IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE
(June 9, 1997 Session)

FILED

September 12, 1997

Cecil W. Crowson
Appellate Court Clerk

JOSEPH CRAIG,	)	DAVIDSON CHANCERY
	)	
Plaintiff-Appellee,	)	Hon. Walter C. Kurtz,
	)	Chancellor.
v.	)	
	)	No. 01S01-9612-CH-00251
MURRAY GUARD, INC. and	)	
FIREMAN'S FUND INSURANCE CO,	)	
	)	
Defendants-Appellants.	)	

For Appellants:	For Appellee:
Mark H. Floyd	Wm. Ritchie Pigue
Susan G. Lindsey	William G. McCaskill, Jr.
Floyd & Tudor	Taylor, Philbin, Pigue, Marchetti & Bennett
Nashville, Tennessee	Nashville, Tennessee

M E M O R A N D U M   O P I N I O N

Members of Panel:

Adolpho A. Birch, Jr., Chief Justice, Supreme Court
Robert S. Brandt, Senior Judge
Joe C. Loser, Jr., Special Judge

AFFIRMED 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 and its insurer contend the injury did not arise out of the employment and that the award of permanent partial benefits is excessive. The employee contends the award is inadequate. As discussed below, the panel has concluded the judgment should be affirmed.

The employee or claimant, Joseph Craig, was sixty-eight years old at the time of the injury. He has a college degree in engineering but has never been employed in that field. On March 12, 1995, while working as a security guard for Murray, he slipped and fell to a linoleum floor, fracturing his left hip. The employer's contention is that the injury is not compensable because the proof does not establish that there was any slippery substance on the floor.

The injured hip was surgically repaired by Dr. Daniel Phillips, who assigned no permanent impairment or limitations. Another orthopedic surgeon, Dr. John McInnis, examined the claimant and opined he would retain a permanent impairment of five percent to the whole body and advised that the claimant limit his activities to minimal squatting and walking and not more than two or three hours of standing per day. The claimant returned to work on May 5, 1995 at his previous salary.

The trial court found the injury to be compensable and awarded permanent partial disability benefits based on five percent to the body as a whole. 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). Where the trial judge has seen and heard the witnesses, especially if issues of credibility and weight to be given oral testimony are involved, considerable deference must be accorded those circumstances on review. McCaleb v. Saturn Corp., 910 S.W.2d 412 (Tenn. 1995).

In a workers' compensation case, the claimant is not required to establish any degree of fault by the employee, merely that the injury resulted from an accident arising out of and in the course of employment. An injury arises out of the employment when there is apparent to the rational mind, upon a consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Fink v. Caudle, 856 S.W.2d 952 (Tenn. 1993).

The employer's contention that the fall was idiopathic is based entirely on the circumstance that no slippery substance was found on the floor where the claimant fell. The claimant was alone at the time and was not found

for a considerable period of time after the accident. His own testimony that he slipped and fell was consistent with what he told his doctors and found credible by the trial judge. The evidence fails to preponderate against the trial judge's finding that the injury is compensable.

In determining the extent of a claimant's permanent vocational disability, courts consider not only anatomical impairment, but also the employee's age, education, skills, local job opportunities, duration of disability and the claimant's capacity for earning wages in his disabled condition. Tenn. Code Ann. section 50-6-241(a)(2). Where a claimant returns to work at his previous salary, the maximum award is two and one-half times his medical impairment, where, as here, the disability is to the body as a whole. Tenn. Code Ann. section 50-6-241(a)(1). The evidence fails to preponderate against the trial court's award.

The judgment of the trial court is accordingly affirmed. Costs on appeal are taxed to the defendants-appellants.

____
Joe C. Loser, Jr., Special Judge

CONCUR:

____
Adolpho A. Birch, Jr., Chief Justice

____
Robert S. Brandt, Senior Judge

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JOSEPH CRAIG,	}	*DAVIDSON CHANCERY*
	}	*No. 95-1363-II Below*
Plaintiff/Appellee	}	
	}	*Hon. Walter C. Kurtz,*
vs.	}	*Judge*
	}	
MURRAY GUARD, INC. and FIREMAN'S FUND INSURANCE COMPANY,	}	*No. 01S01-9612-CH-00251*
	}	
Defendants/Appellants	}	*AFFIRMED.*

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 Defendants/Appellants and Surety, for which execution may issue if necessary.

IT IS SO ORDERED on September 12, 1997.

PER CURIAM