

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
March 9, 2001 Session

DOROTHY BOND v. MURRAY, INC.

**Direct Appeal from the Chancery Court for Madison County
No. 56516 Joe C. Morris, Chancellor**

No. W2000-01830-WC-R3-CV - Mailed March 22, 2001; Filed May 10, 2001

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court pursuant to Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. In this appeal, the employer insists the trial court erred in finding that the employee's disability to her left arm was work-related. No issue is made with respect to the right arm. The trial court treated the gradual injury as two separate injuries and awarded permanent partial disability benefits based on 38 percent to the right arm and 30 percent to the left arm. As discussed below, the panel has concluded the award should be modified, by converting it to one based on 34 percent to both arms, and affirmed.

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

JOE C. LOSER, JR., SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and W. MICHAEL MALOAN, SP. J., joined.

Jay Dustin King and P. Allen Phillips, Waldrop & Hall, Jackson, Tennessee, for the appellant, Murray, Inc.

Ricky Boren and Donna Brown Wilkerson, Hill & Boren, Jackson, Tennessee, for the appellee, Dorothy Bond.

MEMORANDUM OPINION

On the day of trial, the employee or claimant, Dorothy Bond, was 55 years old. She has a high school education and experience as a food service worker, cashier, baby-sitter and production worker. While working in production for the employer, Murray, repetitively using her hands and arms, she gradually developed disabling pain in both hands and arms.

A nerve conduction study revealed bilateral carpal tunnel syndrome, severe on the right, moderate on the left. Dr. David Johnson performed right carpal tunnel release surgery on December 3, 1998 and released her on February 26, 1999 with a 10 percent impairment rating to the right arm and reported that her left arm disability was not work-related but caused by degenerative arthritis. Dr. Johnson acknowledged that the claimant did have left carpal tunnel syndrome but assigned no impairment rating to it. Dr. Johnson prescribed permanent restrictions for both arms.

The claimant was referred to Dr. Robert J. Barnett for examination and evaluation. Dr. Barnett opined that her work aggravated her degenerative arthritis, making it worse than it would otherwise have been. Considering lost grip strength, Dr. Barnett assigned permanent impairment ratings of 20 percent to both arms and restricted the claimant from strenuous and repetitive use of her wrists.

Upon the above summarized evidence, the trial court found that the claimant had suffered a compensable injury to both arms and awarded permanent partial disability benefits based on 38 percent to the right arm and 30 percent to the left arm. Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). The panel is not bound by the trial court's findings but conducts an independent examination of the evidence to determine where the preponderance of the evidence lies. Wingert v. Government of Sumner County, 908 S.W.2d 921, 922 (Tenn. Sp. Workers Comp. 1995).

The employer contends the injury to the left arm is not compensable because Dr. Barnett did not point to any objective manifestation of an anatomic worsening of the underlying condition and because an injury which aggravates a pre-existing condition by making the pain worse but not otherwise injuring or advancing the severity of the underlying condition is not compensable, citing Smith v. Smith's Transfer Corp., 735 S.W.2d 221 (Tenn. 1987) and Boling v. Raytheon Co., 448 S.W.2d 405 (Tenn. 1969). Those cases do not require objective manifestations of an anatomic worsening of an underlying condition for an injury to be compensable, in our view. Rather they prohibit recovery without any expert medical proof that the underlying condition was made worse. In the present case, Dr. Barnett testified the claimant's work could have caused her arthritis and did result in an anatomic change by making her condition worse, not by merely increasing her pain. In addition, Dr. Johnson did not eliminate the claimant's work as a contributing cause.

In a workers' compensation case, a trial judge may properly predicate an award on medical testimony to the effect that a given incident could be the cause of a claimant's injury, when, from other evidence, it may reasonably be inferred that the incident was in fact the cause of the injury, McCaleb v. Saturn Corp., 910 S.W.2d 412, 415 (Tenn. Sp. Workers Comp. 1995). Absolute certainty on the part of a medical expert is not necessary to support a workers' compensation award, for expert opinion must always be more or less uncertain and speculative, Kellerman v. Food Lion, Inc., 929 S.W.2d 333, 335 (Tenn. Sp. Workers Comp. 1995), and, where equivocal medical evidence combined with other evidence supports a finding of causation, such an inference may nevertheless be drawn under the case law. Tindall v. Waring Park Assoc., 725 S.W.2d 935, 937 (Tenn. 1987).

The expert opinion of Dr. Barnett was supported by the claimant's own testimony that her hands swelled and that because of her injury she is unable to perform work for which she is otherwise qualified.

Workers' compensation benefits are payable according to a well-defined scheme or schedule and without regard to fault of the employer or care exercised by the employee. Morrison v. Tennessee Cons. Coal Co., 162 Tenn. 523, 39 S.W.2d 272, 272, 273 (1931). Where a worker's only injury is to a scheduled member, he may receive only the amount of compensation provided by the schedule for his permanent disability. Genesco, Inc. v. Creamer, 584 S.W.2d 191, 193-94 (Tenn. 1979). Such injuries are exclusively controlled by the statutory schedule. McIlvain v. Russell Stover Candies, Inc., 996 S.W.2d 179, 185 (Tenn. 1999). Where a covered employee suffers permanent disability to both arms, it is proper to determine the claimant's disability to each arm separately, then average those two disabilities to arrive at a single disability for the scheduled injury of "loss of two arms other than at the shoulder," then apply that percentage to 400 weeks. Tenn. Code Ann. § 50-6-207(3)(A)(ii)(w); see also Drennon v. Gen. Electric Co., 897 S.W.2d 243, 247 (Tenn. Sp. Workers Comp. 1994).

For the above reasons, the award is modified to one based on 34 percent to both arms. As modified, the judgment of the Chancery Court for Madison County is affirmed. Costs are taxed to the appellant.

JOE C. LOSER, JR.

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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 on appeal are taxed to the Appellant, Murray, Inc., for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM