

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

November 28, 2011 Session

ROCHELLE M. EVANS v. FORD MOTOR COMPANY

Appeal from the Chancery Court for Davidson County
No. 08-866-I Claudia C. Bonnyman, Chancellor

No. M2010-02254-WC-R3-WC - Mailed: January 10, 2012
Filed - February 10, 2012

The employee sought reconsideration of her workers' compensation settlement. The trial court found that she had voluntarily resigned and was therefore not eligible to receive reconsideration. The employee has appealed. We affirm the trial court's judgment.¹

Tenn. Code Ann. § 50-6-225(e) (2008) Appeal as of Right; Judgment of the Chancery Court Affirmed

WALTER C. KURTZ, SR.J., delivered the opinion of the Court, in which CORNELIA A. CLARK, C.J., and D.J. ALISSANDRATOS, SP. J., joined.

Rochelle M. Evans, Clarksville, Tennessee, *pro se*.

Sarah H. Reisner and Michael L. Haynie, Nashville, Tennessee, for the appellant, Ford Motor Company.

MEMORANDUM OPINION

Factual and Procedural Background

This is a reconsideration case brought pursuant to Tennessee Code Annotated section 50-6-241(d)(1)(B)(i) (2008). Rochelle Evans ("Employee") was employed by Ford Motor Company ("Employer") in its Nashville auto glass facility from August 1995 until September

¹ Pursuant to Tennessee Supreme Court Rule 51, this workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law.

2007. She injured her shoulder on September 30, 2004. She was treated by Dr. Michael LaDouceur, who placed her at maximum medical improvement on August 19, 2005 and assigned a 7% permanent anatomical impairment to the body as a whole. Employee had returned to work for Employer at her pre-injury wage in February 2005. A settlement of her workers' compensation claim was approved by the Davidson County Chancery Court on December 13, 2005.

Employee's return to work was marked by a series of disagreements with Employer concerning her abilities and limitations. At one point in time, she performed her previous job, which involved placing labels on boxes. Employee thought that she was capable of performing this job if she was allowed to work "at [her] own pace." Employer was unable to accommodate her request. At another time she was assigned to enter employee information into a computer database. She did not believe that this assignment was appropriate because of the medications she was taking at the time. She was later assigned to place tape on boxes but felt that she could not keep up with the pace of the job. Employer sent a video recording of another employee performing that job to Employee's treating physician who opined that Employee could safely perform it. Employee disagreed and declined to accept assignment to that position. As a result, she was placed on medical leave in January 2006. She did not return to work for Employer thereafter.

After being placed on leave, Employee received unemployment compensation and supplemental income payments from Employer pursuant to a collective bargaining agreement for a period of time. The combined payments were approximately 90-100% of her normal earnings. However, those payments ended when she accepted employment as a janitor with another employer and became ineligible for unemployment compensation. Pursuant to the collective bargaining agreement, she continued to be considered an employee of Employer for various purposes. Employee testified that she was still employed by Employer during this time.

Due to a decline in sales, Employer began to offer various buyout programs to its employees in order to reduce its workforce. Employee inquired about these programs in the summer of 2007. She elected to accept an offer referred to as the "Educational Opportunity Program," known to the participants as "EDOPP." In general, this program provided that Employer would pay school tuition and living expenses up to \$100,000. In exchange, Employee resigned from her employment, effective September 1, 2007.

Employee's mother was injured in a motor vehicle accident in November 2007. As a result, Employee was unable to continue in the EDOPP program. She withdrew and requested to receive the balance of the \$100,000 as a lump sum payment. She received a

payment, but testified at trial that she did not recall even the approximate amount of that payment. The trial court found her testimony was not credible.

Employee then filed a pro se petition for reconsideration of her previous settlement. She subsequently obtained counsel. She and counsel subsequently filed motions to permit counsel to withdraw. The motions were granted by order entered June 12, 2009. By order entered March 15, 2010, the case was set for trial on July 8, 2010, on which date Employee filed a motion to continue the trial. The trial court denied the motion, noting previous trial settings, the length of time since the order setting the case for trial, and the expense Employer had incurred in bringing a witness from Michigan to testify. The trial proceeded.

After hearing the testimony of Employee and Employer's witness, William Kernahan, and after reviewing the deposition of Dr. Michael LaDouceur and the various exhibits, the trial court filed a nine-page order containing detailed findings. Specifically, the trial court found that Employee had voluntarily resigned her employment, that her resignation was not reasonably related to her work injury, and that she was therefore not eligible to seek reconsideration pursuant to Tennessee Code Annotated section 50-6-241(d)(1)(B). The trial court dismissed Employee's petition; however, the trial court made an alternative ruling that if Employee was eligible for reconsideration, the disability from the September 2004 injury was 20% to the body as a whole, a net increase of 9.5% from the December 2005 settlement. Employee has appealed from the trial court's decision. The decision of the trial court is reflected in its nine-page order which contains the detailed findings referenced above.

Standard of Review

The standard of review for factual issues is de novo upon the record of the trial court accompanied by a presumption of correctness of the findings, unless the evidence preponderates otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2008). When the trial court has heard in-court testimony, considerable deference must be afforded to the trial court's findings of credibility and assessment of the weight to be given to in-court testimony. *Whirlpool Corp. v. Nakhoneinh*, 69 S.W.3d 164, 167 (Tenn. 2002). When the issues involve expert medical testimony that is contained in the record by deposition, determination of the weight and credibility of the evidence should be drawn from the contents of the depositions, and the reviewing court may draw its own conclusions with regard to those issues. *Foreman v. Automatic Sys., Inc.*, 272 S.W.3d 560, 571 (Tenn. 2008). We review a trial court's conclusions of law de novo upon the record with no presumption of correctness. *Seiber v. Reeves Logging*, 284 S.W.3d 294, 298 (Tenn. 2009).

Analysis

Employee has alleged numerous issues in her various filings in this appeal. These include, *inter alia*, misconduct by various attorneys, court personnel and doctors involved with her claim, and also violations of the unfair trade practices statute. *See* Tenn. Code Ann. §§ 56-8-101 to -113. In general, these matters were not raised in the trial court, and/or are not relevant to Employee's petition for reconsideration of her workers' compensation settlement.

Employee has also attempted through various stratagems to have the Supreme Court of the United States preclude further proceedings in this case based on the above recited contentions. She also sought to continue the scheduled oral argument. Employee appeared at oral argument in this case, but she refused to argue—seemingly believing that her argument would somehow interfere with her efforts to have the Supreme Court of the United States intervene. Post-argument, an additional filing was made in this court related to her efforts before the Supreme Court of the United States. This Court's ruling on Ms. Evan's motions is contained in a *per curiam* order entered on December 16, 2011.

The court is mindful that the appellant is pro se. Judge (now Justice) Koch has stated the applicable law related to pro se litigants:

We have consistently held that parties who decide to represent themselves are entitled to fair and equal treatment by the courts, *see, e.g., Whitaker v. Whirlpool Corp.*, 32 S.W.3d 222, 227 (Tenn. Ct. App. 2000); *Paehler v. Union Planters Nat'l Bank, Inc.*, 971 S.W.2d 393, 396 (Tenn. Ct. App. 1997), and that trial courts must take into account that many pro se litigants have no legal training and little familiarity with the judicial system, *Irvin v. City of Clarksville*, 767 S.W.2d 649, 652 (Tenn. Ct. App. 1988). That having been said, we must also be mindful of the boundary between fairness to a pro se litigant and unfairness to the pro se litigant's adversary. Pro se litigants should not be permitted to shift the burden of litigating their cases to the courts or to their adversaries. Thus, trial courts should not excuse pro se litigants from complying with the same substantive and procedural rules that represented parties are expected to observe. *Edmundsun v. Pratt*, 945 S.W.2d 754, 755 (Tenn. Ct. App. 1996); *Kaylor v. Bradley*, 912 S.W.2d 728, 733 n.4 (Tenn. Ct. App. 1995).

Wilkerson v. Ekelem, No. M2002-00841-COA-R3-CV, 2004 WL 578600, at *2 (Tenn. Ct. App. Mar. 24, 2004).

