

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

April 20, 2020 Session

**ROBERT RODGERS v. RENT-A-CENTER EAST, INC. ET AL.**

**Appeal from the Circuit Court for Shelby County  
No. CT-004371-14 Jerry Stokes, Judge**

---

**No. W2019-01106-SC-R3-WC – Mailed June 12, 2020; Filed July 29, 2020**

---

Employee was injured in an automobile accident in the course and scope of his employment with Employer. The authorized treating physician and an authorized second opinion physician concluded that Employee suffered zero percent (0%) permanent impairment from his injury and released Employee to return to work. Employee did not successfully return to work and sought private medical treatment, including an independent medical examination (“IME”). The Employee’s IME physician assigned a seven percent (7%) permanent impairment rating. Employer then sought an independent medical evaluation from a physician chosen from the Medical Impairment Registry (“MIR”). The MIR physician assigned a two percent (2%) permanent impairment rating. The trial court adopted the seven percent (7%) permanent impairment rating and awarded permanent partial disability benefits based on a multiplier of three, having determined Employee failed to make a meaningful return to work, for an award of 21% permanent partial disability to the body as a whole. The court further awarded 104 weeks of temporary total disability benefits and certain discretionary costs. Employer has appealed, arguing that the trial court erred in adopting the rating of Employee’s IME physician rather than the MIR physician’s rating; in determining Employee did not make a meaningful return to work; in awarding extended temporary total disability benefits; and in awarding Employee his discretionary costs. The 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 pursuant to Tennessee Supreme Court Rule 51. Following our review of the trial court’s judgment and the record on appeal, we modify in part, affirm in part, and reverse in part.

**Tenn. Code Ann. § 50-6-225(e)(1)(2014) (applicable to injuries occurring prior to July 1, 2014) Appeal as of Right; Judgment of the Circuit Court Modified in Part, Affirmed in Part, and Reversed in Part**

ARNOLD B. GOLDIN, J., delivered the opinion of the court, in which ROGER A. PAGE, J., and KYLE C. ATKINS, J., joined.

A. Allen Grant, Nashville, Tennessee, for the appellants, Rent-A-Center East, Inc., and Rent-A-Center Franchising International, Inc.

Christopher L. Taylor, Memphis, Tennessee, for the appellee, Robert Rodgers.

**OPINION**

**Factual and Procedural Background**

Robert L. Rodgers, Jr. (“Employee”) began employment with Rent-A-Center (“Employer”) in February 2013. He was hired to fill a customer service position, but he performed other tasks including deliveries, repossessions, and credit calls. On May 7, 2013, Employee was rear-ended in an automobile accident while running job-related errands for the store manager. Immediately following the accident, Employee reported a sharp pain in his lower back that radiated down his left leg. He was transported to a nearby hospital where he was x-rayed, administered medication, and given an off-work release. Employee briefly returned to work with complaints of back and leg pain; however, he was soon placed on medical leave.

After being placed on leave, Employee was treated briefly by Dr. Darrin Jessop, a Memphis chiropractor chosen from a list provided by Employer, but he testified the treatment was too painful and provided no relief. On July 22, 2013, Employee was examined by Dr. Stephen Waggoner, an orthopedic surgeon with the Memphis Orthopedic Group, who was also chosen by Employee from a physician panel provided by Employer. The results of an MRI ordered by Dr. Waggoner were noted as normal, and Employee’s straight leg raise testing was negative. After receiving a regimen of physical therapy, Dr. Waggoner determined that Employee reached maximum medical improvement (“MMI”) on October 9, 2013. He assigned Employee a zero percent (0%) permanent impairment rating and released him to return to work. Employee, however, never did return to work. According to Employee, Employer told him not to return to work unless he was “100%.”

Upon exhausting the benefit review process, Employee filed a complaint in the

Shelby County Circuit Court for workers' compensation benefits on October 16, 2014. Employer subsequently agreed to authorize a second opinion evaluation with Dr. Fereidoon Parsioon, a Memphis neurosurgeon, which took place on May 20, 2015. Dr. Parsioon ordered x-rays, the results of which were normal, and two weeks of physical therapy. After Employee completed the physical therapy, Dr. Parsioon released him from his care with no restrictions on October 8, 2015. Dr. Parsioon concurred with Dr. Waggoner that Employee had a zero percent (0%) permanent impairment rating.

Employee subsequently sought treatment on his own. From November 2016 to February 2017, he saw Dr. Manuel Carro, a physical medicine and rehabilitation specialist at the Semmes-Murphy Clinic in Memphis. Dr. Carro noted lumbar myofascial pain syndrome and numbness and tingling in both legs with no evidence of peripheral radiculopathy<sup>1</sup>. The results of an EMG, x-rays, and an MRI of Employee's right leg were all normal. Dr. Carro recommended continued physical therapy. On April 25, 2017, Employee was seen by Dr. Gregory Dabov, an orthopedic surgeon at the Campbell Clinic in Memphis. Following a physical examination, Dr. Dabov diagnosed Employee with chronic lower back pain and patellofemoral syndrome in his right knee. Dr. Dabov offered Employee conservative treatment, including strengthening exercises.

In May 2018, Employee obtained his own IME with Dr. Apruva Dalal, a Memphis orthopedic surgeon. Dr. Dalal observed that Employee walked with a cane, appeared depressed, and spoke sluggishly. Dr. Dalal took Employee's history and reviewed the records of Drs. Waggoner, Parsioon, and Dabov, and the results of an August 2013 MRI. Employee presented with complaints of severe back pain and numbness and pain radiating to his lower extremity. During the physical examination, Dr. Dalal noted moderate tenderness in the paraspinal region of the lumbar spine with moderate paraspinal muscle spasms attributable to inflammation. According to Dr. Dalal, Employee's straight leg raise test was positive bilaterally at fifty degrees. Dr. Dalal took x-rays which revealed moderate multilevel degenerative disc disease. Dr. Dalal opined that the injuries were attributable to the 2013 automobile accident and assigned a permanent impairment rating of seven percent (7%) to the body as a whole "because [Employee] ha[d] evidence of known, verifiable radiculopathy in both his lower extremities." Dr. Dalal also suggested Employee may suffer from post-traumatic depression.

In light of Employee's obtaining an IME from Dr. Dalal, Employer sought an

---

<sup>1</sup> Radiculopathy is a condition due to a compressed nerve in the spine that can cause pain, numbness, tingling, or weakness along the course of the nerve. It is typically diagnosed by physical examination and the use of diagnostic tests including X-ray and MRI imaging.

independent medical evaluation from the Medical Impairment Registry. MIR physician, Bruce Randolph, M.D., was selected from a list provided by the registry. Dr. Randolph reviewed Employee's medical history and prior testing, and he summarized each physician's diagnosis.<sup>2</sup> Dr. Randolph conducted a physical examination at which time Employee reported lower back pain that radiated into both legs. Dr. Randolph noted that Employee displayed pain behavior and was "self-limiting," particularly in performing range-of-motion tests. He further noted that Employee was unwilling to walk without a cane. Dr. Randolph created a chronological chart of Employee's medical history in which he observed, among other things, Dr. Waggoner's assessment that Employee exhibited signs of symptom magnification and Dr. Parsioon's note that the pain "was completely out of proportion to the findings of the examination and studies." Dr. Randolph ultimately concluded Employee suffered from chronic low back pain with nonverifiable radicular components, and he assigned a permanent impairment rating of two percent (2%) to the body as a whole.

A bench trial was held on November 5, 2018. The trial court heard the live testimony of Employee, and it reviewed, among other things, the C-32 Form<sup>3</sup> of Dr. Waggoner and the depositions of Drs. Parsioon, Dabov, Dalal, and Randolph. The trial court concluded that Employee proved by clear and convincing evidence "through the testimony of [Employee], Dr. Carro<sup>4</sup>, Dr. Dabov, and Dr. Dalal" that Employee sustained a permanent impairment of seven percent (7%) to the body as a whole as a result of the May 7, 2013 work injury rather than the MIR rating by Dr. Randolph of two percent (2%) permanent impairment to the body as a whole.

Additionally, the court found that Employee was entitled to 104 weeks of temporary total disability benefits at the weekly rate of \$380.62 for an award of \$39,584.48. The court further found that Employee had not had a meaningful return to work and, as a result, had sustained permanent partial disability of 21% to the body as a whole (7% x 3 multiplier) and awarded PPD benefits totaling \$30,449.60 for a total judgment of \$70,034.08. The court also awarded Employee his discretionary costs of \$1,515.20 for Dr. Dalal's deposition fee and the associated court reporter fees. Employer timely appealed.

---

<sup>2</sup> It does not appear Dr. Randolph had Dr. Dalal's report at the time of his evaluation.

<sup>3</sup> A C-32 Form is a "Standard Form Medical Report for Industrial Injuries" used to introduce direct testimony from a physician in a workers' compensation case in lieu of the necessity of taking the physician's deposition.

<sup>4</sup> Although the trial court references the "testimony" of Dr. Carro in its Judgment, the record on appeal does not contain either a C-32 Form or a deposition of Dr. Carro.

## Issues Presented

Employer raises the following issues on appeal, which we have restated and reordered as follows:

1. Did the trial court err in its determination that clear and convincing evidence existed to rebut the presumption of correctness afforded to Dr. Randolph's impairment rating?
2. Did the trial court err in its determination that Employee did not have a meaningful return to work and in so finding was entitled to a multiplier greater than one and a half (1½) times the impairment rating?
3. Did the trial court err in its determination that Employee was entitled to 104 weeks of temporary total disability benefits?
4. Did the trial court err in its determination to award Employee his discretionary costs?

## Analysis

### Standard of Review

Generally, appellate review of decisions in workers' compensation cases is governed by Tennessee Code Annotated section 50-6-225(e)(2) (2008), which provides that appellate courts must "[r]eview . . . the trial court's findings of fact . . . de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise." As the Supreme Court has observed many times, reviewing courts must conduct an in-depth examination of the trial court's factual findings and conclusions. *Wilhelm v. Krogers*, 235 S.W.3d 122, 126 (Tenn. 2007). When the trial court has seen and heard the witnesses, considerable deference must be afforded the trial court's factual findings. *Tryon v. Saturn Corp.*, 254 S.W.3d 321, 327 (Tenn. 2008). No similar deference need be afforded the trial court's findings based upon documentary evidence such as depositions. *Glisson v. Mohon Int'l, Inc./Campbell Ray*, 185 S.W.3d 348, 353 (Tenn. 2006). Similarly, reviewing courts afford no presumption of correctness to a trial court's conclusions of law. *Seiber v. Reeves Logging*, 284 S.W.3d 294, 298 (Tenn. 2009).

## Permanent Partial Disability Benefits

Employer challenges two different aspects of the trial court's award of permanent partial disability benefits. First, Employer argues the trial court erred in concluding Employee overcame the statutory presumption afforded the MIR physician's rating. Second, Employer contends the trial court erroneously determined that Employee failed to make a meaningful return to work, and therefore, erred in applying the three (3) times multiplier to the appropriate impairment rating. We address each issue in turn below.

### I.

The Medical Impairment Registry program was established by statute as a resource to resolve disputes regarding the degree of permanent medical impairment ratings. *See Act of June 15, 2004, ch. 962, § 24, 2004 Tenn. Pub. Acts 2346, 2361 (codified at Tenn. Code Ann. § 50-6-204(d)(5) (2005)); Tenn. Comp. R. & Regs. 0800-02-20-.02 (2008).* The statute provides in pertinent part that:

(5) When a dispute as to the degree of medical impairment exists, either party may request an independent medical examiner from the administrator's registry. . . . The written opinion as to the permanent impairment rating given by the independent medical examiner pursuant to this subdivision (d)(5) shall be presumed to be the accurate impairment rating; *provided, however, that this presumption may be rebutted by clear and convincing evidence to the contrary.*

Tenn. Code Ann. § 50-6-204(d)(5) (emphasis added).

