

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
(September 28, 2000 Session)

**RICHARD DAN MOOREHEAD v. RYDER INTEGRATED LOGISTICS,
INC.**

**Direct Appeal from the Circuit Court for Davidson County
No. 98C-2559 Carol Soloman, Judge**

**No. M2000-00425-WC-R3-CV - Mailed - March 14, 2001
Filed - April 16, 2001**

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 defendant, Ryder Integrated Logistics, Inc., appeals the judgment of the Circuit Court of Davidson County, where the trial court allowed reconsideration of the plaintiff's industrial disability under *Tennessee Code Annotated* § 50-6-241(a)(2) and awarded a sixty percent (60%) disability to the body as a whole with a credit for earlier payments made pursuant to the original settlement order between the parties filed in the Chancery Court of Davidson County. The defendant submits that the trial court erred: (1) by allowing the plaintiff a reconsideration of his earlier award when he had received in excess of the two and one-half (2½) cap upon advice of former counsel; (2) by awarding additional disability benefits when the employee failed to establish disability to the extent of thirty-two and one-half (32.5%) percent he had already received; and (3) by awarding disability benefits of five (5) times the impairment rating without making specific findings of fact required by *Tennessee Code Annotated* § 50-6-241(c). Under the recent ruling of the Tennessee Supreme Court in *Freeman v. Marco Transportation Co.*, 27 S.W.3d 909 (Tenn. 2000), in which the Court held that a request for reconsideration brought pursuant to *Tennessee Code Annotated* § 50-6-241(a)(2) must be filed in the same court that exercised jurisdiction over the original workers' compensation claim, we do not reach the issues raised by the defendant and find that the judgment of the trial court should be reversed and the cause dismissed without prejudice. Under the savings statute, the plaintiff can refile his request for reconsideration in the Chancery Court of Davidson County within one year of the date of judgment that is the final deposition in this case.

Tenn. Code Ann. § 50-6-225(e)(2000) Appeal as of Right; Judgment of the Circuit Court Reversed and Dismissed.

WEATHERFORD, SR. J., delivered the opinion of the court, in which BIRCH, J. and CATALANO, Sp.J. joined.

Daniel C. Todd, Nashville, Tennessee for the appellant, Ryder Integrated Logistics, Inc.

Steve C. Norris, Nashville, Tennessee for the appellee, Richard Dan Moorehead

MEMORANDUM OPINION

On February 12, 1998, Judge Hamilton Gayden sitting by Interchange in the Chancery Court of Davidson County, approved the settlement of a workers' compensation claim of Richard Dan Moorehead (Moorehead) against Ryder Integrated Logistics, Inc. (defendant). The order approving final settlement provided that Moorehead retained a permanent partial impairment of twelve percent (12%) to his body as a whole; and that the "final lump sum settlement of \$55,954.79, which amount, together with the overpayment of temporary benefits [of \$1,914.48], is equal to or greater than the compensation which would be due the employee for a 32% permanent partial disability."

The order also contained a provision releasing the employer "from any and all further liability and indemnity under the terms and provisions of the Workers' Compensation Law of the State of Tennessee, at common law or otherwise." However, the order did not contain any provisions regarding the right to reconsideration under *Tennessee Code Annotated* § 50-6-241(a)(2).

On September 16, 1998, Moorehead filed a complaint in the Circuit Court of Davidson County seeking additional workers' compensation benefits by a reconsideration of his industrial disability pursuant to *Tennessee Code Annotated* § 50-6-241. The Circuit Court found that Moorehead had sustained an industrial disability of sixty percent (60%) to the body as a whole with a credit for earlier payments and awarded a judgment of \$49,378.81.

ANALYSIS

Tennessee Code Annotated § 50-6-241(a)(2) provides in pertinent part:

In accordance with this section, the courts may reconsider, upon the filing of a new cause of action, the issue of industrial disability. Such reconsideration shall examine all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's disabled condition. Such reconsideration may be made in appropriate cases where the employee is no longer employed by the pre-injury employer and makes application to the appropriate court within one (1) year of the employee's loss of employment,

Tenn. Code Ann. § 50-6-241(a)(2).

In the recent case of *Freeman v. Marco Transportation Co.*, 27 S.W.3d 909, 910 (Tenn. 2000), our Supreme Court held that a request for reconsideration pursuant to *Tennessee Code Annotated* § 50-6-241(a)(2) must be filed in the court that originally exercised jurisdiction over the workers' compensation claim. In *Freeman*, the Chancery Court of Knox County had approved the original settlement and the plaintiff had filed the complaint for reconsideration in the Circuit Court of Knox County. *Id.* at 910-11. The Supreme Court dismissed the complaint for reconsideration but found that *Tennessee Code Annotated* § 28-1-105(a), the savings statute, applied to allow the plaintiff to refile his request for reconsideration within twelve (12) months of the entry of its judgment. *Id.* at 912-13.

Under this ruling, which we recognize as controlling authority, we find that the judgment of the trial court should be reversed and the cause dismissed without prejudice. Under the savings statute, Moorehead may refile his complaint in the Chancery Court of Davidson County within one year of the date of the judgment that is the final disposition in this case.

We do not reach and express no opinion on the issues raised by the defendant.

CONCLUSION

The judgment of the trial court is reversed and the cause is dismissed without prejudice. The costs of this appeal are taxed to Moorehead.

James L. Weatherford, Senior Judge

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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 will be paid by Richard Dan Moorehead, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM