IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
November 20, 2017 Session

JAMES HARRISON v. GENERAL MOTORS, LLC, ET AL.

Appeal from the Court of Workers' Compensation Claims
No. 2016-05-0277 Dale A. Tipps, Judge

No. M2016-02522-SC-R3-WC – Mailed January 11, 2018
Filed February 20, 2018

James Harrison sustained a compensable injury to his right shoulder while employed by General Motors, LLC ("GM"). He filed a workers' compensation claim contending he was permanently and totally disabled as a result of the injury. The Court of Workers' Compensation Claims found he was not permanently and totally disabled and awarded permanent partial disability benefits in accordance with the statutory scheme. Tenn. Code Ann. § 50-6-207(3)(A) & (B) (2014 & 2017 Supp.) Mr. Harrison appeals contending the evidence preponderates against the finding he is not totally disabled. The appeal has been referred to the Special Workers' Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law pursuant to Tennessee Supreme Court Rule 51. We affirm.

Tenn. Code Ann. § 50-6-225(a) (2014 & 2017 Supp.) Appeal as of Right; Judgment of the Court of Workers' Compensation Claims Affirmed

DON R. ASH, SR.J., delivered the opinion of the court, in which CORNELIA A. CLARK, J. and ROBERT E. LEE DAVIES, SR.J., joined.

J. Anthony Arena, Brentwood, Tennessee, for the appellant, James Harrison.

Jason A. Lee and Seth B. Wilson, Nashville, Tennessee, for the appellee, General Motors, LLC.

Herbert H. Slatery, III, Attorney General and Reporter, Alexander S. Rieger, Assistant Attorney General (on appeal), and Ronald McNutt, Assistant General Counsel (at trial), for the appellees, Abigail Hudgens, and Tennessee Department of Labor/Second Injury Fund.

OPINION

Factual and Procedural Background

After a full examination of the record, we conclude the trial court's summary of the facts is comprehensive and accurate. Harrison v. General Motors, Inc., No. 2016-05-0277, 1-8 (Tenn. Ct. Workers' Comp. Claims Nov. 18, 2016).[1] Therefore, we adopt it with only non-substantive changes[2]:

James Harrison, a fifty-eight-year-old resident of Maury County, earned his GED in 1995—the year he began working for Saturn Corporation. He continued to work for Saturn and GM through their successive corporate entities through the time of trial.[3] Mr. Harrison suffered a number of work injuries, including a left shoulder injury in 2008 settled for 15% vocational disability to the body as a whole and a 2011 right wrist injury settled for 15% disability to the right upper extremity. The injury at issue occurred on October 24, 2014, when Mr. Harrison injured his right shoulder. GM accepted the injury as compensable and provided authorized medical treatment with Dr. Scott McCall.

Mr. Harrison testified he dropped out of school in the tenth grade to work on his family farm. He performed farm work for several years before moving on to other jobs including construction, operating heavy equipment, and working on a ship and towboat. Mr. Harrison believed he was in good physical condition when he began working at GM and had no problems with his right shoulder or wrist. During his time at GM, he worked several different production jobs; however, because of his current right shoulder and wrist problems, he believes he can no longer perform these jobs.

Dr. Alton Hunter treated Mr. Harrison for his 2011 right wrist injury. He performed surgery and returned Mr. Harrison to work with light duty restrictions: no repetitive gripping and limited use of power tools. Mr. Harrison provided this information to GM, which assigned him to work duties within his restrictions. Mr. Harrison periodically followed up with Dr. Hunter who updated Mr. Harrison's

[1] The trial court order is available at http://trace.tennessee.edu/utk_workerscomp/619/. The University of Tennessee database of Tennessee Court of Workers' Compensation Claims and Workers' Compensation Appeals Board Decisions is available at http://trace.tennessee.edu/utk_workerscomp/.

[2] For ease of reading, alterations from the original are not specifically noted.

[3] Mr. Harrison testified he remains employed by GM, but has not worked since his October 2014 injury.

restrictions. If Mr. Harrison's job assignment did not comply with the updated restrictions, GM reassigned him to an appropriate job.

When Dr. Hunter last saw Mr. Harrison for his wrist in October 2012, Mr. Harrison was working at a "caregate," or inspection job, within his restrictions. At that time, Dr. Hunter placed Mr. Harrison at maximum medical improvement (MMI) for his wrist injury and recommended a follow-up appointment in six months. Mr. Harrison continued to perform the caregate job for another six to eight months before GM transferred him to a "moist sanding" job in the paint department. He did not return to Dr. Hunter as recommended because he was able to perform his job and simply forgot about the appointment.

On October 24, 2014, while performing the moist sanding job, Mr. Harrison sustained the right shoulder injury at issue. Mr. Harrison began treatment with Dr. McCall, who performed surgery. During the course of his follow-up treatment, Dr. McCall ordered a functional capacity evaluation (FCE). After discussing the FCE results with Dr. McCall, Mr. Harrison took his new restrictions back to GM, which had no jobs he could perform within those restrictions. Mr. Harrison has not worked for any employer or earned any income since his October 2014 shoulder injury.

At trial, Mr. Harrison described experiencing current, ongoing pain in both his right wrist and right shoulder and he demonstrated to the trial court a significantly restricted range of motion in both. He testified he takes OxyContin two to three times per day for pain management. When questioned regarding his ability to work, Mr. Harrison stated his ability to work is dependent upon the individual job requirements; however, he did not think he could be retrained.

On cross-examination, Mr. Harrison testified his right wrist restrictions prevent him from performing over 90% of the jobs at GM. He also acknowledged having a pacemaker which prevents him from working around magnetic fields—a restriction of which GM was aware. He confirmed he is able to perform activities of daily living such as driving, bathing, cooking and dressing himself. At trial, he was recovering from a recent hip replacement surgery unrelated to his employment.

Mr. Harrison testified he has not applied for any jobs or other work because he remains employed by, and receives disability benefits from, GM. He has not sought any government assistance regarding training for other kinds of work. He agreed he could perform jobs without significant lifting requirements.

The parties introduced a number of exhibits including chart notes from Dr. Hunter. These notes show Dr. Hunter treated Mr. Harrison for osteoarthritis of the right wrist and performed a proximal row carpectomy in February 2012. The July 20, 2012 note

indicates Dr. Hunter assigned Mr. Harrison to light duty for three months with "no air guns, no repetitive gripping." Then, on October 22, 2012, he assigned a 12% right arm impairment and stated, Mr. Harrison "will return in six months to assess the need for any permanent restrictions."

GM Medical Records Reports related to Mr. Harrison's 2012 right wrist injury show GM's clinic physician, Dr. David Daniels, reviewed Dr. Hunter's treatment records and made his own notations regarding Mr. Harrison's medical status. The first note documented Mr. Harrison's return to work on June 11, 2012, with restrictions of limited forceful gripping/grasping with the right hand and indicated these restrictions were to remain in place for three months. The September 13, 2012 report renewed those restrictions for an additional two months. On November 15, 2012, the same restrictions were renewed for only six months, but Dr. Daniels indicated they were "probably permanent." Dr. Daniels then indicated in May 15, 2013, the same restrictions "should remain in place through 10/29/2013." The final record shows Mr. Harrison failed to attend his October 30, 2013 appointment with Dr. Hunter.

Records from Dr. McCall show he treated Mr. Harrison for a labral tear, synovitis, and bursitis of the right shoulder, resulting in a 3% permanent impairment. An October 19, 2015 note states: "I reviewed the FCE which suggested sedentary work. From his shoulder issue, he is at MMI and will be released based on the FCE findings."

The FCE was performed on September 28, 2015, at Star Physical Therapy by Josh Ezell, ATC/L[4] and Alicia Benham, DPT.[5] The FCE report shows Mr. Harrison made acceptable/good effort and the evaluators considered the evaluation data reliable. They concluded:

> The patient demonstrated the ability to function at the SEDENTARY physical demand level (based on lifting) as defined by the U. S. Department of Labor's "Dictionary of Occupational Titles." The patient demonstrated the following maximum, OCCASIONAL lifts with use of the right shoulder/upper extremity:
>
> *Floor to waist — 10 lbs.
> *Waist to shoulder — 6 lbs.
> *Shoulder to overhead — 2.5 lbs.
> *Carry —10 lbs.

[4] Certified/licensed athletic trainer.

[5] Doctor of physical therapy.

*Unilateral Carry RUE — 5 lbs.
*Lifting out from Body — 2.6 lbs.
*Unilateral Lift, Carry & Maneuver LUE — 35 lbs.
*Push/pull force — 36 & 29 lbs. respectively.

Dr. McCall completed a C-32 Standard Form medical report on August 16, 2016, in which he restated his 3% impairment rating and related the impairment to the October 2014 right shoulder injury. In section G, the Functional Capacity Assessment, Dr. McCall imposed maximum and frequent lifting restrictions of ten pounds, lift and carry restrictions of ten pounds less than three hours, and push/pull limitations of "36 & 29 lbs. per FCE." He checked the "limited" box for reaching, noting this was for the right arm only, but indicated Mr. Harrison was "unlimited" in the other physical factors, such as handing and fingering. He also wrote on this part of the form, "more detail in FCE."

In his deposition, Dr. McCall testified he surgically repaired Mr. Harrison's biceps tear and cleaned up some inflammation. He opined Mr. Harrison's smoking and hepatitis C complicated and prolonged his recovery, but declared Mr. Harrison at MMI on October 19, 2015, with a 3% whole person disability rating. Regarding Mr. Harrison's right upper restrictions, Dr. McCall stated:

> Based off the Functional Capacity Evaluation, to the right upper extremity we had . . . waist to floor lifting of 10 pounds; waist to shoulder of 5 pounds; shoulder to overhead of two-and-a-half pounds; carry, 10 pounds; unilateral carry in the right upper extremity of 5 pounds; lifting out from body of two-and-a-half pounds; unilateral carry — lift, carry and maneuver, left upper extremity, 35 pounds; push/pull, 36 and 29 pounds respectively.

Dr. McCall confirmed he gave no other restrictions—specifically, he gave no left upper extremity restrictions. He also stated he was not assigning a restriction limiting Mr. Harrison to the sedentary job classification.

Dr. McCall opined Mr. Harrison could work and it would be beneficial for him to do so. He suggested Mr. Harrison could do jobs "where his workload is at or below shoulder level" or "any type of work where [he is] not having to do heavy lifting."

On cross-examination, Dr. McCall explained he did not restrict Mr. Harrison to sedentary work, but the shoulder restrictions he assigned Mr. Harrison put him in the category of sedentary work according to the U.S. Department of Labor. He also agreed Mr. Harrison would experience limitations with activities such as "continuous and sustained reaching overhead" and weakness in his grip strength, although the doctor had not given a formal restriction for these activities.

Although Dr. Hunter did not testify live or by deposition, Mr. Harrison submitted a Physician's Form completed by Dr. Hunter in connection with Mr. Harrison's Application for GM Disability Benefits. In response to the question, "Is the patient able to engage in any occupation or employment for wage or profit?" Dr. Hunter answered "No," and attributed the causes of Mr. Harrison's disability as "R[ight] hand/sh[ou]ld[er] injury."

Mr. Harrison's vocational expert, Dana Stoller, testified she performed a vocational assessment of Mr. Harrison on February 18, 2016. She evaluated Mr. Harrison's work history and concluded he did not have any transferable job skills for less physically demanding jobs. His relevant work history, which Ms. Stoller defined as the last fifteen years, included no skilled work experience. She characterized his most recent work as a wet sander as "semi-skilled."

In determining Mr. Harrison's permanent restrictions and limitations, Ms. Stoller relied on her interview and testing with Mr. Harrison, Mr. Harrison's medical records, Dr. McCall's deposition transcript, Dr. Hunter's restrictions of no repetitive gripping and no vibratory tools, and the entirety of the FCE.

Ms. Stoller testified the FCE defines Mr. Harrison's physical demand category as "sedentary" based on lifting. However, she disagreed with this conclusion because it considered only one extremity rather than the whole body. She testified Mr. Harrison's maximum physical demand category should be "less than sedentary" because of other limitations in material handling reflected in the FCE. She opined there are no job opportunities for Mr. Harrison in the "less than sedentary" category because these jobs require the use of more than one arm. Based upon her conclusion Mr. Harrison would be limited to unskilled, sedentary work, Ms. Stoller testified he would normally qualify for 137 job titles. However, considering the limitations set out in the FCE, she could not conceive of any job Mr. Harrison could currently perform. She stated, applying only Dr. McCall's restrictions she likely could not place him in a job, explaining "there's more to consider than just restrictions. We've got age, education, skills, the pain, narcotic pain medication, individuals who have more tendency for absenteeism, off task due to pain complaints." She concluded by opining Mr. Harrison is 100% totally incapacitated from gainful employment.

