

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

AT JACKSON
(August 29, 1996 Session)

JAMES RAYMOND CASEY,) CROCKETT CHANCERY
)
Plaintiff-Appellee,) Hon. George R. Ellis,
) Chancellor.
v.)
) No. 02S01-9605-CH-00047
THE TRAVELERS INSURANCE)
COMPANY,)
)
Defendant-Appellant.)

FILED

November 5, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

For Appellant:

S. Newton Anderson
Memphis, Tennessee

For Appellee:

T. J. Emison, Jr.
Alamo, Tennessee

MEMORANDUM OPINION

Members of Panel:

Lyle Reid, Associate Justice, Supreme Court
F. Lloyd Tatum, Special Judge
Joe C. Loser, Jr., Special Judge

AFFIRMED AS MODIFIED

Loser, Judge

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. section 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. In this appeal, the employer's insurer contends (1) the award of permanent partial disability benefits is excessive, (2) the award of temporary total disability benefits is excessive and (3) the trial court erred in granting plaintiff's motion for discretionary costs. As discussed below, the panel concludes the judgment should be modified.

The employee or claimant, Casey, is 29 years old and has a tenth grade education. His working experience consists of light to medium manual labor.

On October 11, 1994, his right hand caught in some belts at work and was injured. He continued working for approximately one month. He was treated by an orthopedic surgeon beginning on December 22, 1994.

The treating doctor diagnosed a rupture of the extensor tendon of the last joint of the claimant's right little finger, swelling of the PIP joint of the ring and middle fingers of the same hand and decreased range of hand motion, for all of which he prescribed a splint for the little finger and range of motion exercises for the hand. In time the swelling disappeared and he recovered full range of motion in the hand. He improved to the extent that he could have returned to work on January 13, 1995.

The doctor assigned a permanent partial impairment rating of eight percent to the right little finger because the claimant "lacked about thirty degrees of extension of the DIP joint of the right little finger." The doctor's testimony also included the following questions and answers:

Q. ... in your opinion, he did not sustain any permanent impairment with regard to his hand or to the arm?

A. No, Ma'am.

Q. Okay. In your opinion, ... would the plaintiff have necessarily had any problems in going back to work and using his hand?

A. No, ma'am. In fact, ... the more he used his hand, the better he would get....

The claimant testified, however, that he was unable to work because of lack of grip strength. Another orthopedic surgeon, who examined the claimant, diagnosed severe soft tissue injury to the right hand with secondary grip strength loss. The examining doctor opined the claimant had suffered a permanent loss of grip strength and assigned a permanent impairment rating of twenty percent to the right upper extremity.

The trial court awarded permanent partial disability benefits on the basis of fifty percent to the right arm, temporary total disability benefits from October 11, 1994 through December 22, 1994, and discretionary costs for fees incidental to the testimony of the examining doctor.

Appellate review of the award of disability benefits is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. section 50-6-225(e)(2). This tribunal is required to conduct 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 (Tenn. 1995).

PERMANENT PARTIAL DISABILITY

Where a worker's only injury is to a scheduled member, the worker may receive only the amount of compensation provided by the statutory schedule for the worker's permanent disability. Genesco, Inc. v. Creamer, 584 S.W.2d 191 (Tenn. 1979). The hand is a scheduled member. Tenn. Code Ann. section 50-6-207. From an independent examination of the record, the panel finds that a preponderance of the evidence supports an award to the hand, but not to the arm.

If the injury causes a permanent loss of part but not all of the use of a scheduled member, and if such loss is not specifically provided for in the schedule, benefits are computed by applying the percentage of loss to the total loss benefit contained in the schedule. In cases where the employee loses all or part of the use of a scheduled member, the injury is compensable whether or not there has been any loss of earning capacity. Hedges Mfg. Co. v. Worley, 223 Tenn. 102, 442 S.W.2d 624 (1969). We find in the record no persuasive

medical evidence that the claimant suffered any permanent impairment beyond the hand.

The panel finds that the evidence preponderates against an award of permanent partial disability benefits based on fifty percent to the arm and in favor of one based on twenty percent to the hand. The judgment is modified accordingly.

TEMPORARY TOTAL DISABILITY

Temporary total disability refers to the injured employee's condition while disabled to work because of the injury and until the employee recovers as far as the nature of the injury permits. Redmond v. McMinn County, 209 Tenn. 463, 354 S.W.2d 435 (1962). Benefits for temporary total disability are payable until the injured worker is able to return to work. Simpson v. Satterfield, 564 S.W.2d 953 (Tenn. 1978).

The preponderance of the evidence in this case is that the claimant became disabled to work on November 11, 1994 (approximately one month after the injurious occurrence) and that he was able to return to work on January 13, 1995. The award of temporary total disability benefits is modified to provide for an award of such benefits between those dates.

DISCRETIONARY COSTS

Because the treating physician did not evaluate the claimant's loss of grip strength in his injured hand, the claimant found it necessary to consult another physician and to obtain that physician's evidential deposition. In such cases, the cost of obtaining such proof is recoverable as discretionary costs. Tenn. R. Civ. P. 54. Finding no abuse of discretion by the chancellor, and finding in the record no persuasive evidence that the charges were unreasonable, the panel affirms the award of discretionary costs.

As modified above, the judgment of the trial court is accordingly affirmed. Costs on appeal are taxed to the parties, one-half each.

Joe C. Loser, Jr., Judge

CONCUR:

Lyle Reid, Associate Justice

F. Lloyd Tatum, Judge

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AT JACKSON

JAMES RAYMOND CASEY,

Plaintiff/Appellee,

vs.

THE TRAVELERS INSURANCE
COMPANY,

Defendant/Appellant.

) CROCKETT CHANCERY

) NO. 6975

)

) Hon. George R. Ellis,

) Chancellor

)

)

) NO. 02S01-9605-CH-00047

)

) AFFIRMED AS MODIFIED.

FILED
November 5, 1996
Cecil Crowson, Jr.
Appellate Court Clerk

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 Appellant and Appellee, one-half each, for which execution may issue if necessary.

IT IS SO ORDERED this 5th day of November, 1996.

PER CURIAM

(Reid, J., not participating)

