IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
March 17, 2014 Session

DANA AUTOMOTIVE SYSTEMS GROUP, LLC ET AL. v. LARRY EVANS

Appeal from the Circuit Court for Gibson County
No. H3729 Clayburn Peeples, Judge

No. W2013-01960-SC-R3-WC - Mailed August 28, 2014; Filed October 2, 2014

An employee developed carpal tunnel syndrome while working as a welder and supervisor for his employer. Prior to receiving medical treatment and unrelated to the injury, the employer gave the employee a choice to retire or potentially lose his substantial pension. The trial court held that the Medical Impairment Registry physician's rating was incorrect and that the statutory one and one-half cap on permanent partial disability benefits did not apply. The employer appealed. After a thorough review of the record, we reverse in part and affirm in part.

Tenn. Code Ann. § 50-6-225(e) (2008) Appeal as of Right;
Judgment of the Circuit Court Reversed in Part;
Affirmed in Part; Case Remanded

J. S. "Steve" Daniel, SP.J., delivered the opinion of the Court, in which JANICE M. HOLDER, J., and DON P. HARRIS, SP.J., joined.

William F. Kendall, III, Jackson, Tennessee, for the appellants, Dana Automotive Systems, LLC and Hartford Casualty Insurance Company.

Jeffrey P. Boyd, Jackson, Tennessee, for the appellee, Larry Evans.

OPINION

Factual and Procedural Background

For approximately twenty-eight years, Larry Evans was employed by Dana Automotive Systems ("Dana") and its predecessor, Eaton Axle. Mr. Evans began working for Eaton Axle in 1976 as a general laborer and by 1994 was a supervisor for Dana. Mr.

Evans' duties as a supervisor included scheduling, overseeing production in his departments, and welding. In January 2007, both of his hands started to become numb at night, and he informed his supervisor, Richard Sharp, of the problem. Mr. Sharp took no action concerning Mr. Evans' report, despite Mr. Evans' regular inquiries. In July 2007, Craig Davis replaced Mr. Sharp as Mr. Evans' supervisor. Mr. Evans informed Mr. Davis of his injury, and Mr. Davis gave him an "Employee Accident or Near Miss" form. Mr. Evans submitted the form and was provided a list of physicians for treatment, from which he selected Dr. James Lanter, a hand specialist.

During July 2007, Dana was in Chapter 11 bankruptcy. Because of the company's financial condition, Dana sent human resources manager Ann Wallsmith to inform employees about the company's bankruptcy and its implications on their retirement accounts. Ms. Wallsmith held a meeting for the senior hourly employees during which she read an article concerning Dana's bankruptcy. The article stated that due to the bankruptcy, employees who did not retire before December 31, 2007, would lose the option to collect their retirement benefits as a lump sum and would be required to take periodic payments as an annuity. On July 24, 2007, Mr. Evans submitted his voluntary resignation to Ms. Wallsmith and proposed September 28, 2007, as his last day of work. On August 15, 2007, Mr. Evans declared that he would retire effective that day. Mr. Evans received a lump-sum payment of $93,000.00 for his twenty-eight years of work.

On August 23, 2007, Mr. Evans' was diagnosed with bilateral carpal tunnel syndrome. After undergoing surgeries on his left and right arms, Mr. Evans reached maximum medical improvement on January 29, 2008. Although Mr. Evans was released without medical restrictions, Dana did not him offer re-employment because of his voluntary retirement.

On January 13, 2009, the parties conducted a Benefit Review Conference that resulted in an impasse. Later that same day, Dana filed a complaint denying liability for workers' compensation benefits in the Circuit Court for Gibson County.

Mr. Evans testified at trial that he informed his supervisor, Richard Sharp, in early January 2007 that he had developed pain and numbness in his hands as a result of his job. Mr. Sharp never took action, however, on Mr. Evans' complaints. When Mr. Sharp was replaced by Craig Davis, Mr. Evans again reported his complaints. Dana allowed Mr. Evans to fill out "workers' comp" paperwork in early August 2007. Mr. Evans testified that his hands were better after the surgeries, but he continued to have some numbness and pain. These symptoms did not prevent him from operating his lawn care business, but he did not think he could return to his job at Dana because it would cause his "hands to go to sleep." Mr. Evans also expressed his concerns about the possibility of losing his retirement benefits at Dana, and that the two factors ultimately persuaded him to retire.

Two of Mr. Evans' co-workers, Oliver Welch and Donnie Bradford, testified at trial about the meeting with Ms. Wallsmith. Both employees understood that after December 31, 2007, they would no longer have the option to recover their pensions as a lump sum and that they possibly would not have a pension at all. Both decided to retire due to the concern of losing their pensions.

Mr. Evans introduced a C-32 Standard Form Medical Report for Industrial Injuries ("C-32") completed by Dr. Apurva Dalal, an orthopedic surgeon. Dr. Dalal examined Mr. Evans on May 16, 2008, at the request of his attorney. Dr. Dalal assigned a ten percent permanent impairment to each arm as a result of Mr. Evans' carpal tunnel syndrome.

Dana introduced the Medical Impairment Rating ("MIR") report of Dr. Heather Gladwell, who examined Mr. Evans on August 12, 2008. In her report, Dr. Gladwell concluded that Mr. Evans sustained a five percent permanent impairment to each hand. The parties stipulated Dr. Gladwell's five percent impairment rating was appropriate but that she incorrectly assigned the injury to the hand instead of the arm. The parties disagreed, however, about the effect of these stipulations.

The trial court took the case under advisement and issued written findings of fact and conclusions of law. The court adopted Dr. Dalal's impairment rating of ten percent to each arm in light of the parties' stipulation that Dr. Gladwell had incorrectly conducted her evaluation. The trial court also found that Mr. Evans' award was not limited to one and one-half times the impairment rating and awarded twenty-five percent permanent partial disability to both arms. Judgment was entered in accordance with those findings. Dana appealed, arguing that the trial court erred by finding that Dr. Gladwell's impairment had been rebutted by clear and convincing evidence and also by finding that Mr. Evans' award was not limited to one and one-half times his anatomical impairment due to his voluntary resignation. This case was referred to the Special Workers' Compensation Appeal Panel for a hearing and a report of findings of fact and conclusions of law pursuant to Tennessee Supreme Court Rule 51.

Standard of Review

Courts reviewing an award of workers' compensation benefits must conduct an in-depth examination of the trial court's factual findings and conclusions. Wilhelm v. Krogers, 235 S.W.3d 122, 126 (Tenn. 2007). When conducting this examination, Tenn. Code Ann. § 50-6-225(e)(2) requires the reviewing court to "[r]eview . . . the trial court's findings of fact . . . de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise." The reviewing court must also give considerable deference to the trial court's findings

regarding the credibility of the live witnesses and to the trial court's assessment of the weight that should be given to their testimony. Tryon v. Saturn Corp., 254 S.W.3d. 321, 327, (Tenn. 2008); Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 167 (Tenn. 2002). However, the reviewing courts need not give similar deference to a trial court's findings based upon documentary evidence such as depositions, Orrick v. Bestway Trucking, Inc., 184 S.W.3d 211, 216 (Tenn. 2006); Bohanan v. City of Knoxville, 136 S.W.3d 621, 624 (Tenn. 2004), or to a trial court's conclusions of law, Seiber v. Reeves Logging, 284 S.W.3d 294, 298 (Tenn. 2009).

Analysis

Impairment Rating

In Mansell v. Bridgestone Firestone North American Tire, LLC, 417 S.W.3d 393 (Tenn. 2013), our Supreme Court stated the following concerning the purpose of the MIR program:

> The MIR program was created in 2005 to establish a resource to resolve disputes regarding the degree of permanent medical impairment ratings for injuries or occupational diseases to which the Workers' Compensation Law is applicable. Tennessee Code Annotated section 50-6-204(d)(5) was designed to permit either the employee or the employer to request the appointment of an independent medical examiner from the MIR registry when a dispute as to the degree of medical impairment exists. By the terms of the legislation, the parties may mutually agree upon the selection of an MIR physician from the registry or may engage in an established process of elimination to reach an agreement as to the selected physician.

Id. at 400 (citations, internal quotation marks, and alterations omitted).

After setting out the method for selection of an evaluating physician, section 50-6-204(d)(5) provides: "[t]he written opinion as to the permanent impairment rating given by the independent medical examiner pursuant to this subdivision (d)(5) shall be presumed to be the accurate impairment rating; provided, however, that this presumption may be rebutted by clear and convincing evidence to the contrary." Tenn. Code Ann. § 50-6-204(d)(5) (2008)

As another panel noted, "the MIR evaluation is presumed the accurate rating-absent clear and convincing evidence to the contrary. In other words, if no evidence raises a 'serious or substantial doubt' about the evaluation's correctness, the MIR evaluation is the

accurate impairment rating." Beeler v. Lennox Hearth Prods., Inc., No. W2007-02441-SC-WCM-WC, 2009 WL 396121, at *4 (Tenn. Workers' Comp. Panel Feb. 18, 2009). Similarly, in Tuten v. Johnson Controls, Inc., another panel stated that "[a] straightforward interpretation of this standard favors, or even requires, the presentation of affirmative evidence that an MIR physician had used an incorrect method or an inappropriate interpretation of the AMA Guides to overcome the statutory presumption." Tuten v. Johnson Controls, Inc., No. W2009-01426-SC-WCM-WC, 2010 WL 3363609 at *4 (Tenn. Workers Comp. Panel Aug. 25, 2010).