Our Supreme Court has explained that in the specific context of this section, the clear and convincing evidence standard means that the MIR evaluation is the accurate impairment rating "if no evidence has been admitted which raises a 'serious and substantial doubt' about the evaluation's correctness." *Mansell v. Bridgestone Firestone N. Am. Tire, LLC*, 417 S.W.3d 393, 411 (Tenn. 2013) (quoting *Beeler v. Lennox Hearth Prods., Inc.*, No. W2007-02441-SC-WCM-WC, 2009 WL 396121, at \*4 (Tenn. Workers Comp. Panel Feb. 18, 2009)). The Court recognized, however, that other special workers' compensation appeals panels have offered varied interpretations of the standard in the MIR setting. One panel took a strict approach observing that the standard "*favours, or even requires*" an employee to present affirmative evidence that an MIR physician used an incorrect method or gave an erroneous interpretation of the AMA Guides. *Id.* (citing *Tuten v. Johnson Controls, Inc.*, No. W2009-01426-SC-WCM-WC, 2010 WL 3363609, at \*4 (Tenn.

Workers Comp. Panel Aug. 25, 2010)). Other panels retreated from this narrow interpretation, suggesting the presumption “may be rebutted” by such affirmative evidence. *Id.* (citing *Smith v. Elec. Research & Mfg. Coop., Inc.*, No. W2012-00656-WC-R3-WC, 2013 WL 683192, at \*3 (Tenn. Workers Comp. Panel Feb. 22, 2013) and *Brooks v. Corr. Med. Servs.*, No. W2010-00266-WC-R3-WC, 2011 WL 684600, at \*3 (Tenn. Workers Comp Panel Feb. 25, 2011)). In the end, the Court concluded that “[w]hen deciding whether or not an employee has rebutted the statutory presumption of correctness enjoyed by an MIR physician’s impairment rating, *the focus is on the evidence offered to rebut that physician’s rating.*” *Id.* (quoting *Brooks*, 2011 WL 684600, at \*5).

Here, Dr. Randolph evaluated Employee as the MIR physician. He diagnosed Employee with “[c]hronic low back pain with *nonverifiable* radicular components” and assigned a two percent (2%) permanent impairment rating to the body as a whole. (emphasis added). Dr. Randolph detailed his findings and identified the specific AMA Guidelines he utilized in reaching this rating. Pursuant to Tennessee Code Annotated section 50-6-204(d)(5), Dr. Randolph’s rating is presumed to be the accurate impairment rating.

In this case the trial court found that Employee’s testimony, combined with the records and/or depositions of Drs. Carro, Dabov, and Dalal, constituted “clear and convincing evidence” that overcame the presumption required by the statute. In our review, we are mindful that the trial court found Employee “very credible.” Indeed, the court had the ability to view his demeanor and ambulation. Under our standard of review, these findings are entitled to a presumption of correctness. The remaining documentary evidence, however, is not entitled to the same deference because the Panel can review the records and depositions in the record and draw its own conclusions.

From our review of the C-32 Form and the medical depositions, we find no evidence which raises a serious or substantial doubt about the correctness of Dr. Randolph’s evaluation. It becomes apparent, however, that the disparity in impairment ratings can be primarily attributed to the presence or absence of objective findings of radiculopathy. In our view, while Dr. Dabov, in his deposition, gave a thoughtful medical assessment of Employee’s condition based on his complaints; he did not offer persuasive evidence to rebut the statutory presumption. On the other hand, Dr. Dalal apparently believed Employee was truly enduring pain because he had been seeking medical assistance for years. Although Dr. Dalal did not entirely disagree with Employee’s other treating and consulting physicians, he was the lone physician who concluded Employee had verifiable radiculopathy sufficient to warrant the higher impairment rating. Thus, other than Employee’s testimony, we are left with physicians who disagree as to the presence of

radiculopathy. However, “[a] disagreement between medical expert witnesses as to the proper diagnosis of an employee’s condition may not, in and of itself, constitute the clear and convincing evidence needed to overcome the statutory presumption of accuracy afforded an MIR physician’s impairment rating.” *Mansell*, 417 S.W.3d at 411 (quoting *Smith*, 2013 WL 683192, at \*4).

Looking qualitatively at the evidence used to rebut the presumption, we are unable to conclude that Employee met his high burden. Accordingly, we conclude that the trial court erred in its conclusion. Per the statute, we conclude that Dr. Randolph’s two percent (2%) permanent impairment rating to the body as a whole is the accurate rating that should be used in determining the extent of Employee’s permanent partial disability. The judgment of the trial court should, therefore, be modified to reflect Dr. Randolph’s two percent (2%) permanent impairment rating to the body as a whole as the correct rating to be used in determining the extent of Employee’s permanent partial disability.

