

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

EUNICE IRENE FREEMAN, )  
 )  
 Plaintiff/Appellee )  
 )  
 v. )  
 )  
 SPORTSWEAR AND ASSOCIATES )  
 and LIBERTY MUTUAL INSURANCE )  
 COMPANY, )  
 )  
 Defendants/Appellants )

MACON CIRCUIT

Hon. Bobby Capers,  
Judge

NO. 01S01-9511-CV-00193

(No. 3796 Below)

**FILED**

**June 20, 1996**

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

**For the Appellants:**

Luther E. Cantrell, Jr.  
Davies, Cantrell, Humphreys & McCoy  
150 2d Ave. N., Ste. 225  
P.O. Box 190609  
Nashville, TN 37219-0609

**For the Appellee:**

E. Guy Holliman  
William Joseph Butler  
Farrar & Holliman  
102 Scottsville Hwy.  
Lafayette, TN 37083

**MEMORANDUM OPINION**

**Members of Panel:**

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

**AFFIRMED  
AND REMANDED**

**BYERS, 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.

The trial judge found the plaintiff had suffered a 65% permanent partial disability to the body as a whole and entered judgment accordingly.

The issues raised by the defendant are:

- 1) Whether the proof preponderates against the trial court's judgment as excessive.
- 2) Whether the trial court erred in holding that the plaintiff's award was not limited to two and a half times the medical impairment rating.
- 3) Whether the trial court erred in awarding the plaintiff a lump sum payment.

The judgment of the trial court is affirmed.

There is no dispute that the plaintiff, who is 58 years of age, with a high school education, whose primary job was as a sewing machine operator, was injured in an industrial accident. Further, there is no dispute that the plaintiff sustained a permanent vocational impairment to the body as a whole.

The plaintiff submitted the only medical evidence in this case. The physician testified that the plaintiff had sustained a 17% permanent medical impairment to the body as a whole. The plaintiff, her husband and a co-worker testified concerning the plaintiff's condition subsequent to the injury. Each of these witnesses testified to the limitations of the plaintiff's ability to perform work as a result of her injuries.

Without question the plaintiff sustained a significant injury in this accident. The trial judge saw and heard the witnesses who testified in court and credited their testimony. Credibility of these witnesses is for the trial judge to find, and we do not, and can not, reweigh the credibility on appeal.

On appeal, we review the judgment of the trial court with a presumption of correctness. TENN. CODE ANN. § 50-6-225(e)(2). We are required, however, to

make an in-depth review of the record to determine where the preponderance of the evidence lies. TENN. CODE ANN. § 50-6-225(e)(2). Landers, 775 S.W.2d at 356. In applying this rule of review, we take the evidence as established in the record at the trial court. To overturn the findings of fact of the trial court, we must find the evidence clearly preponderates against the trial court's factual findings. TENN. CODE ANN. § 50-6-225(e)(2). If it does not so preponderate or if there is reasonable debate as to whether the evidence preponderates in favor of or against the trial court's findings of fact, those factual findings will be affirmed.

Using this guide in weighing the evidence in this case, we find the evidence does not preponderate against the finding of the trial court that the plaintiff sustained a 65% permanent vocational disability to the body as a whole.

We must now determine if, despite the trial court's finding, the amount of the award is limited to two and a half times the medical impairment rating of 17% by the reason of TENN. CODE ANN. § 50-6-241(a)(1) or whether the amount of the award is limited to six times the medical impairment rating of 17% as provided in TENN. CODE ANN. § 50-6-241(b).

If an employee suffers an injury, such as the plaintiff suffered in this case, and is returned to work by the pre-injury employer at a wage greater than or equal to the wage the employee was earning prior to the injury, the award to the employee shall be limited to two and a half times the medical impairment rating. TENN. CODE ANN. § 50-6-241(a)(1). TENN. CODE ANN. § 50-6-241(b) provides that, if the employee is not returned to work by the pre-injury employer at a wage equal to or greater than the pre-injury wage, the amount of the award will be limited to six times the medical impairment rating.

TENN. CODE ANN. § 50-6-241 does not and cannot define all the circumstances which might arise in determining whether there has or has not been a return to work within the meaning of the statute. The courts have been required to construe the statute in relation to the facts arising in cases where the statute is at issue, to determine its application to the particular case. In doing this, we must keep

in mind that the intent of the legislature in passing this act was to encourage employers to return employees to work upon their recovery from injury.

In this case, when the plaintiff was released to return to work, the pre-injury employer had ceased to be in business. There was no pre-injury employer who could return the employee to work at the same or greater pay. Because the intent of the legislature in passing this act could not be realized in this case, we find the trial judge was correct when he found the award was not limited to two and a half times the medical impairment rating. We, therefore, find the award entered by the trial judge to be proper.

The defendant complains that the trial judge ordered the award in this case to be paid in a lump sum payment. The judgment recites that the defendant shall pay the plaintiff the sum of \$41,228.20. We do not construe this to be a lump sum award. Neither does the plaintiff, who, in her brief, asserted she never asked for a lump sum payment nor offered any proof at trial to support a lump sum award. Upon remand, the trial judge may enter an order showing a periodic payment of the award, if such clarification is necessary.

The judgment of the trial court is affirmed, the costs of this appeal are taxed to the defendant/appellant and the case is remanded to the trial court.

---

John K. Byers, Senior Judge

CONCUR:

---

Frank F. Drowota, III, Justice

---

Roger E. Thayer, Special Judge