

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

FILED

January 4, 1999

Cecil W. Crowson
Appellate Court Clerk

WAYNE ELDRED HILL,)
)
Plaintiff/Appellee,)
)
v.)
)
CNA INSURANCE COMPANY,)
)
Defendant/Appellee,)
)
and)
)
LARRY BRINTON, JR., DIRECTOR)
OF THE DIVISION OF WORKERS')
COMPENSATION, TENNESSEE)
DEPARTMENT OF LABOR,)
SECOND INJURY FUND,)
)
Defendant/Appellant.)

NO. 03S01-9608-CH-00086

CONCURRING OPINION

I concur in the majority's holding that this case falls within the purview of Tenn. Code Ann. § 50-6-208(a). I, however, continue to adhere to my dissent in Bomely v. Mid-America Corp., 970 S.W.2d 929 (Tenn. 1998), in which I concluded that Tenn. Code Ann. § 50-6-208(a) is applicable when there is a subsequent injury and the employee is rendered permanently and totally disabled. Subsection (b), however, should apply only when the employee is still able to earn a wage or be gainfully employed but has received compensable vocational disabilities that exceed 100 percent or 400 weeks of compensation.

JANICE M. HOLDER, JUSTICE