## II.

In assessing the extent of the award of permanent partial disability payments, the trial court was also required to consider whether Employee made a “meaningful return to work.” *See Tryon*, 254 S.W.3d at 328.

When determining whether an employee has made a meaningful return to work, the courts assess the reasonableness of the employer in attempting to return the employee to work and the reasonableness of the employee in failing to either return to work or to remain at work. *Id.* Additionally, the courts may consider “(1) whether the injury rendered the employee unable to perform the job; (2) whether the employer refused to accommodate work restrictions ‘arising from’ the injury; and (3) whether the injury caused too much pain to permit the continuation of the work.” *Williamson v. Baptist Hosp. of Cocke Cnty., Inc.*, 361 S.W.3d 483, 488 (Tenn. 2012).

This determination is consequential, because if an employee makes a meaningful return to work, the permanent partial disability benefits are capped at one and a half (1½) times the medical impairment rating. Tenn. Code Ann. § 50-6-241(d)(1)(A) (for injuries occurring on or after July 1, 2004, but before July 1, 2014). On the other hand, if the employee fails to make a meaningful return to work, the employee may receive benefits up to six (6) times the medical impairment rating. Tenn. Code Ann. § 50-6-241(d)(2)(A) (for injuries occurring on or after July 1, 2004, but before July 1, 2014).

The proof established that Employee was provided an off-work release when he was



released from the hospital on the day of the accident. Employee attempted to return to work a few days later, but he continued to experience back pain. Employer sent Employee for treatment at a local healthcare facility and subsequently placed him on medical leave. As stated earlier, Dr. Waggoner released Employee to full duty on October 9, 2013, with no restrictions. According to Employee, Employer informed him he could only return to work if he was “100%.” Employee never returned to work.

Employer maintains that Employee voluntarily abandoned his job because he never made a serious effort to return to work even though Dr. Waggoner released him to full duty with no restrictions. Insisting that Employee voluntarily left his employment, Employer argues Employee’s benefits are statutorily capped at one and one half (1½) times his impairment rating. According to Employee, he attempted to go back to work at Employer, but he could no longer perform the job, which included lifting furniture on a regular basis. The trial court accredited Employee’s testimony. We defer to the trial court’s credibility assessment, and we also reject the notion that Employee abandoned his position. We conclude that the evidence does not preponderate against the trial court’s conclusion that Employee failed to make a meaningful return to work and affirm the trial court’s ruling on this issue.

Having found that Employee did not have a meaningful return to work, the trial court was further required to determine the appropriate multiplier (up to six) under Tenn. Code Ann. § 50-6-241(d)(2)(A). In making such determinations, the trial court must consider lay and expert testimony; the employee’s age, education, skills, and training; local job opportunities; and his capacity to work at types of employment available in claimant’s condition. Tenn. Code Ann. § 50-6-241(d)(2)(A). In applying the above factors, the trial court arrived at a multiplier of three (3). On appeal, Employer only challenged the trial court’s multiplier on the basis that Employee should have been limited by a cap of one and a half (1½) times the impairment rating. It did not raise as an issue or argue, in the alternative, that the trial court’s multiplier of three (3) was inappropriate if that cap did not apply.

However, because we modified the trial court’s judgment by adopting the MIR physician’s permanent impairment rating of two percent (2%) to the body as a whole, the trial court’s judgment as to permanent partial disability must also be modified. As a result, the trial court’s judgment as to Employee’s permanent partial disability should be reduced from 21% to 6% (2% impairment rating x 3 multiplier) to the body as a whole.

### **Temporary Total Disability Benefits**

Employer maintains that the trial court erred in its determination that Employee was entitled to 104 weeks of temporary total disability (“TTD”) benefits. Tennessee Code Annotated section 50-6-207(1)(E) provides that:

If a treating physician determines that pain is persisting for an injured worker beyond an expected period for healing, the physician may refer such injured worker for pain management, encompassing pharmacological, nonpharmacological and other approaches to reduce or stop pain sensations. Such injured worker shall be presumed to have reached maximum medical improvement at the earliest occurrence of the following:

- (i) The treating physician determines the injured worker has reached maximum medical improvement; or
- (ii) One hundred and four (104) weeks after the commencement of pain management pursuant to the referral of the treating physician.

Tenn. Code Ann. § 50-6-207(1)(E) (applicable to injuries occurring prior to July 1, 2014). The trial court initially noted that Employee had been paid TTD benefits from May 14, 2013 through October 8, 2013. The trial court found, however, that “Employee ha[d] suffered one hundred four weeks of temporary total disability.”

Employer argues the trial court erred in awarding 104 weeks of TTD benefits because the authorized treating physician, Dr. Waggoner, placed Employee at MMI on October 9, 2013, and because Dr. Waggoner never referred Employee to pain management. Thus, Employer insists the trial court’s award of 104 weeks contravenes a clear reading of the law. Employee simply argues his TTD period should have restarted after his October 13, 2013 visit with Dr. Waggoner. He submits that he was still having significant pain and was incapable of being employed. However, Dr. Waggoner determined that Employee reached MMI on October 9, 2013. Employee can point to no physician who instructed him not to return to work, nor is there any evidence in this record that any other approved physician took Employee off work. Likewise, nothing in the record indicates Employee was referred to pain management so as to trigger the statutory 104-week provision. Thus, the trial court erred in extending the temporary total disability payments past October 9, 2013, and this part of the award is, therefore, reversed.

## **Discretionary Costs**

Finally, Employer contends the trial court erred by awarding Employee discretionary costs totaling \$1,515.20 for Dr. Dalal's deposition fee and the associated court reporter fees. Employer acknowledges that allowable discretionary costs to the prevailing party include "reasonable and necessary" court reporter expenses for depositions and "reasonable and necessary" expert witness deposition fees. *See* Tenn. R. Civ. P. 54.04(2). However, Employer contends that the award of these fees in this case is inappropriate because Employee is no longer the prevailing party.

In *Crew v. First Source Furniture Group*, 259 S.W.3d 656, 670 (Tenn. 2008), the Court explained that adjudging costs is within the trial court's discretion and that the court may equitably apportion the costs between litigants. In *Crew*, the Court determined that the trial court erred by awarding costs when Ms. Crew was no longer the prevailing party because she failed to meet her burden of establishing causation. *Id.*

Even though we have modified the trial court's judgment in this case, Employee remains the prevailing party. Employee will still receive an award of permanent partial disability benefits in this case, and the amount of this award has been contested by the Employer both in the trial court and on appeal, as has the issue of whether or not there was a meaningful return to work by Employee. As a result, we conclude that the Employee remains the prevailing party, and we affirm the trial court's award of discretionary costs to Employee.

## **Conclusion**

For the foregoing reasons, we modify the judgment as to permanent impairment from seven percent (7%) to two percent (2%) to the body as a whole, affirm the trial court's finding that Employee failed to make a meaningful return to work and that Employee is entitled to a multiplier of three (3) times Employee's two (2%) permanent impairment rating for a modified award of six percent (6%) permanent partial disability to the body as a whole, reverse the award of additional temporary total disability benefits, and affirm the trial court's award of discretionary costs to Employee. The case is, therefore, remanded to the trial court to enter a judgment and to assess costs and attorneys' fees consistent with this opinion. Costs of this appeal shall be assessed one-half (1/2) to Employee, Robert Rodgers, and one-half (1/2), jointly and severally, to Rent-A-Center East, Inc., Rent-A-

Center Franchising International, Inc., and their workers' compensation insurance carrier,  
for which execution may issue if necessary.

---

ARNOLD B. GOLDIN, JUDGE

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

**ROBERT RODGERS v. RENT-A-CENTER EAST INC. ET AL.**

**Circuit Court for Shelby County  
No. CT-004371-14**

---

**No. W2019-01106-SC-R3-WC – Filed July 29, 2020**

---

**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 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 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 and the decision of the panel modifying in part, affirming in part, and reversing in part the decision of the trial court is adopted and made the judgment of the Court.

Costs are assessed one-half (1/2) to the Appellant, Rent-A-Center East, Inc., Rent-A-Center Franchising International, Inc. and their workers' compensation insurance carrier, jointly and severally, and one-half (1/2) to the Appellee, Robert Rogers, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM