

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

November 3, 2000 Session

METHODIST HOSPITAL OF DYERSBURG, INC., v. LINDA AMS

**Direct Appeal from the Circuit Court for Dyer County
No. 98-60 Lee Moore, Judge**

No. W2000-01569-WC-R3-CV - Mailed January 10, 2001; Filed March 15, 2001

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 employer-appellant contends the award of permanent partial disability benefits is excessive. As discussed below, the panel has concluded that the evidence preponderates against an award based on five times the undisputed medical impairment rating.

**Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Circuit Court
Affirmed as Modified.**

LOSER, SP. J., delivered the opinion of the court, in which HOLDER, J. and WALKER, SP. J., joined.

Timothy G. Wehner, Rainey, Kizer, Butler, Reviere & Bell, Jackson, Tennessee, for the appellant, Methodist Hospital of Dyersburg, Inc.

Damon E. Campbell, Conley, Campbell, Moss & Smith, Union City, Tennessee, for the appellee, Linda Ams.

MEMORANDUM OPINION

The employer initiated this civil action seeking a declaration of the extent of its liability for permanent disability benefits to the employee or claimant, Linda Ams. No other issue was presented to the trial court.

At the time of her injury on October 9, 1996, the claimant was 53 years old. She has a GED and an associate's degree in nursing from the University of Tennessee at Martin. After receiving her degree, she worked at Volunteer General Hospital as a charge nurse supervising nurse's aides. She has worked as a supervisor and served as nursing director at Ten State, Inc., where she taught classes

and was responsible for supervising an average of 250 employees, as well as accounts of patients that were being provided home health care services. Until injured, she served as Director of Patient Services at Methodist Hospital in Dyersburg. She suffered a back injury while lifting safety manuals from a low shelf and has not returned to work.

She was first seen in the emergency room, then referred to Dr. Carl Huff. When conservative care did not help, she was referred to Dr. Morris Ray, who performed surgical disc repair on her lower back. She retains a permanent clinical impairment of 12 percent to the whole person and is medically restricted from lifting over ten pounds repetitively, twenty pounds occasionally, prolonged standing and repetitive stooping or bending. After being released by Dr. Ray, she received medication management from Dr. Michael Kempton.

Dr. Kempton sold his family practice in 1998 and presently is an emergency room physician. He testified in his opinion that the claimant was totally "disabled." He expressed no opinion as to the extent of the claimant's medical impairment and did not use any guidelines in assessing her disability.

Dr. Kempton has no education, training or experience which would qualify him as an expert on vocational disability.

A vocational expert, Brenda C. Dailey, has a master's degree in guidance and personnel services and twenty years' experience as a vocational rehabilitation counselor. She testified that the claimant's qualifications were superior to 95 percent of the people she has seen for evaluation and that she is capable of working in a supervisory capacity. Ms. Dailey testified that there are presently such jobs available in the claimant's home community. The claimant, however, has not sought any employment since her injury.

Upon the above summarized evidence, the trial court expressly discredited the testimony of Dr. Kempton and awarded permanent partial disability benefits based on 60 percent to the body as a whole, which equates to five times the only proof of medical impairment. Review of findings of fact by the trial court is de novo upon the record of the trial court, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). This standard requires the panel to examine in depth a trial court's factual findings and conclusions. The reviewing tribunal is not bound by a trial court's factual findings but instead conducts an independent examination to determine where the preponderance of the evidence lies. Galloway v. Memphis Drum Serv., 822 S.W.2d 584 (Tenn. 1991). Conclusions of law are reviewed de novo without any presumption of correctness. Presley v. Bennett, 860 S.W.2d 857 (Tenn. 1993).

For injuries occurring on or after August 1, 1992, where an injured worker is entitled to receive permanent partial disability benefits to the body as a whole, and the pre-injury employer does not return the employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of the injury, the maximum permanent partial disability award that the employee may receive is six times the medical impairment rating determined pursuant to

certain guidelines. Tenn. Code Ann. § 50-6-241(b). If a court awards a multiplier of five or greater, then the court must make specific findings of fact detailing the reasons for its award, considering all relevant factors, including lay and expert testimony, the employee's age, education, skills and training, local job opportunities and capacity to work at types of employment available in claimant's disabled condition. Tenn. Code Ann. § 50-6-241(c). Here, the appellant contends, and the appellee agrees, the trial court did not make the required specific findings. Thus, the appellant argues, the award of the trial court cannot be affirmed unless it is modified to one based on not more than four times the medical impairment of 12 percent.

The appellant argues the award should be reduced therefore to one based on not more than 48 percent to the body as a whole, but the appellee, citing authorities that do not really address the issue, contends this panel should affirm the trial court because of her own testimony that her condition worsened after she was last seen by Dr. Ray and because the trial judge may have felt that the claimant's medical impairment was as much as 15 percent. Unfortunately for the claimant, a trial court's finding as to a claimant's medical impairment must be based on competent expert medical evidence and the opinions of medical experts as to the extent of such impairment must be based on statutory guidelines. Tenn. Code Ann. § 50-6-204(d)(3). Our independent review of the record reveals no competent expert medical evidence of an impairment rating greater than 12 percent. Considering all of the factors relating to the claimant's vocational disability rating, we hold that the evidence fails to support an award of greater than four times the claimant's impairment rating.

For the above reasons, the panel has concluded that the evidence preponderates against the award of permanent partial disability benefits based on 60 percent to the body as a whole and in favor of one based on 48 percent to the body as a whole. The judgment is modified accordingly and affirmed as modified. Costs on appeal are taxed to the appellee.

JOE C. LOSER, JR., SPECIAL JUDGE

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JUDGMENT

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 on appeal are taxed to the Appellee, Linda Ams, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM