

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

FILED

November 14, 1996

Cecil W. Crowson
Appellate Court Clerk

MARY L. BRENTS,)
)
Plaintiff/Appellant)
)
VS.)
)
BATESVILLE CASKET COMPANY,)
INC. and LUMBERMEN'S MUTUAL)
COMPANY,)
)
Defendants/Appellees.)

COFFEE CIRCUIT

Hon. John W. Rollins, Judge

No. 01S01-9508-CV-00141

For Appellant:

Othal Smith, Jr.
Nashville, Tennessee

For Appellees:

Bryan Essary
Gideon & Wiseman
Nashville, Tennessee

MEMORANDUM OPINION

Members of Panel:

Adolpho A. Birch, Jr., Chief Justice
Jerry L. Smith, Special Judge
Joe C. Loser, Jr., Special Judge

AFFIRMED

Smith, Special Judge

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeal Panel of the Supreme Court for hearing and reporting of findings of fact and conclusions of law. See Tenn. Code Ann. § 50-6-225(e)(3)(1990). Appellant Mary L. Brents presents the following issues for review: (1) whether the trial court erred in finding that attorneys' fees for both accrued and future benefits could not be paid solely from the future benefits award and (2) whether the trial court erred in reducing the amount of her weekly benefit payments by twenty percent, thereby reflecting the advance, lump-sum payment of attorneys' fees.

After a review of the record, we affirm the judgment of the trial court.

I. FACTUAL BACKGROUND

On February 13, 1992, Appellant filed a workers' compensation action against Batesville Casket Company. On March 14, 1994, following a hearing, the trial court found that Appellant was due a fifty-five percent permanent partial disability award for a work-related injury that occurred in October of 1991. The trial court indicated that, had proper notice been given, Appellant would have also been due a fifteen percent permanent partial disability for a work-related injury that occurred in March of 1992.

On February 9, 1995, this Court affirmed the judgment of the trial court regarding the October, 1991, injury and reversed the judgment of the trial court regarding the March 1992 injury, modifying Appellant's award to include the additional fifteen percent permanent partial disability.

On March 13, 1995, Appellant received three checks pursuant to the decision of this Court. These checks represented (1) payment for all then-accrued and outstanding income benefits, totaling \$16,211.13, (2) payment for attorneys' fees

for future benefits, totaling \$10,571.18, and (3) payments for discretionary costs, totaling \$4,107.03.

On March 25, 1995, Appellant filed a contempt petition with the trial court, alleging that the payments failed to comply with the court order. Except for the payment of attorneys' fees, all issues in the petition were subsequently resolved. On April 28, 1995, following a hearing, the trial court reached the following conclusion with regard to the payment of attorneys' fees:

[C]ounsel for [Appellant] is awarded a judgment for twenty percent of the accrued award . . . and twenty percent lump sum of the award of future benefits due to [Appellant] reducing those future benefits twenty percent.

Appellant appeals from the judgment of the trial court.

II. PAYMENT OF ATTORNEYS' FEES FOR ACCRUED BENEFITS

Appellant first alleges that the trial court erred in finding that attorneys' fees for both accrued and future benefits could not be paid solely from the future benefits award. Appellant argues that attorneys' fees for both accrued and future benefits should be paid in a lump sum from the future benefits award, preserving the entire amount of the accrued benefits award without and reduction due to attorneys' fees. Because this issue involves a question of law, our review of the record is purely *de novo*. See Spencer v. Towson Moving & Storage, Inc., 922 S.W.2d 508, 509 (Tenn. 1996). Attorneys' fees may be paid as a partial lump sum from any award when approved and ordered by the trial court. Tenn. Code Ann. § 50-6-229(a)(Supp. 1995). Such a decision is left to the sound discretion of the trial court. Johnson v. Alcoholic Beverage Commission, 844 S.W.2d 182, 185 (Tenn. Ct. App. 1992). Here, the trial court ordered that the attorneys' fees from the accrued benefits be paid from the accrued benefit award. Such an arrangement is in keeping with a well-settled line of cases. See, e.g., Forkum v. Aetna Life and Casualty Insurance Company, 852 S.W.2d 230, 231 (Tenn. 1993); North American Royalties v. Thrasher, 817 S.W.2d

308, 312 (Tenn. 1991); West v. C. B. Ragland Company, 785 S.W.2d 351, 352 (Tenn. 1990). Thus, we conclude that the trial court was within its discretion in rejecting Appellant's suggested mode of payment.

III. WEEKLY BENEFIT PAYMENTS

Appellant next alleges that the trial court erred in reducing the amount of her weekly benefit payments by twenty percent, thereby reflecting the advance, lump-sum payment of attorneys' fees. Appellant argues that, rather than adjusting the amount of each weekly payment, the number of weeks that benefits are payable should be reduced. Once again, because this issue involves a question of law, our review of the record is purely de novo. See Spencer, 922 S.W.2d at 509. We note initially that the law is unsettled as to whether the trial court should reduce the amount of the weekly payments or shorten the length of time that the payments are made. See Stankard v. Travelers Insurance Company, No. 01S01-9404-CC-00035, 1995 WL 866095, at *3 (Tenn. Jan. 26, 1995). The purpose of the Workers' Compensation Law is to provide injured workers with periodic payments as a substitute for regular wages. See Burris v. Cross Mountain Coal Company, 798 S.W.2d 746, 750 (Tenn. 1990). We believe that reducing the amount of the weekly payments in order to maintain payments for the full period of the disability serves as a more effective substitute for regular wages. Thus, we conclude that the trial court properly ordered a twenty percent reduction in Appellant's weekly disability payments to reflect the advance, lump-sum payment of attorneys' fees.

Accordingly, the judgment of the trial court is affirmed. Costs of appeal are taxed to plaintiff/appellant.

JERRY L. SMITH, SPECIAL JUDGE

CONCUR:

ADOLPHO A. BIRCH, JR., CHIEF JUSTICE

JOE C. LOSER, JR., SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

MARY L. BRENTS,
Plaintiff/Appellant

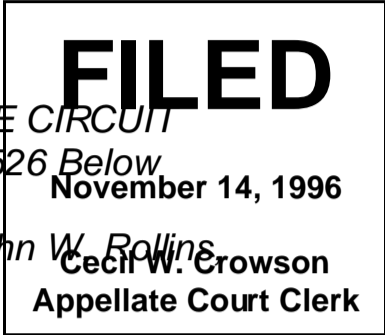
vs.

BATESVILLE CASKET COMPANY,
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COFFEE CIRCUIT
No. 25,526 Below
November 14, 1996
Hon. John W. Rollins
Judge Cecil W. Crowson
Appellate Court Clerk
No. 01S01-9508-CV-00141
AFFIRMED.



JUDGMENT ORDER

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 Plaintiff/Appellant and Surety for which execution may issue if necessary.

IT IS SO ORDERED on November 14, 1996.

PER CURIAM

