

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL

**LUMBERMEN'S MUTUAL UNDERWRITING ALLIANCE v. RAMON
SANCHEZ**

**Circuit Court for Davidson County
No. 97C-2128**

No. M1999-00453-WC-R3-CV - Decided May 15, 2000

JUDGMENT

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

IT IS SO ORDERED.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

**LUMBERMEN'S MUTUAL UNDERWRITING ALLIANCE, v. RAMON
SANCHEZ**

**Direct Appeal from the Circuit Court for Davidson County
No. 97C-2128, Hon. Hamilton V. Gayden, Jr., Judge**

**No. M1999-00453-WC-R3-CV - Mailed April 12, 2000
Filed May 15, 2000**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with Tenn. Code Ann. §50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. In this case, the employer contends (1) the trial court erred in awarding, as medical benefits, the fees of an unapproved chiropractor and (2) the award of temporary total disability benefits is excessive. The employee insists the trial court erred in denying him any permanent partial disability benefits. As discussed herein, the panel has concluded the award should be modified by disallowing the unapproved medical benefits, by reducing the award of temporary total disability benefits from fifty-four weeks to two weeks and by awarding permanent partial disability benefits based on fifteen percent to the body as a whole.

Tenn. Code Ann. § 50-6-225(e)(3) Appeal as of Right; Judgment of the Circuit Court Modified

LOSER, SP. J., delivered the opinion of the court, in which DROWOTA, J., and CANTRELL, SP.J. joined.

Richard C. Mangelsdorf, Jr., Leitner, Williams, Dooley & Napolitan, Nashville, Tennessee, for the appellant, Lumbermen's Mutual Underwriting Alliance, Appellant

Martin S. Sir, Nashville, Tennessee, for the appellee, Ramon Sanchez

MEMORANDUM OPINION

The employee or claimant, Sanchez, is forty-five years old and has a seventh or eighth grade education. He moved to the United States from Puerto Rico in 1969. He has experience in construction labor. He began working for the employer, Concrete Form Erectors, in March of 1995.

On April 23, 1996, while working for the employer, the claimant and another worker, Robert Garst, were constructing forms for a wall when it began to sway because of high winds. As the wall was

falling, the two workers jumped off of it, landing on the ground. Testimony as to the height of the wall ranges from twelve to twenty-five feet. The claimant told his immediate supervisor that he felt okay and did not need medical care at the time. He continued working for another four months, but did complain to his supervisor of neck and back pain. His pain worsened and he began to have headaches. He complained to his wife and others, but did not ask the employer for a referral to a doctor.

In October of 1996, the claimant received in the mail a coupon for a free chiropractic visit with Dr. W. H. Scheitel, which he used, without first consulting the employer. The employer's insurer refused to pay for treatment by Dr. Scheitel, when a claim was finally made, but provided other names, including Dr. Stanley Hopp, whom the claimant also visited, while continuing to receive treatment from Dr. Scheitel.

The claimant's job was terminated on March 28, 1997. Since then, he has received five weeks of unemployment compensation and has worked at other jobs, from which he received an income. However, he has continued to suffer disabling pain. Dr. Scheitel has assigned a permanent impairment rating of twenty-seven percent to the body as a whole. Dr. Hopp assigned no permanent impairment rating, but prescribed temporary restrictions, acknowledged that the claimant suffered from chronic pain because of his injury and recommended he consider changing jobs.

From the above summarized evidence, the trial judge found that the claimant was injured but that his pre-existing condition "outweighed the strain and sprain" resulting from the accident. He awarded medical benefits, including \$7,449.00 in charges from Dr. Scheitel, and temporary total disability benefits for fifty-four weeks, but no permanent disability benefits.

An injured worker must consult with the employer before choosing a treating physician or operating surgeon. State Auto Mut. Ins. Co. v. Cupples, 567 S.W.2d 164 (Tenn. 1976), and, unless he has a reasonable excuse for the failure to consult with the employer first, he may be responsible for his own medical expenses. Emerson Electric Co. v. Forrest, 536 S.W.2d 343 (Tenn. 1976). Mr. Sanchez did not consult his employer before choosing Dr. Scheitel as his treating physician. For that reason, the award of medical benefits is reduced by the amount of Dr. Scheitel's charges.

Compensable disabilities are divided into four separate classifications: (1) temporary total disability, (2) temporary partial disability, (3) permanent partial disability and (4) permanent total disability. Tenn. Code Ann. §50-6-207. Each class of disability is separate and distinct and separately compensated for by different methods. Compensation benefits are allowable for an injured employee, separately, for each class of disability which results from a single compensable injury. Redmond v. McMinn County, 209 Tenn. 463, 354 S.W.2d 435 (1962).

Temporary total disability refers to the injured employee's condition while disabled to work because of his injury and until he recovers as far as the nature of his injury permits. Id. Benefits for temporary total disability are payable until the injured employee is able to return to work or, if he does not return to work, until he attains the maximum recovery from his injury, at which time his entitlement to such benefits terminates. Simpson v. Satterfield, 564 S.W.2d 953 (Tenn. 1978). The

undisputed proof is that the claimant continued to work following his injury, although he was on light duty for some of the time. The employer concedes, however, that he is entitled to two weeks of temporary total disability benefits. For those reasons, the judgment is further modified by reducing the award of temporary total disability benefits from fifty-four to two weeks.

When an injured employee's partial disability is adjudged to be permanent, he is entitled to benefits based on a percentage of disability. Corcoran v. Foster Auto GMC, Inc., 746 S.W.2d 452 (Tenn. 1988). Such benefits are payable in addition to any temporary total disability benefits and whether or not there is a medical impairment rating. Hill v. Royal Insurance Company, 937 S.W.2d 873 (Tenn. 1996).

Dr. Scheitel's testimony that the claimant is permanently impaired is supported by the testimony of the claimant and other lay proof. Moreover, Dr. Hopp, although he did not assign any impairment rating, acknowledged that the claimant has chronic pain and needs to seek less strenuous work. The cause of the claimant's injury is not at issue in this appeal, but the preponderance of the evidence is that the accident at work caused a cervical sprain and aggravated his preexisting arthritis. Under all the circumstances, including the claimant's lack of education, training and experience in jobs other than construction labor, this panel is persuaded that he is entitled to some permanent disability benefits.

Once the cause and permanency of an injury have been established, the courts may consider many pertinent factors, including age, job skills, education training, duration of disability and job opportunities for the disabled, in addition to anatomical impairment, for the purpose of evaluating the extent of a claimant's industrial disability. Pittman v. Lasco Industries, Inc., 908 S.W.2d 932 (Tenn. 1995). From a consideration of those factors as they apply to the present case, the panel is persuaded that the judgment should be modified to include an award of permanent partial disability benefits based on fifteen percent to the body as a whole.

The judgment of the trial court is modified and the case is remanded to the trial court. Costs on appeal are taxed to the parties, one-half each.