

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT KNOXVILLE
(July 3, 1996 Session)

FILED
October 30, 1996
KNOX CHANCERY
Cecil Crowson, Jr.
Appellate Court Clerk
Hon. Frederick D.

CHARLES LEROY STAFFORD,)
)
Plaintiff-Appellant,)
McDonald,)

v.)

MID-AMERICA CORPORATION and)
LARRY BRINTON, JR., DIRECTOR)
of the WORKERS' COMPENSATION)
DIVISION, DEPARTMENT OF LABOR,)
SECOND INJURY FUND, and CHARLES)
W. BURSON, ATTORNEY GENERAL)
OF THE STATE OF TENNESSEE)

Defendants-Appellees.)

) KNOX CHANCERY
)
)
) Hon. Frederick D.
)
) Chancellor.
)
) No. 03S01-9512-CH-00132

For Appellant:
Fund:

Ward S. Whelchel
C. Edward Daniel
Knoxville, Tennessee

For Appellee, Second Injury

Charles W. Burson
Attorney General & Reporter

Sandra E. Keith
Assistant Attorney General
Nashville, Tennessee

MEMORANDUM OPINION

Members of Panel:

Penny J. White, Associate Justice, Supreme Court
Roger E. Thayer, Special Judge
Joe C. Loser, Jr., Special Judge

MODIFIED AND REMANDED

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. The issue presented by this appeal involves the extent of the claimant's permanent disability. The panel concludes the judgment should be modified as provided below.

The employee or claimant, Stafford, is forty-eight with a ninth grade education. On December 23, 1993, he suffered a compensable injury to his neck and arm, for which he received medical treatment and lost time from work. The treating physician assigned a permanent impairment rating of 30% to the whole body and released him to return to work in August of 1994 with no restrictions. From a previous injury, the claimant had received an award based on ninety-five percent to the body as a whole.

The chancellor awarded permanent partial disability benefits on the basis of five percent to the body as a whole, reasoning that the claimant had not yet become rehabilitated from his previous injury. Appellate review is de novo upon the record of the trial court, accompanied by a presumption of the correctness of the findings of the trial court, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. section 50-6-225(e)(2). Conclusions of law are subject to de novo review without any presumption of correctness. Presley v. Bennett, 860 S.W.2d 857 (Tenn. 1993). This tribunal is required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. Galloway v. Memphis Drum Service, 822 S.W.2d 584 (Tenn. 1991).

Tennessee has long recognized the rule in workers' compensation

cases that an employer takes an employee as he is and assumes the risk of having a weakened condition aggravated by an injury which might not affect a normal person. Harlan v. McClellan, 572 S.W.2d 641 (Tenn. 1978). Tennessee also recognizes the rule that the employer takes the employee with all preexisting conditions and cannot escape liability when the employee, upon suffering a work-related injury, incurs disability far greater than if he had not had the preexisting conditions. Rogers v. Shaw, 813 S.W.2d 397 (Tenn. 1991).

The opinion of a qualified medical expert with respect to a claimant's medical impairment is a factor which must be considered along with all other relevant facts and circumstances in determining the extent of his or her industrial disability. Pittman v. Lasco Industries, Inc., 908 S.W.2d 932 (Tenn. 1995). There is evidence in this case from a vocational expert that the claimant is unable to work, but that evidence must be weighed against persuasive other evidence that he was able to return to work after treatment for his injuries.

From our independent examination of the entire record on appeal, we find that the evidence preponderates against the judgment of the trial court and in favor of an award based on fifty percent to the body as a whole. The judgment is modified accordingly.

Where, as here, an injured employee has one or more prior awards under the Workers' Compensation Act, and the combination of all such awards equals or exceeds one hundred percent permanent partial disability to the body as a whole, then the Second Injury Fund, not the employer, will pay the benefits due the employee in excess of one hundred percent. Tenn. Code Ann. section 50-6-208(B). Consequently, the judgment is further modified to provide that the fund will pay benefits due the claimant in excess of one hundred percent.

The case is remanded to the trial court for entry of a judgment consistent with this memorandum opinion and such other proceedings, if any, as may be necessary. Costs on appeal are taxed to the Second Injury Fund.

Joe C. Loser, Jr., Judge

CONCUR:

Penny J. White, Associate Justice

Roger E. Thayer, Judge

IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE

CHARLES LEROY STAFFORD,)	KNOX CHANCERY
)	
Plaintiff-Appellants,)	No. 122715-1
)	
)	No. 03S01-9512-CH-00132
)	
vs.)	Hon. Frederick D. McDonald
)	Chancellor
)	
MID-AMERICA CORPORATION and)	MODIFIED AND
LARRY BRINTON, JR., DIRECTOR of the)	REMANDED
DIVISION, DEPT. OF LABOR, SECOND)	
INJURY FUND, and CHARLES W.)	
BURSON,)	
)	
Defendants-Appellees.)	

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 it, 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 on appeal are taxed to the Second Injury Fund, for which execution may issue if necessary.

10/30/96