

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

FILED
January 17, 1997
Cecil W. Crowson
Appellate Court Clerk

MARTHA ANN BOYD,)
Plaintiff/Appellee)
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v.)
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LINCOLN BRASS WORKS, INC.,)
Defendant/Appellant)
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_____)
)

WAYNE CIRCUIT
HON. WILLIAM B. CAIN, JUDGE
No. 01S01-9604-CV-00062
(No. 3218-C-36 below)

FOR APPELLANT:

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FOR APPELLEES:

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MEMORANDUM OPINION

MEMBERS OF PANEL:

ADOLPHO A. BIRCH, JR., CHIEF JUSTICE, SUPREME COURT
WILLIAM H. INMAN, SENIOR JUDGE
WILLIAM S. RUSSELL, RETIRED JUDGE

AFFIRMED

RUSSELL, RETIRED JUDGE

This appeal from the judgment of the trial court in a workers' compensation case has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated Section 50-6-225 (e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

THE CASE

Martha Ann Boyd, age 22 at the time of trial, worked at running a machine that drilled parts so that they can be placed together on an assembly line. She was required to place a part inside a jaw of the machine and close the jaw with a lever and then push another handle to operate the machine. She was required to produce a minimum of 5,600 parts per eight hour shift.

Thirteen months after she commenced this job she began suffering intense pain in her right forearm. She suffered tingling, numbness and pain in her arm, wrist and fingers.

Her attending physician/surgeon, H. James Wiesman, M.D., diagnosed her medical problem as a right pronator syndrome. This is a condition wherein the pronator muscle, located in the forearm, develops to the point that it decompresses the median nerve located underneath it.

Treatment consisted of surgery on the right forearm to release the trapped nerve. An incision was made into the arm for a distance of about eight inches. When the arm healed a significant scar resulted.

Ms. Boyd returned to work and was assigned to operate the same machine. Her symptoms returned and she was transferred to an easier machine that did not require repetitive manual operation. A few months later she was laid off, and at the time of trial had not found another job.

Her attending physician opined that she had a 10% permanent partial anatomic impairment to the right arm. The trial judge assessed her vocational disability at 25% of the arm.

THE ISSUES

The appellant contends that the trial court erred by considering the employee's surgical scar as a compensable disfigurement, and by awarding vocational disability "when there was no showing of a diminution of the plaintiff's earning capacity in the open labor market".

As an alternative claim, it is submitted that the award was excessive.

ANALYSIS

The appellant relies upon Tennessee Code Annotated Section 50-6-207 (3)(E), which limits disfigurement awards to disfigurement to the head, face or hands; and to the case of Owens v. Vulcan Materials Company, 503 S.W. 2d 87 (Tenn. 1973), which

states that a disfiguring injury is noncompensable where it and some other compensable injury result from the same accident at the same point on the body.

We do not find that the judgment in this case was in any part based upon disfigurement. The trial judge held "that the plaintiff has incurred a medical impairment of four percent because of the injury and surgery and an additional six percent because of the scarring", and held that Ms. Boyd suffered a twenty-five percent permanent partial disability to her right arm. The attending surgeon testified that she had a four percent functional impairment and "six percent is the scar". He said that it is not a functional scar.

There was no evidence that contradicted Ms. Boyd's testimony on this issue, as follows:

A. * * * And I cannot cover the scar because the scar hurts so bad when I try to cover it.

Q. What do you mean by cover it?

A. To wear a long sleeved blouse or a jacket or something of that sort.

Q. What happens when you try to do that?

A. It rubs the scar and it hurts me.

Q. Do you have pain with the scar now besides what you just described?

A. Yes, sir.

Q. Tell us about that. Tell the judge what your experience.

A. I experience sharp pain through the scar, into the scar tissue, down through the arm. It will occasionally make me cry because it cramps. The pain is as if someone is still cutting on it and me awake. The pain is really bad.

We interpret the six percent attributed to the scarring to be bottomed upon the pain that it causes, with resultant disability. Disfigurement is not the basis for that part of the judgment. This is not a matter of cosmetics, but involves disabling pain.

Regarding the alleged excessiveness of the award, the injured employee could not perform her previous duties without reinjury, and has been unable to find other work that she can tolerate.

We review the judgment of the trial judge de novo upon the record, accompanied by a presumption of correctness of the findings below, unless the preponderance of the evidence is otherwise. Tennessee Code Annotated Section 50-6-225 (e)(2) (1991). This standard of review requires this court to weigh in depth the factual findings and conclusions of the trial court. Humphrey v. David Witherspoon, Inc., 734 S.W. 2d 315 (Tenn. 1987).

The extent of vocational disability is a question of fact to be determined from all of the evidence, including lay and expert testimony. Washington v. Modine Mfg. Co., 798 S.W. 2d 232, 234 (Tenn. 1990).

CONCLUSION

We find that no error was committed regarding compensation for disfigurement of an injured part of the employee's body, for the reasons stated.

Furthermore, the judgment is not excessive under all of the

proof.

The judgment of the trial court is affirmed.

WILLIAM S. RUSSELL, RETIRED JUDGE

CONCUR:

ADOLPHO A. BIRCH, JR.,
CHIEF JUSTICE

WILLIAM H. INMAN, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

<p>FILED</p> <p>January 17, 1997</p> <p>Cecil W. Crowson Appellate Court Clerk</p>

<p>MARTHA ANN BOYD,</p> <p style="padding-left: 40px;">Plaintiff/Appellee</p> <p>vs.</p> <p>LINCOLN BRASS WORKS, INC.</p> <p style="padding-left: 40px;">Defendant/Appellant</p>	<p>} WAYNE CIRCUIT</p> <p>} No. 3218-C-36 Below</p> <p>} Hon. William B. Cain,</p> <p>} Judge</p> <p>} No. 01S01-9604-CV-00062</p> <p>} AFFIRMED.</p>
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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 Defendant/Appellant and Surety for which execution may issue if necessary.

IT IS SO ORDERED on January 17, 1997.

PER CURIAM