The trial court found that the parties' stipulation represented clear and convincing evidence that Dr. Gladwell's impairment rating was inaccurate and should have been applied to the arm, not the hand. The full stipulation, as announced to the trial court prior to trial was: "And Dr. Heather Gladwell evaluated Mr. Evans pursuant to T.C.A. Section 50-6-246, which is the medical impairment rating evaluation, and came in with a 5 percent impairment to each hand; however, the parties have stipulated and agreed that the correct rating would be 5 percent to each arm." Although this stipulation does not address Dr. Gladwell's method or her interpretation of the AMA Guides, prior panel decisions have held that permanent disability benefits for carpal tunnel syndrome should be apportioned to the arm, not the hand. See Estes v. Bridgestone Ams. Holdings, Inc., No. M2006-00834-WC-R3-CV, 2007 WL 906722 (Tenn. Workers Comp. Panel Mar. 23, 2007); Reece v. J.T. Walker Indus. Inc., No. E2006-01555-WC-R3-WC, 2007 WL 4322003 (Tenn. Workers Comp. Panel Dec. 11, 2007). The Fifth Edition of the AMA Guides, the edition applicable to this injury, states that a 5% impairment to the hand is equivalent to a 5% impairment of the upper extremity. Linda Cocchiarella et al., Guides to the Evaluation of Permanent Impairment 439 (Am. Med. Ass'n et al. eds., 5th ed. 2000). Both parties have consistently represented that Dr. Gladwell's rating should be considered as one to the arm. Aside from this stipulation, Mr. Evans presented no proof to overcome the statutory presumption of accuracy and correctness of Dr. Gladwell's rating. We therefore conclude that the record does not support the trial court's finding that the stipulation is clear and convincing evidence that Dr. Gladwell's MIR evaluation is inaccurate. We reverse the trial court's finding that Mr. Evans has a 10% anatomical impairment to each arm and conclude that the correct anatomical rating is 5% to each arm in compliance with the MIR report.

Statutory Cap

Dana asserts that the trial court erred by awarding benefits in excess of one and one-half times his medical impairment because Mr. Evans voluntarily retired. Tennessee Code Annotated section 50-6-241(d)(1)(A) provides in pertinent part:

> For injuries occurring on or after July 1, 2004, in cases in which an injured employee is eligible to receive any permanent partial disability benefits either for body as a whole or for scheduled member injuries, ... and the pre-injury employer returns the employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of injury, the maximum permanent partial disability benefits that the employee may receive is one and one half (11/2) times the medical impairment rating determined pursuant to the provisions of § 50-6-204(d)(3). In making the determinations, the court shall consider all pertinent factors, including lay and expert testimony, the employee's age, education, skills and training, local job opportunities and capacity to work at types of employment available in claimant's disabled condition.

Tenn. Code Ann. § 50-6-241(d)(1)(A) (2008). Thus, when an employee "has the opportunity to return to his place of employment at the same or greater wage," the cap on permanent partial disability benefits is one and one-half times the medical impairment rating. Williamson v. Baptist Hosp. of Cocke County, 361 S.W.3d 483, 488 (Tenn. 2012). In contrast, when an injured employee is not returned to work by the employer at a wage equal to or greater than his or her pre-injury wage, the cap is six times the medical impairment rating. Tenn. Code Ann. § 50-6-241(d)(2)(A)(2008); Williamson, 361 S.W.3d at 488. "When the employee has made a 'meaningful return to work,' the lower cap of one and one-half times the impairment rating applies." Williamson, 361 S.W.3d at 488.

The concept of a "meaningful return to work" guides the determination of whether the lower statutory cap applies in a given case. Id. As the Supreme Court has explained:

> The circumstances to which the concept of "meaningful return to work" must be applied are remarkably varied and complex. When determining whether a particular employee had a meaningful return to work, the courts must assess the reasonableness of the employer in attempting to return the employee to work and the reasonableness of the employee in failing to either return to or remain at work. The determination of the reasonableness of the actions of the employer and the employee depends on the facts of each case.
>
> As a result of extensive litigation over the concept of "meaningful return to work" in the context of claims for permanent partial disability benefits, we have the benefit of many decisions in which this Court and the Appeals Panel have addressed whether a particular employee has had a meaningful return to work. These decisions provide that an employee has not had a meaningful return to work if he or she returns to work but later resigns or retires for

> reasons that are reasonably related to his or her workplace injury. Accordingly, the multiplier in Tenn. Code Ann. § 50-6-241(b) is applicable. If, however, the employee later retires or resigns for personal reasons or other reasons that are not reasonably related to his or her workplace injury, the employee has had a meaningful return to work which triggers the two and one-half multiplier allowed by Tenn. Code Ann. § 50-6-241(a)(1).

