IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
January 10, 2002 Session

WILMA M. ADKINS v. , MODINE MANUFACTURING COMPANY, INC., ET AL.

Direct Appeal from the Circuit Court for Anderson County
No. AOLA0228 James B. Scott, Jr., Circuit Judge

Filed April 8, 2002

No. E2001-01237-WC-R3-CV

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 trial court awarded the employee 75 percent permanent partial disability to each arm. The employer has appealed and insists the award is excessive and should have been fixed to the body as a whole. The judgment is affirmed.

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

THAYER, SP. J., delivered the opinion of the court, in which ANDERSON, J., and BYERS, SR. J., joined.

Robert W. Knolton, of Oak Ridge, Tennessee, for Appellants, Modine Manufacturing Company, Inc. and Sentry Insurance Company.

Roger L. Ridenour, of Clinton, Tennessee, for Appellee, Wilma M. Adkins.

MEMORANDUM OPINION

The trial court awarded the employee, Wilma M. Adkins, 75 percent permanent partial disability to each arm. The employer, Modine Manufacturing Company, Inc., and insurance carrier, Sentry Insurance Company, have appealed.

Facts

The employee was 57 years of age at the time of the trial and she was a high school graduate.

During her life, she had worked as a cashier, salesperson, school bus driver, and nurse's assistant. She started working at Modine Manufacturing in 1981 and had worked at a number of different positions throughout her long-term employment.

In 1997 she began having problems with her hands because of the repetitive use related to her work activities. She reported the problem to her employer and was sent to see a doctor. Therapy treatments did not improve her condition much and she was eventually referred to an orthopedic surgeon. She was laid-off from work during June 2000 and was never called back to work. Her lay-off was part of a general lay-off.

Dr. Randall R. Robbins, an orthopedic surgeon, testified by deposition and said he first examined her during May 2000 and at first medication and splintering seemed to give some relief but her symptoms persisted to the extent it was necessary to perform surgery on each hand. She was diagnosed as having bilateral carpal tunnel syndrome and surgery on the left was performed during July 2000 and on the right during October 2000. Therapy was resumed and he eventually released her to return to work under restrictions of doing light duty work and to avoid any repetitive use of her hands. He said she would have a 10 percent impairment to both arms under the AMA Guidelines, Fifth Edition.

At trial the employee testified she could not return to any of the jobs she held before her employment with Modine and that she could not find any type of employment that she could do. With regard to housework, she said she could not vacuum or mop. Also, she could not hold a newspaper for any length of time; still had some numbness and pain in her hands; had no strength in her hands; and it was painful when attempting to put on her clothes or brush her teeth.

Dr. Rodney Caldwell, a vocational consultant, testified orally as a witness and said he had examined her deposition, the medical deposition and administered several vocational tests. He concluded she could only do a very small number of light duty jobs and fixed her vocational disability at 94 percent.

The employer and insurance carrier did not offer any evidence.

Standard of Review

We are required to review the case *de novo* with a presumption that the findings of the trial court are correct unless we find the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2).

Issues on Appeal

The employer and insurance carrier argue the award of 75 percent disability to each arm is excessive. Also, they contend the trial court was in error in fixing the award to scheduled members rather than the body as a whole where a six times impairment rating would cap the award.

Analysis

We should first consider whether the trial court was in error in failing to fix the disability to the body as a whole rather than to scheduled members. This question is totally without merit. At the beginning of the trial, counsel stipulated the only issue for the court was to determine the extent of disability to each arm. Stipulations entered into at the trial level are binding on appeal. Moreover, if this were the sole issue on appeal, we would view same to be frivolous.

The question of whether the award of 75 percent disability to each arm is excessive is a viable issue but an issue which we do not find to be valid. When fixing disability to a scheduled member, the main question is to ascertain the loss of use of that member. ***Duncan v. Boeing Tennessee, Inc.***, 825 S.W.2d 416 (Tenn. 1992). In this connection, the usual factors of the employee's age, education, training and skills as well as the opportunity for employment in the open labor market may also be considered. ***Orman v. Williams-Sonoma, Inc.***, 803 S.W.2d 672, 678 (Tenn. 1991).

In the present case it appears the employee has not obtained a great deal of relief from her bilateral carpal tunnel syndrome surgery and we conclude the loss of use of her arms seems to be quite extensive. Appellants say the award should be capped at six times the medical impairment but cite no valid authority. In ***Atchley v. Life Care Center of Cleveland***, 906 S.W.2d 428 (Tenn. 1995) the Supreme Court held the two and one-half cap did not apply to scheduled member cases. Appellants argue that ruling only concerned employees who returned to work at the same wage. Our reading of the statute and ***Atchley*** decision causes us to conclude the six times cap also does not apply to scheduled member awards.

Conclusion

The evidence does not preponderate against the award of 75 percent disability to each arm. The judgment is affirmed. Costs of the appeal are taxed to Appellants.

_____

ROGER E. THAYER, SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE, TENNESSEE

WILMA ADKINS V. MODINE MANUFACTURING COMPANY, INC. ET AL.

Anderson County Circuit Court
No. AOLA0228

Filed April 08, 2002

No. E2001-01237-WC-R3-CV

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 facts and conclusions of law are adopted and affirmed and the decision of the Panel is made the Judgment of the Court.

The costs on appeal are taxed to the Appellants for which execution may issue if necessary.