is also no longer able to play sports with his children. Plaintiff testified that he would not be able to work in his previous occupations with his restrictions.

Plaintiff's wife testified at the trial that her husband is more depressed, short-tempered, and withdrawn than before his accident. In addition, he is no longer active with the children and has no social life. She stated that sitting and walking cause her husband pain.

The C-32, letters, and medical records from Dr. Ronald M. Barton, plaintiff's plastic surgeon at The Vanderbilt Clinic, were offered at trial. Dr. Barton released plaintiff on October 2, 1997, with recommendations that he should not return to his previous employment. In a letter dated August 25, 1997, Dr. Barton stated that plaintiff underwent an impairment measurement on August 20, 1997, which showed no limb length discrepancy, no gait derangement, no ankle impairment, and no joint ankylosis. In that letter, Dr. Barton stated that the plaintiff had 15 percent impairment to the body as a whole. On October 24, 1997, Dr. Barton stated that the plaintiff had 25 percent impairment to the body as a whole pursuant to Table 2, p. 280, of the AMA Guidelines, since plaintiff's skin was affected. He restricted plaintiff from standing or walking over three hours, sitting more than six hours per day, and from stooping. Dr. Barton placed environmental restrictions on plaintiff's exposure to chemicals, which cause his skin grafts to break down. Plaintiff can occasionally climb, balance, kneel, crouch, crawl, and twist. He has unlimited ability to push, pull, reach, handle, finger, feel, see, hear, and speak.

Dr. W. H. Blackburn, a family practitioner, saw plaintiff on December 18, 1996, and rated him at 20 percent disability to the body as a whole, but stated that it "is too soon to estimate his permanent disability" and deferred to Dr. Barton.

On August 13, 1997, Dr. Stephen M. Pratt, a plastic surgeon to whom plaintiff was referred for a second opinion, assigned plaintiff a 5 percent impairment to the body as a whole, based on the AMA Guidelines, Class I, skin problems.

As to whether the disability should be assessed as a scheduled member or to the body as a whole, our courts have consistently held that an injury confined to a scheduled member is governed exclusively by the statute controlling awards to scheduled members.

Wells v. Sentry Ins. Co., 834 S.W.2d 935, 937 (Tenn. 1992); Rayburn v. Hutton Stone, Inc., No. 01S01-9201-CV-00002, 1992 WL 174258, at *2 (Tenn. July 27, 1992); Lock v. National Union Fire Ins. Co. of Pa., 809 S.W.2d 483, 486 (Tenn. 1991); Reagan v. Tennessee Mun. League, 751 S.W.2d 842, 843 (Tenn. 1988). Establishing the schedules for certain enumerated portions of the body is the prerogative of the legislature, and the fact that a disability rating can be translated to the body as a whole by the AMA Guidelines does not alter the rule that the statutory schedules control. Wells, 834 S.W.2d at 938; Reagan, 751 S.W.2d at 844.

Tennessee Code Annotated § 50-6-207(3)(F) provides in pertinent part:

> All other cases of permanent partial disability not above enumerated shall be apportioned to the body as a whole . . . **The benefits provided by this paragraph shall not be awarded in any case where benefits for a specific loss are otherwise provided in this chapter.** (emphasis added)

This section applies only to those disabilities that are not "enumerated" in the schedules of Tennessee Code Annotated § 50-6-207(3)(A)(ii). The loss of a leg is an "enumerated" injury in the schedules. Tenn. Code Ann. § 50-6-207(3)(A)(ii)(o). Therefore, plaintiff's argument that his injury should be assessed to the body as a whole must fail, because our courts have repeatedly stated, and the statute expressly provides, that an injury to a scheduled member is controlled exclusively by the benefits provided for scheduled members in § 50-6-207. Lock, 809 S.W.2d at 486.

In the present case, we find that the trial court erred in assessing plaintiff's disability to the body as a whole. The trial judge stated in his ruling:

> But the Court feels that the anatomical rating for this type of injury that goes to the body as a whole because of the severe damage to the skin is an appropriate rating. And as a result, the Court uses that anatomical rating as the basis for making its vocational rating. . . . But using that anatomical rating as the basis [20-25 percent], the Court can go anywhere up to six times to the body or at least five times. . . . The Court feels that his vocational rating is 80 percent to the body as a whole.

In General Smelting and Refining, Inc. v. Whitefield, 579 S.W.2d 857 (Tenn. 1979), the claimant sustained serious burns to his right arm, left hand, right foot, and left leg that required skin grafting, thus sustaining permanent injuries to four scheduled members. The Supreme Court stated that claimant's burned skin was not as durable and was more susceptible to disease after grafting and that his injuries were to four scheduled members,

namely, both arms and both legs. However, the workers' compensation statutes provide that injuries to three or more scheduled members are to be assessed to the body as a whole rather than to scheduled members, and the Court so held. Id. at 859. In the opinion on petition to rehear, it is clear that the injuries to the four members were to the skin. Id.

In the unreported case of Rayburn v. Hutton Stone, Inc., No. 01S01-9201-CV-00002, 1992 WL 174258 (Tenn. July 27, 1992), the employee sustained an injury to the skin of his left foot and heel. The trial judge awarded compensation based on an injury to the body as a whole. On appeal, the employer argued that the trial judge erred in basing the award on disability to the body as a whole instead of to a scheduled member. The Supreme Court affirmed, solely on the ground that there was credible evidence, supported by expert medical testimony, that the employee was experiencing low back problems as a result of his difficulty in walking. Since the back is a non-scheduled member, the Court held that the trial judge properly based the award on disability to the body as a whole. Id. at *2-3.

We have no evidence in the case before us, either expert or lay, that plaintiff has suffered any permanent impairment to any part of his body, except for the right leg. Tennessee Code Annotated § 50-6-204(d)(3) requires physicians to utilize one of the two guidelines mentioned therein only for the purpose of determining the **degree** of anatomical impairment. The guidelines cannot be used to alter the statutory schedules of Tennessee Code Annotated § 50-6-207 as fixed by the General Assembly. The damage to the skin on plaintiff's leg is very disabling, but the disability is to the leg, a scheduled member, and compensation must be based on disability to the leg. The plaintiff has cited no authority for the proposition that injury to the skin of a scheduled member is an injury to the body as a whole. In our independent research, we have found none.

We, therefore, hold that the trial court's judgment that plaintiff's injury caused a disability to the body as a whole is erroneous. We hold that benefits should be calculated pursuant to the schedule in Tennessee Code Annotated § 50-6-207(3)(A)(ii)(o) governing the loss of a leg and we sustain the first issue.

On our de novo review, we have assessed the evidence above summarized as to the plaintiff's disability to the leg. We find that plaintiff has a 90 percent permanent partial

disability to the right leg and adjudge accordingly. Our decision moots the second issue, and it is pretermitted.

Judgment of the trial court is modified as stated herein, and the case is remanded to the trial court for further proceedings that may be necessary, consistent with this opinion. Each party will pay one-half the costs of this appeal.

_____
F. LLOYD TATUM, SENIOR JUDGE

CONCUR:

_____
JANICE M. HOLDER, JUSTICE

_____
L. T. LAFFERTY, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

FILED

October 6, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

WILLIE LANE SHANNON,	)	BENTON CHANCERY
	)	NO. 97-3953
Plaintiff/Appellee,	)	
	)	Hon. C. Creed McGinley,
vs.	)	Chancellor
	)	
SIPCO SERVICES & MARINE, INC. and AMERICAN HOME ASSURANCE COMPANY,	)	NO. 02S01-9902-CH-00013
	)	
Defendants/Appellants.	)	MODIFIED AND REMANDED

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 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 one-half by each party, for which execution may issue if necessary.

IT IS SO ORDERED this 6th day of October, 1999.

PER CURIAM