

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

AT NASHVILLE
(March 14, 1996 Session)

RICHARD A. HARRIS,)	MAURY CIRCUIT
)	
Plaintiff-Appellee,)	Hon. Jim T. Hamilton,
)	Judge
v.)	
)	No. 01S01-9510-CV-00176
TRIANGLE AUTO SPRINGS)	
COMPANY,)	
)	
Defendant-Appellant.)	

For Appellant:

Terry L. Hill
Manier, Herod, Hollabaugh & Smith
Nashville, Tennessee

For Appellee:

Lawrence D. Sands
Sands & Sands
Columbia, Tennessee

MEMORANDUM OPINION

Members of Panel:

Adolpho A. Birch, Jr., Associate Justice, Supreme Court
Ben H. Cantrell, Special Judge
Joe C. Loser, Jr., Special Judge

AFFIRMED AS MODIFIED

Loser, 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. section 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. In this appeal, the employer, Triangle Auto Springs Company, contends (1) the award of permanent partial disability benefits is excessive and (2) the trial court abused its discretion by commuting such award to a lump sum. The panel concludes that the judgment should be modified as provided herein.

On October 4, 1991, the employee or claimant, Richard H. Harris, felt a sharp pain in his back while lifting an automobile spring at work for the employer. The employer referred him to the Mid-Tennessee Bone and Joint Clinic where his injury was diagnosed as a probable ruptured disk. Medication was prescribed and he returned to work. When he did not improve from conservative care, a CAT scan was ordered, which confirmed a ruptured disk in the low back, with L5 radiculopathy from a pinched nerve.

Ultimately, the claimant was referred to Dr. Robert Weiss, who performed a lumbar laminectomy. The surgery was successful and the claimant was finally released from the surgeon's care with a weight lifting limitation of fifty pounds occasionally and thirty pounds repetitively. Dr. Weiss estimated his permanent anatomical impairment at ten percent from guidelines of the American Medical Association.

The claimant returned to work for Triangle in January of 1993, but in a lighter position, where he could work within his limitations. When he was laid off from that position and no other was found within his limitations, he attempted to rehabilitate himself by returning to college and studying toward an Associate of Science degree. The employer paid half of his expenses. At the time of the trial, he was working as a technician in the Physical Therapy Department at Maury Regional Hospital. He is studying to become a physical therapist.

The claimant and his wife own their home and are current on their debts, a home mortgage and a debt secured by their 1993 Jeep Cherokee. They have been married for sixteen years and have a young daughter.

The trial judge found, among other things, that the claimant had a permanent partial disability of sixty percent to the body as a whole and awarded benefits accordingly, which he commuted to a lump sum. 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). This tribunal is required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. Wingert v. Government of Sumner County, 908 S.W.2d 921 (Tenn. 1995).

Once the causation and permanency of an injury have been established by expert testimony, the trial judge may consider many pertinent factors, including age, job skills, education, training, duration of disability, and job opportunities for the disabled, in addition to anatomical impairment, for the purpose of evaluating the extent of a claimant's permanent disability. McCaleb v. Saturn Corp., 910 S.W.2d 412 (Tenn. 1995). From our independent examination of the record and consideration of the pertinent factors, the panel finds that the evidence preponderates against a finding of sixty percent permanent partial disability to the body as a whole and in favor of an award based on thirty-five percent to the body as a whole. The judgment of the trial court is modified accordingly.

Permanent partial disability benefits may, in the discretion of the trial judge, be awarded in a lump sum. Tenn. Code Ann. section 50-6-229(a). In determining whether to commute an award, the courts must consider (1) whether the commutation will be in the best interest of the employee, and (2) the ability of the employee to wisely manage and control the commuted award. We are not persuaded that the trial judge abused his discretion by commuting the award in this case.

As modified, the judgment of the trial court is affirmed. Costs on appeal are taxed to the parties, one-half each.

Joe C. Loser, Jr., Judge

CONCUR:

Adolpho A. Birch, Jr., Associate Justice

Ben H. Cantrell, Senior Judge