Having carefully reviewed the record, we have determined that the only issue before us is whether or not the trial court erred by finding that Employee voluntarily resigned her employment for reasons unrelated to her work injury. We conclude that it did not.

In reaching its decision, the trial court relied upon *Hardin v. Royal & Sunalliance Insurance*, 104 S.W.3d 501 (Tenn. 2003). In *Hardin*, the employee successfully returned to work after sustaining a compensable injury. *Id.* at 503. His workers' compensation claim was settled in accordance with the lower "cap" then in effect, Tennessee Code Annotated section 50-6-241(a)(1). *Id.* After the settlement, the employee resigned in anticipation of a sale of his employer, believing he would be unable to work for the prospective new owner of the company. *Id.* He filed a petition for reconsideration and received an increase in his permanent partial disability award. *Id.* On appeal, the Special Workers' Compensation Panel reversed, and the Supreme Court affirmed that reversal. *Id.* at 502, 506. The Court held that "while a trial court may reconsider a previous award if the employee resigns, it may increase that award only if the resignation was reasonably related to the injury." *Id.* at 505-06.

In *Tryon v. Saturn Corp.*, 254 S.W.3d 321 (Tenn. 2008), the Supreme Court elaborated on this principle:

[A]n employee has not had a meaningful return to work if he or she returns to work but later resigns or retires for reasons that are reasonably related to his or her workplace injury. Accordingly, the multiplier in Tenn. Code Ann. § 50-6-241(b)² is applicable. If, however, the employee later retires or resigns for personal reasons or other reasons that are not reasonably related to his or her workplace injury, the employee has had a meaningful return to work which triggers the two and one-half multiplier allowed by Tenn.Code Ann. § 50-6-241(a)(1).³

254 S.W.3d at 328-29 (citations omitted).

The undisputed evidence in this case showed that Employee had successfully returned to work at the time the settlement of her workers' compensation claim was approved by the trial court. A dispute then arose concerning her ability to perform her job at the pace

²Tennessee Code Annotated section 50-6-241(d)(1)(B) applies to injuries occurring on or after July 1, 2004. Tenn. Code Ann. § 50-6-241(d)(1)(A).

³A one and one-half times impairment multiplier is applicable to injuries occurring on or after July 1, 2004. Tenn. Code Ann. § 50-6-241(d)(1)(A).

required by Employer. Employee asserted that her injury prevented her from doing so; Employer asserted that it did not. As a result of the disagreement, Employee was placed on medical leave. Her employment was not terminated, and she received unemployment compensation and other payments which approximated her normal earnings. That event did not constitute a loss of employment for purposes of Tennessee Code Annotated section 50-6-241. *See Edwards v. Saturn Corp.*, No. M2007-01955-WC-R3-WC, 2008 WL 4378188, at *6 (Tenn. Workers' Comp. Panel Sept. 25, 2008). The unemployment compensation and other payments ended for reasons unrelated to her injury. Neither Employee nor Employer contends that Employee's placement on medical leave triggered her eligibility for reconsideration.

Both parties agreed that Employee's employment ended on September 1, 2007 with her voluntary resignation, which was given in exchange for \$100,000 in tuition payments and other benefits afforded Employee under the EDOPP plan. As the trial court found, Employee "voluntarily quit her job when she was offered a substantial buyout. Her decision to quit was the result of the buyout opportunity and was not reasonably related to her injury." The trial court's finding is entirely consistent with all of the evidence in the record. Because Employee's resignation was not reasonably related to her injury, the trial court correctly held that she was not eligible for reconsideration of her earlier settlement. *Tryon*, 254 S.W.3d at 328-29; *Hardin*, 104 S.W.3d at 505-06; *see also Gibbs v. Saturn Corp.*, No. M2007-02263-WC-R3-WC, 2009 WL 141895, at *5-6 (Tenn. Workers' Comp. Panel Jan. 22, 2009).

Conclusion

The trial court's judgment is affirmed. Costs are taxed to Rochelle Evans, for which execution may issue if necessary.

WALTER C. KURTZ, SENIOR JUDGE

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JUDGMENT

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 Rochelle Evans, for which execution may issue if necessary.

PER CURIAM