

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

**JAMES DAVID RAMSEY, JR. v. CROCKETT-PHILLIPS
CONSTRUCTION, et al.**

**Criminal Court for Smith County
No. 4060**

No. M1999-01008-WC-R3-CV - Filed - August 14, 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 appellants, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
June 2000 Session

**JAMES DAVID RAMSEY, JR. v. CROCKETT-PHILLIPS
CONSTRUCTION, ET AL.**

**Direct Appeal from the Criminal Court for Smith County
No. 4060 J. O. Bond, Judge**

**No. M1999-01008-WC-R3-CV - Mailed - July 12, 2000
Filed - August 14, 2000**

The employer and its insurer have appealed, contending the trial court's award of permanent disability benefits based on the functional equivalent of one hundred percent to both legs is excessive.

**Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Criminal Court
Affirmed.**

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

Deanna B. Johnson, Nashville, Tennessee, for the appellants, Crockett-Phillips Construction, Inc., Bob Crockett, d/b/a Crockett Construction, Inc. and The Travelers.

Hugh Green, Lebanon, Tennessee, for the appellee, James David Ramsey, Jr.

MEMORANDUM OPINION

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. As discussed below, the panel has concluded the judgment should be affirmed.

The employee or claimant, Ramsey, age 60 at the time, was working for the appellant on or about August 12, 1996, when the PTO shaft on a piece of construction equipment broke and struck his right leg, injuring it so severely that the leg had to be amputated below the knee. Subsequently, because of the necessary overuse of his left leg, the claimant aggravated a pre-existing condition of his left ankle.

The left ankle injury occurred in 1986 and was treated by Dr. Stephen Neeley. From the time he was released by the doctor in 1986 until it began to swell following amputation of the right leg, the claimant never sought medical treatment for it and was never restricted or limited in his work because of it. He was asymptomatic until after the injury to the right leg.

The claimant's operating surgeon for the amputation was Dr. Horace Eugene Watson, who also undertook to treat the left leg for symptoms that followed the amputation. His employer and co-workers were not even aware of his pre-existing condition until after the 1996 accident.

Dr. Watson, using appropriate guidelines, opined at the trial that the claimant would retain a permanent medical impairment of seventy percent to the right leg. His testimony with respect to the left leg, fairly summarized, was that the necessarily increased demands on the left leg for "weeks and even a few months," because of the amputation of the right leg, not only increased pain, but aggravated and advanced the severity of the pre-existing condition of the left leg. Dr. Watson's estimate of the claimant's permanent impairment to the left leg, also using appropriate guidelines, was seventy-five percent. We find in the record no countervailing evidence.

From the above summarized evidence, the trial judge awarded permanent partial disability benefits based on the functional equivalent of one hundred percent to both legs. The extent of an injured worker's vocational disability is a question of fact. Story v. Legion Ins. Co., 3 S.W.3d 450 (Tenn. 1999). Review of a finding of fact by the trial court is de novo upon the record of the trial court, accompanied by a presumption of correctness of the finding, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). This standard requires the panel to examine in depth a trial court's factual findings and conclusions. The reviewing tribunal is not bound by a trial court's factual findings but instead conducts an independent examination to determine where the preponderance of the evidence lies. Galloway v. Memphis Drum Serv., 822 S.W.2d 584 (Tenn. 1991).

The appellant contends it is not liable for any part of the disability resulting from the claimant's left leg injury because it resulted in part from a pre-existing condition. The panel respectfully rejects that argument and the further argument that the award should be reduced because of the pre-existing condition. An injury is compensable, even though the employee may have been suffering from a serious pre-existing condition, if a work connected accident can be fairly said to be a contributing cause of such injury. An employer takes an employee as he is and assumes the risk of having a weakened condition aggravated by an injury which might not affect a normal person. Fink v. Caudle, 856 S.W.2d 952 (Tenn. 1993).

Once the causation and permanency of an injury have been established by expert testimony, the trial judge may consider many pertinent factors, including age, job skills, education, training, duration of disability and job opportunities for the disabled, in addition to medical impairment, for the purpose of determining the extent of an injured workers' vocational disability. McCaleb v. Saturn Corp., 910 S.W.2d 412 (Tenn. 1995). In this case, the employee is over sixty years old with an eighth grade education and experience in farming and construction work. We cannot say the evidence preponderates against the findings of the trial judge.

Accordingly, the trial court's award of benefits based on one hundred percent permanent disability to both legs is affirmed. Costs on appeal are taxed to the appellants.