IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS COMPENSATION APPEALS PANEL

AT KNOXVILLE
(April 26, 2000 Session)

HILDA LIGHT v. FRONTIER HEALTH, INC., d/b/a WOODRIDGE MENTAL HEALTH HOSPITAL.

Direct Appeal from the Chancery Court for Washington County
No. 31684 G. Richard Johnson, Chancellor

No. E1999-00256-WC-R3-CV - Mailed: August 16, 2000

FILED: DECEMBER 5, 2000

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The appellant, Frontier Health, Inc., d/b/a Woodbridge Mental Health Hospital (hereafter "Frontier"), appeals an award to Hilda Light of sixty percent disability to the body as a whole. The issue is whether the trial court erred in basing an award to the body on an impairment rating for an upper extremity. We modify the award to thirty-six percent to the body as a whole.

Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Chancery Court is Modified and Remanded

PEOPLES, H.N., SP. J., delivered the opinion of the court, in which BARKER, J., and LAFFERTY, SR. J., joined.

Louis Andrew McElroy, Knoxville, Tennessee for the appellant, Frontier Health, Inc., d/b/a Woodbridge Mental Hospital

Howell H. Sherrod, Jr., Johnson City, Tennessee, for the Appellee, Hilda Light.

MEMORANDUM OPINION

Review of the findings of fact made by the trial court is *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. T.C.A. § 50-6-225(e)(2); *Stone v. City of McMinnville*, 896 S.W.2d 548, 550 (Tenn. 1995). The application of this standard requires this Court to weigh in more depth the factual findings and conclusions of the trial courts in workers' compensation cases. *Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988).

At trial, the parties stipulated that: (1) Hilda Light suffered an on-the-job injury on June 21, 1997; (2) she was born on July 8, 1935 and was accordingly 61 years old on the date of the accident; (3) she had wages which would entitle her to a workers' compensation rate of $141.16; (4) she reached maximum medical improvement on July 2, 1998; and (5) she had received disability payments totaling $14,931. Ms. Light injured her shoulder at work and eventually had surgery for a torn rotator cuff. It is undisputed that Ms. Light is entitled to an award for an injury to the body as a whole.

On appeal, Frontier does not seriously contest the application of the six (6) times multiplier to the impairment award, but maintains that the trial court erred in treating a medical impairment rating of ten percent to the upper extremity as equivalent to ten percent medical impairment to the body as a whole. The trial judge issued a bench opinion in this case. In discussing the medical testimony, he stated that Dr. Charles E. Barnes testified that Ms. Light had a medical impairment of five percent to the body, and that Dr. William Kennedy opined that she had a ten percent permanent partial physical impairment to the body as a whole as a result of

the right rotator cuff injury. The trial judge awarded benefits based on ten percent impairment to the body.

Dr. William Kennedy testified, by deposition, that Ms. Light had a medical impairment of ten percent to the right upper extremity based upon the AMA Guides. He testified it would not be appropriate to convert the rating to the body as a whole and stated his opinion that the injury stopped at the ball of the humerus and did not get to the shoulder socket. He testified that the shoulder was part of the upper extremity in medical terminology. He reluctantly testified that ten percent of the upper extremity converts to six percent to the whole person under the AMA Guides. The trial court mistakenly found he testified to a ten percent impairment to the body.

The case of *Advo, Inc. v. Phillips*, 989 S.W.2d 693 (Tenn. 1998), also involved a rotator cuff tear and a ten percent permanent medical impairment to the upper extremity which equates to a rating of six percent to the body as a whole. The trial court had awarded forty percent disability to the arm. On appeal, this Court found that the two and one-half times cap applied, because the employee returned to work at a wage equal to or greater than the pre-injury wage, and modified the award to fifteen percent to the body as a whole (or two and one-half times the medical impairment rating of six). It was noted that prior decisions held that an upper extremity is not a scheduled member, *Wells v. Sentry Insurance Company*, 834 S.W.2d 935 (Tenn. 1992), and that a shoulder is not a scheduled member, *Continental Insurance Companies v. Pruitt*, 541 S.W.2d 594 (Tenn. 1976). An injury to the shoulder or upper extremity is not an injury to a scheduled member, therefore it is to be apportioned to the body as a whole. *Smith v. Empire Pencil Company*, 781 S.W.2d 833 (Tenn. 1989) (citing *Chapman v. Clement Brothers, Inc.*, 222 Tenn. 223, 435 S.W.2d 117 (1968).

Counsel for Ms. Light asserts that we should apply the multiplier of six to the ten percent impairment to the upper extremity to arrive at the award of sixty percent disability to the body as a whole. T.C.A § 50-6-207 provides:

> "All other cases of permanent partial disability not above enumerated shall be apportioned to the body as a whole, which shall have a value of four hundred (400) weeks, and there shall be paid compensation to the injured employee for the proportionate loss of use of the body as a whole resulting from the injury."

To determine the proportionate loss of use of the body as a whole, we rely on medical evidence that the ten percent medical impairment to the right upper extremity equals six percent when apportioned to the body as a whole. Using the multiplier of six times the impairment rating renders a permanent partial disability of thirty-six percent to the body as a whole.

We find that the judgment of the trial court should be modified to award Hilda Light permanent partial disability of thirty-six percent to the body as a whole. The case is remanded to the trial court. The costs of the appeal are assessed to the Appellee.

IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE

HILDA LIGHT v. FRONTIER HEALTH, INC., d/b/a WOODBRIDGE MENTAL HEALTH HOSPITAL

Chancery Court for Washington County

No. 31684

Filed: December 5, 2000

No. E1999-00256-SC-WCM-CV

JUDGMENT ORDER

This case is before the Court upon motion for review filed by the appellant, Hilda Light, pursuant to Tenn. Code. Ann. § 50-6-225(e)(5)(B), the record before us, including the order of referral to the Special Workers' Compensation Appeal 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 motion for review is not well-taken and should be denied; 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 Appellee.

IT IS SO ORDERED.

PER CURIAM

Barker, J., not participating

MEMORANDUM

TO: Carolyn Williams, Deputy Clerk - Knoxville

FROM: Riley Anderson, Chief Justice

RE: Hilda Light v. Frontier Health, Inc., d/b/a Woodbridge Mental Health Hosp. (Washington Chancery), No. E1999-00256-SC-WCM-CV

DATE: December 4, 2000

WC MOTION FOR REVIEW: **DENIED (Barker, J., not participating)**

RELEASE DATE: **As soon as possible**

DISPOSITION OF RECORD: **Previously Returned**