On cross-examination, Ms. Stoller acknowledged she provided her opinion and issued her report before Dr. McCall was deposed. She agreed she based her opinion—placing Mr. Harrison in the less than sedentary work category—on the more-restrictive FCE rather than on Dr. McCall's testimony. She stated, utilizing Dr. McCall's restrictions, alone, would place Mr. Harrison in the sedentary category with a vocational loss of 98 or 99%. Ms. Stoller admitted she had no medical training qualifying her to

assess the appropriate restrictions for Mr. Harrison, but stated the physical therapist who performed the FCE was "trained and qualified to provide limitations and assessments."

GM's vocational expert, Patsy Bramlett, performed a vocational assessment of Mr. Harrison and reviewed his medical records and the deposition transcripts of Mr. Harrison, Dr. McCall, and Ms. Stoller. She testified medical restrictions allow a vocational specialist to "bridge the gap between the medical field and the vocational field" and determine which jobs a person is capable of performing given those restrictions. She reviewed the restrictions adopted by Dr. McCall and opined Mr. Harrison would be able to perform some, but not all, of the jobs classified as "light." Based on this "limited light work" classification, she placed his vocational disability at 75%. Utilizing additional limitations on tasks requiring motor coordination, finger dexterity, and manual dexterity, she estimated his vocational disability at 85%. She also testified Mr. Harrison's most recent job could be categorized as "semi-skilled," and therefore, she opined he might have additional transferrable skills.

Ms. Bramlett disagreed with Ms. Stoller's "less than sedentary" classification because it was based on physical limitations beyond those placed by treating physician Dr. McCall and did not consider Mr. Harrison's unimpaired left arm. Ms. Bramlett opined Mr. Harrison is not permanently and totally disabled and she identified a number of available jobs in his area he could perform.[6] Additionally, she noted her analysis did not consider self-employment or part-time opportunities.

On cross-examination, Ms. Bramlett was questioned regarding the GM clinic note suggesting Dr. Hunter's restrictions were "probably permanent." She testified she did not consider any GM Clinic notes in forming her opinion, but admitted, were she to consider additional restrictions from Dr. Hunter, her vocational disability opinion might be different. She also acknowledged age and disability could negatively affect employment opportunities.

Ms. Bramlett was also questioned regarding the appropriateness of including Mr. Harrison's left arm functionality in her analysis. However, she stated her unilateral extremity impairment methodology is peer-reviewed and is the approach used by other vocational experts.

At the Compensation Hearing, Mr. Harrison argued he is entitled to permanent total disability (PTD) benefits for his shoulder injury arising primarily out of and in the course and scope of his employment. He relied on Ms. Stoller's opinion he has no

[6] Ms. Bramlett stated, even if the temporary gripping and power tool restrictions from Dr. Hunter were permanent, Mr. Harrison would retain vocational opportunities because of his left arm functionality.

vocational opportunities in his current physical state. He disagreed with Ms. Bramlett's opinion because she considered only Dr. McCall's right shoulder restrictions; he argued she should have also considered both Dr. Hunter's restrictions and the full FCE. Mr. Harrison contended it is unreasonable to assume a fifty-eight-year-old man with a GED could successfully retrain for jobs with requirements beyond his current abilities. Alternatively, he argued his current condition is the only relevant inquiry and the Court should not consider his ability to retrain.

GM denied Mr. Harrison is entitled to PTD benefits because, it contended, he did not successfully demonstrate he is unable to work at any job. GM relied on Ms. Bramlett's 75 to 85% total job loss opinion based on Dr. McCall's restrictions—the only medical restrictions in evidence. It argued, because Dr. McCall's restrictions involve the right arm, it is improper to consider the additional limitations (such as bending, squatting, or kneeling) contained in the FCE.

GM also contended Ms. Stoller's practice of "taking the whole person into account" allowed her to selectively apply restrictions from the FCE to place Mr. Harrison in a less than sedentary job category. GM argued she, in fact, failed to consider the whole person because she ignored Mr. Harrison's functional left arm. It suggested adopting Ms. Stoller's approach would allow anyone who loses an arm to be classified as totally disabled.

The Tennessee Department of Labor Second Injury Fund questioned the efficacy of the FCE, arguing when administered, Mr. Harrison had not fully recovered from his extended bout of hepatitis C. It argued Mr. Harrison's actual functional capabilities are substantially higher than his FCE results.

The trial court issued its Compensation Order on November 18, 2016. It found Mr. Harrison had failed to sustain his burden of demonstrating he is permanently and totally disabled. The court declined to accept Ms. Stoller's opinion because it was based on recommendations from the FCE not adopted by Dr. McCall. It specifically noted Dr. McCall's "explicit testimony that he was assigning no restrictions for anything other than the right shoulder injury and that he was not limiting Mr. Harrison to the sedentary job classification." The court assigned a 3% whole body impairment rating with an original award of $11,448.00. However, because Mr. Harrison was unable to return to work at his pre-injury wages and was more than forty years old when the compensation period ended, the trial court awarded an additional $7,097.76, for a total permanent partial disability benefit award of $18,545.76.

Mr. Harrison appeals contending the evidence preponderates against the trial court's finding he is not permanently and totally disabled. The appeal has been assigned to this Panel pursuant to Tennessee Supreme Court Rule 51.

Analysis

On Appeal, Mr. Harrison asserts the evidence preponderates against the trial court's finding he is not permanently and totally disabled from his October 24, 2014 work injury. We disagree.

The standard of review of issues of fact in a workers' compensation case is de novo upon the record of the trial court accompanied by a presumption of correctness of the findings, unless the preponderance of evidence is otherwise. Tenn. Code Ann. § 50-6-225(a)(2). When credibility and weight to be given testimony are involved, considerable deference is given the trial court when the trial judge had the opportunity to observe the witness' demeanor and to hear in-court testimony. Madden v. Holland Group of Tenn., 277 S.W.3d 896, 900 (Tenn. 2009). When the issues involve expert medical testimony contained in the record by deposition, determination of the weight and credibility of the evidence necessarily must be drawn from the contents of the depositions, and the reviewing court may draw its own conclusions with regard to those issues. Foreman v. Automatic Sys., Inc., 272 S.W.3d 560, 571 (Tenn. 2008). A trial court's conclusions of law are reviewed de novo upon the record with no presumption of correctness. Seiber v. Reeves Logging, 284 S.W.3d 294, 298 (Tenn. 2009).

Tennessee Code Annotated Section 50-6-207(4)(B) states an employee is permanently and totally disabled if his injury "totally incapacitates the employee from working at an occupation that brings the employee an income." Our Supreme Court addressed permanent total disability in Hubble v. Dyer Nursing Home:

> The determination of permanent total disability is to be based on a variety of factors such that a complete picture of an individual's ability to return to gainful employment is presented to the Court. Such factors include the employee's skills, training, education, age, job opportunities in the immediate and surrounding communities, and the availability of work suited for an individual with that particular disability. Though this assessment is most often made and presented at trial by a vocational expert, "it is well settled that despite the existence or absence of expert testimony, an employee's own assessment of his or her overall physical condition, including the ability or inability to return to gainful employment, is 'competent testimony that should be considered.'"

188 S.W.3d 525, 535-36 (Tenn. 2006) (internal citations omitted).

The extent of an injured worker's vocational disability is a question of fact. Worthington v. Modine Mfg. Co., 798 S.W.2d 232, 234 (Tenn. 1990). We note Mr. Harrison testified regarding his perceived disability at length. While he stated he was

unable to work at any of the jobs he had previously held at GM, he did not consider himself unable to work, stating his ability to work was dependent upon the individual job requirements. Mr. Harrison had not sought other jobs because he considered himself employed by GM.

As set out in Hubble and other cases, the injured employee's testimony concerning his abilities and limitations is evidence to be considered by the trial court. See Orrick v. Bestway Trucking, Inc., 184 S.W.3d 211, 217 (Tenn. 2006) ("'[T]he claimant's own assessment of his physical condition and resulting disabilities is competent testimony and cannot be disregarded.'") (quoting Tom Still Transfer Co. v. Way, 482 S.W.2d 775, 777 (Tenn.1972)). Here, the trial court discussed and clearly considered Mr. Harrison's testimony. It found "Mr. Harrison's testimony demonstrates a willingness to try to work, but it is not determinative on the question of whether he actually has any potential vocational opportunities."

Likewise, the trial court found the physicians' opinions non-determinative. Because the parties had no opportunity to depose Dr. Hunter, the court found Dr. Hunter's one-word response on a form—answering "No" when asked whether "the patient [is] able to engage in any occupation or employment for wage or profit?"—"lacks any foundation or context." It also found "Dr. McCall's general statement [] Mr. Harrison can work is only marginally more helpful, as he was unable to demonstrate any knowledge of the physical requirements of any specific jobs or the availability of those jobs."

Ultimately, because there was no deposition or testimony from Dr. Hunter and Dr. McCall gave only limited testimony on the issue of Mr. Harrison's ability to work, the court relied upon the opinions of the two vocational consultants as its "primary guidance," noting:

> The divergence in their opinions results primarily from the restrictions upon which they based their evaluation. Ms. Bramlett limited her analysis to the permanent restrictions imposed by Dr. McCall. Ms. Stoller included all the restrictions in the FCE, as well as Dr. Hunter's prior restrictions of no repetitive gripping and no vibratory tools.

Regarding the FCE, the trial court correctly observed the opinions of physical therapists are not accorded the same weight as those of medical doctors, citing Seal v. Charles Blalock & Sons, Inc., 90 S.W.3d 609, 613 (Tenn. 2002) and Bolton v. CNA Ins. Co., 821 S.W.2d 932, 938 (Tenn. 1991).

In light of Ms. Stoller's reliance on the opinions of Dr. Hunter and the FCE, as well as her decision to exclude Mr. Harrison's residual left arm capabilities from her

analysis, the trial court afforded greater weight to the opinion of Ms. Bramlett. It concluded Mr. Harrison had failed to carry his burden of proof to demonstrate he is incapable of working at an income-producing job. As outlined above, the trial court then awarded permanent partial disability benefits of $18,545.76 based on a 3% whole body impairment rating, plus additional benefits due to Mr. Harrison's age and his inability to return to work at his pre-injury wage. Tenn. Code Ann. § 50-6-207(3)(A) & (B).

In concluding that Mr. Harrison was entitled only to a permanent partial disability award, the trial court recognized "that Mr. Harrison has suffered a significant vocational disability." However, the trial court went to voice its concern that "there is no middle ground between a permanent partial disability award of 3% and an award of [permanent total disability]." While there would have been *some* gap under the pre-2014 statute for calculating permanent partial disability awards, it would not have been nearly so extreme as in this case. Compare Tenn. Code Ann. § 50-6-207(3) (current section for calculating permanent partial disability awards), with Tenn. Code Ann. § 50-6-241(d)(2)(A) (2014) (section for calculating permanent partial disability awards for pre-2014 injuries). But whatever our concerns may be about the absence of a "middle ground" between awards for permanent total and partial disability awards, it is not the role of this Court to substitute its own policy judgments for those of the legislature. Frazier v. State, 495 S.W.3d 246, 249 (Tenn. 2016).

In summary, two qualified experts expressed conflicting opinions in this case on the issue of total disability. "When expert medical testimony differs, it is within the discretion of the trial court to accept the opinion of one expert over another." Fritts v. Safety Nat'l Cas. Corp., 163 S.W.3d 673, 679 (Tenn. 2005) (citing Hinson v. Wal-Mart Stores, Inc., 654 S.W.2d 675, 676-77 (Tenn. 1983)). Here, the trial court assigned greater weight to Ms. Bramlett's opinion—based solely on the testimony of the treating medical physician—than to Ms. Stoller's opinion—based on additional, less-reliable sources, i.e., a note from a non-testifying physician and a report from a non-physician. We conclude the trial court did not abuse its discretion in accepting the opinion of Ms. Bramlett. Considering Ms. Bramlett's opinion, we further conclude the evidence does not preponderate against the trial court's finding Mr. Harrison is not permanently and totally disabled.

Conclusion

The judgment of the trial court is affirmed. Costs are taxed to James Harrison and his surety, for which execution may issue if necessary.

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DON R. ASH, SENIOR JUDGE