Tryon, 254 S.W.3d at 328 (citations omitted); see also Cha Yang v. Nissan N. Am., Inc., No. M2012-01196-SC-WCM-WC, slip op. at 7 (Tenn. Aug. 11, 2014) ("If an employee voluntarily resigns or retires from a pre-injury employer based upon a reasonable and substantiated belief that he or she will be unable to perform the job required upon return to the workplace, the employee has acted reasonably for purposes of the statutory caps.").

At the time that Mr. Evans agreed to a lump sum retirement benefit, the record demonstrates that he had not been provided with medical care for his work-related injury after months of inquiry. The trial court found that Mr. Evans was credible and that, because of his hand pain, he was unsure whether he could continue his work activities. He was also uncertain that his employer would provide medical care for his injuries or if the care he received would allow him to continue working. With the end-of-the-year deadline looming, Mr. Evans was also faced with the decision of whether to retire and receive a lump-sum payment or remain and receive monthly benefits only in the distant future, if at all. The trial court found that Mr. Evans' retirement in August was the result of his injury and the uncertainty concerning his ability to return to work. Having made these findings, the trial court concluded that Mr. Evans' retirement was reasonable in light of circumstances and applied the higher benefit cap provided by Tennessee Code Annotated section 50-6-241(d)(2)(A).

After a thorough review of the record, we are unable to conclude that the evidence preponderates against the trial court's conclusion that Mr. Evans' retirement was reasonably related to his work-place injuries. We therefore affirm the trial court's judgment awarding permanent partial disability benefits in excess of the cap provided by Tennessee Code Annotated section 50-6-241(d)(2)(A).

Vocational Disability

We next address the trial court's award of 25% vocational disability. As noted above, Mr. Evans failed to establish by clear and convincing evidence that Dr. Gladwell's MIR rating was inaccurate. The employee's anatomical impairment, however, is but "one of the relevant factors" that a court should consider when determining an employee's vocational disability. Corcoran v. Foster Auto GMC, Inc., 746 S.W.2d 452, 458 (Tenn. 1988). Indeed,

"vocational disability is not restricted to the precise estimate of anatomical disability made by a medical witness." Id. Instead, "the extent of vocational disability is a question of fact to be determined from all of the evidence, including lay and expert testimony." Worthington v. Modine Mfg. Co., 798 S.W.2d 232, 234 (Tenn.1990). Furthermore, "[t]he assessment of permanent . . . disability is based []on numerous factors, including the employee's skills and training, education, age, local job opportunities, and his capacity to work at the kinds of employment available in his disabled condition." Robertson v. Loretto Casket Co., 722 S.W.2d 380, 384 (Tenn.1986).

Here, the trial court found that Mr. Evans was 51 years old at the time of his injury and was earning $25.50 per hour. At the time of trial, Mr. Evans was 56 years old and was earning $12.50 per hour in the farming industry. The trial court found that Mr. Evans' had a high school education, had worked in labor-intensive positions, and continued to have symptoms in his hands following his surgery. The trial court also considered Mr. Evans' testimony that he could not return to his former position at Dana due to his continued hand pain. In conclusion, the trial court stated, "Based on all of the factors, the Court finds that Mr. Evans sustained a 25% vocational disability as a result of his employment with Dana Corporation." (Emphasis added.)

After our own, independent review of the record, we conclude that the evidence supports the trial court's finding that Mr. Evans is 25% vocationally disabled. Accordingly, although we have reversed and modified the trial court's findings as to the appropriate anatomical impairment rating of Mr. Evans injuries, we affirm the trial court's judgment concerning vocational disability.

Conclusion

For the foregoing reasons, we reverse in part and affirm in part the trial court's judgment. Costs of this appeal are taxed in equal shares to Dana Automotive Systems Group, LLC, and Larry Evans, and their sureties, for all of which execution may issue if necessary.

J. S. "STEVE" DANIEL, SPECIAL JUDGE

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Circuit Court for Gibson County
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No. W2013-01960-SC-R3-WC - Filed October 2, 2014

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 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 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 on appeal are taxed equally to the Appellee, Larry Evans, and to the Appellant, Dana Automotive Systems Goup, LLC, and its surety, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM