

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE
(June 25, 1996 Session)

FILED

October 10, 1996
SMITH CRIMINAL
Cecil W. Crowson
Appellate Court Clerk
Hon. L. O. Bond,
Judge.

BOBBY G. DICKENS,)
)
Plaintiff-Appellee,)
)
v.)
)
TRAVELERS INSURANCE COMPANY,)
)
Defendant-Appellant.)

No. 01S01-9512-CR-00227

For Appellant:

Wm. Ritchie Pigue
William G. McCaskill, Jr.
Taylor, Philbin, Pigue, Marchetti & Bennett
Nashville, Tennessee

For Appellee:

Hugh E. Green
Lebanon, Tennessee

MEMORANDUM OPINION

Members of Panel:

Frank F. Drowota, III, Associate Justice, Supreme Court
Joe C. Loser, Jr., Special Judge
Hamilton V. Gayden, Jr., Special Judge

AFFIRMED

Loser, Judge

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 the award of permanent partial disability benefits is excessive. The panel concludes the award should be affirmed.

The claimant, Dickens, is 54 years old with a high school education and no special skills. In April of 1993, while working for Eatherly Construction Company as a ditch digger, he twisted his right knee.

He was referred to Dr. John McInnis, who arthroscopically diagnosed and removed a large tear from the lateral meniscus of the claimant's right knee joint. The doctor assessed a permanent anatomical impairment of seven and one-half percent to the right knee, from AMA Guidelines. The claimant returned to work on June 21, 1993, but is medically restricted from repetitive squatting.

Because his duties at Eatherly required him to climb, squat and kneel, he left Eatherly and is now working for another construction company servicing equipment, a job he can perform while standing in a pit. He is making less than he would be making in his former work at Eatherly.

The trial court awarded permanent partial disability benefits on the basis of forty percent to the injured leg. Appellate review 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).

Once the causation and permanency of an injury have been established by expert testimony, the trial judge may consider many pertinent factors, including age, job skills, education, training, duration of disability, and job opportunities for the disabled, in addition to anatomical impairment, for the purpose of evaluating the extent of a claimant's permanent disability. Tenn. Code Ann. section 50-6-241(a)(2). From a consideration of those factors in this case, the panel finds that the evidence fails to preponderate against the judgment of the trial court.

The judgment of the trial court is therefore affirmed. Costs on appeal are taxed to the defendant-appellant.

Joe C. Loser, Jr., Special Judge

CONCUR:

Frank F. Drowota, III, Associate Justice

Hamilton V. Gayden, Jr., Special Judge