

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

FILED
January 11, 1999
Cecil W. Crowson
Appellate Court Clerk

LINDA S. SEALS,)
)
Plaintiff/Appellee,)
)
v.)
)
ENGLAND/CORSAIR UPHOLSTERY)
MANUFACTURING COMPANY, INC.,)
)
Defendant/Appellant,)
)
DINA TOBIN, DIRECTOR OF)
THE DIVISION OF WORKERS')
COMPENSATION, TENNESSEE)
DEPARTMENT OF LABOR,)
SECOND INJURY FUND,)
)
Defendant/Appellee.)

NO. 03S01-9704-CH-00044

CONCURRING OPINION

I concur in the majority's decision to remand this case to the trial court for a determination as to the extent of the worker's vocational disability attributable to the worker's subsequent physical and mental disabilities. I continue to adhere to my dissent in Bomely v. Mid America Corp., 970 S.W.2d 929 (Tenn. 1998), in which I concluded that Tenn. Code Ann. § 50-6-208(a) is applicable when there is a subsequent injury and the employee is rendered permanently and totally disabled. Subsection (b), however, should apply only when the employee is still able to earn a wage or be gainfully employed but has received compensable vocational disabilities that exceed 100 percent or 400 weeks of compensation.

Janice M. Holder, Justice