IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

SAMMIE HALL	}	*SUMNER CHANCERY*
	}	*No. Below 97C-99*
Plaintiff/Appellee	}	
	}	*Hon. Tom E. Gray*
vs.	}	*Chancellor*
	}	
	}	*No. 01S01-9803-CH-00041*
SHONEY'S, INC. AND	}	
ALEXSIS, INC.	}	
	}	
Defendants/Appellants	}	*MODIFIED*

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 plaintiff/appellee, for which execution may issue if necessary.

IT IS SO ORDERED on February 3, 1999.

PER CURIAM

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

SAMMIE HALL,	)	SUMNER CHANCERY
	)	
Plaintiff -Appellee	)	NO. 01S01-9803-CH-00041
	)	
v.	)	
	)	
SHONEY'S, INC., and ALEXSIS, INC.,	)	HON. TOM E. GRAY, CHANCELLOR
	)	
	)	
Defendants-Appellants	)	

For the Appellant:

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For the Appellee:

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

Members of Panel:

Justice William M. Barker
Senior Judge William H. Inman
Special Judge Joe C. Loser, Jr.

MODIFIED

INMAN, 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.

This complaint was filed April 9, 1997, alleging that the plaintiff sustained an injury to his left shoulder on January 12, 1994 while lifting a heavy object during the course and scope of employment.

The defendants filed their answer on November 19, 1997 alleging that the claim was barred (1) by the one-year statute of limitations, T.C.A. § 50-6-203; (2) by the failure of the plaintiff to give notice of injury, T.C.A. § 50-6-201 *et seq.;* (3) by the execution of the plaintiff of a general release on January 10, 1997; (4) by the principles of accord and satisfaction.

The Chancellor found that the plaintiff sustained a job-related injury to his left shoulder on January 12, 1994; that all of his medical expenses have been paid; and that the medical proof established a ten percent impairment to his left upper extremity which, when apportioned to his whole body, resulted in a 35 percent disability to his body as a whole.

The employer appeals, insisting that the proof established an "anatomical rating of ten percent to the upper extremity," which equates to six percent whole body impairment, and that the statutory multiplier of 2.5 should have been applied.

That the plaintiff suffered a shoulder injury is not seriously disputed. He was treated by Dr. Barrett F. Rosen, an orthopedic surgeon, who performed an arthroscopic procedure on his shoulder on July 22, 1996 with a diagnosis of impingement syndrome, left shoulder. Dr. Rosen fixed his impairment rating at ten percent to the *upper extremity.*

The defendants argues that Dr. Rosen testified that the plaintiff retained a ten percent impairment to a scheduled member, i.e., his arm, which is apportioned to whole body impairment of six percent rather than ten percent as found by the Court.

The confusion is generated by the use of Form C-32, on which Dr. Rosen reported, "10% scheduled member," after previously reporting "10% upper extremity." In light of the undisputed fact that it was the plaintiff's left shoulder, and not his arm, that was injured, and that the surgery was performed on his shoulder, and not his arm, we think it reasonable and fair to conclude that the impairment was to the shoulder.

The injury was apparently not a serious one. Following arthroscopy on July 22, 1996, the plaintiff returned to work three days later, and worked until January 10, 1997, when he was terminated after executing a severance agreement.[1]

The plaintiff's injury was sustained on January 12, 1994. He was off from work only three days for causes attributable to his injury until he executed the Severance Agreement effective January 10, 1997. Given these circumstances we find that the plaintiff returned to work in a meaningful way and that the multiplier of 2.5 times impairment rating is applicable. T.C.A. § 50-6-141(a)(1). It results that the judgment is modified to reflect a vocational disability of 25 percent to the body as a whole.

As modified, the judgment is affirmed, with costs on appeal assessed to the appellee.

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William H. Inman, Senior Judge

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[1]The defendants paid him about $11,000.00 in consideration of his voluntary separation. The Severance Agreement encompasses a General Release. Since it was not court approved, the defendants do not rely upon it as a bar to this action.

CONCUR:

_____

William M. Barker, Justice

_____

Joe C. Loser, Jr., Special Judge