

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

THOMAS E. RODDY,	)	
	)	RUTHERFORD CHANCERY
Plaintiff/Appellee	)	
	)	Hon. Don R. Ash,
v.	)	Chancellor
	)	
BEAMAN BOTTLING COMPANY OF	)	NO. 01S01-9511-CH-00194
NASHVILLE,	)	(No. 94WC-1139 Below)
	)	
Defendant/Appellant	)	

**FILED**

July 24, 1996

**Cecil Crowson, Jr.**  
**Appellate Court Clerk**

**For the Appellant:**

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**For the Appellee:**

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**MEMORANDUM OPINION**

**Members of Panel:**

Justice Frank F. Drowota, III  
Senior Judge John K. Byers  
Special Judge Roger E. Thayer

**MODIFIED  
AND REMANDED**

**THAYER, Senior 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. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

Defendant, Beaman Bottling Company of Nashville, had appealed from the action of the trial court in awarding plaintiff, Thomas E. Roddy, 33% permanent partial disability to the body as a whole.

On November 12, 1992, plaintiff was injured during the course and scope of his employment with the defendant. After having surgery for a rotator cuff injury, he returned to work on about August 10, 1993, at a wage equal to or greater than that he was receiving prior to his injury. In the spring of 1994, defendant company was sold to Pepsico, the parent company for Pepsi-Cola. Plaintiff continued to work for new owner Pepsico until September 9, 1994, when his job classification was eliminated and he was terminated.

There is some dispute concerning the medical impairment to the body as a whole. At issue is whether plaintiff sustained a 7% or 11 % impairment to the body as a whole. We conclude that the finding of 11% impairment to the whole body is the proper finding of medical impairment.

The primary issue is whether the award of disability is limited to two and a half times the medical impairment rating provided in TENN. CODE ANN. § 50-6-241(a)(1) or whether the award may be fixed up to six times the medical impairment rating as provided in TENN. CODE ANN. § 50-6-241(b).

Under subsection (a)(1), an injured employee's recovery is limited to two and a half times the employee's medical impairment rating if the pre-injury employer returns the employee to work at a wage equal to or greater than that received prior to the injury. Subsection (a)(2) provides that the industrial disability award may be reconsidered by the court when the employee is no longer employed by the pre-injury employer, the loss of employment occurs within 400 weeks of the day the employee returned to work, and a new cause of action is filed within one year of the

employee's loss of employment. The reconsidered award is limited to the multiplier maximum of subsection (b), which is six times the medical impairment rating.

The trial judge found the provisions of subsections (a)(2) and (b) to be applicable to the facts of the case and that "judicial economy" dictated he settle all issues at the time of the hearing.

Our review is *de novo* upon the record of the trial court, accompanied by a presumption that the trial court's findings of fact are correct, unless the evidence preponderates otherwise. TENN. CODE ANN. § 50-6-225(e)(2). The *de novo* review of the case does not carry a presumption of correctness as to a trial court's conclusions of law but is confined to factual findings. *Union Carbide Corp. v. Huddleston*, 854 S.W.2d 87 (Tenn. 1993). In this case, the main issue raises a question of law.

We are of the opinion the Chancellor did not have the authority to reconsider an award which was originally capped by TENN. CODE ANN. § 50-6-241(a)(1) and that the other subsections of the statute have no application to fixing a final award in this case. We reach this conclusion because there is no evidence in the record that plaintiff ever filed a complaint or amended complaint alleging a new cause of action as required by the provisions of the statute.

Subsection (a)(2) clearly conditions the authority of the court to reconsider "upon the filing of a new cause of action," and courts may not waive this basic requirement but must examine the evidence and ascertain whether the employee has complied with the statutory procedure.

Jurisdiction is the lawful authority of a court to adjudicate a controversy brought before it. Jurisdiction of the subject matter is conferred by the Constitution and statutes; jurisdiction of the parties is acquired by service of process. *Turpin v. Conner Bros. Excavating Co.*, 761 S.W.2d 296 (Tenn. 1988); *Kane v. Kane*, 547 S.W.2d 559, 560 (Tenn. 1977).

Our review of the case requires us to find the award is limited to two and one-half times the 11% medical impairment rating, which results in an award of 27.5%

permanent partial disability to the body as a whole.

The judgment entered below is modified accordingly. Costs of the appeal are taxed to plaintiff and sureties.

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Roger E. Thayer, Special Judge

CONCUR:

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Frank F. Drowota, III, Justice

(See dissenting opinion)  

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John K. Byers, Senior Judge

