IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
February 28, 2002 Session

FAYE BUTTERFIELD v. CRAWFORD & COMPANY

Direct Appeal from the Chancery Court for Madison County
No. 56285 Joe C. Morris, Chancellor

No. W2001-01178-WC-R3-CV - Mailed April 25, 2002; Filed June 11, 2002

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. In this appeal, the employer-appellant insists the trial court erred in (1) considering an evaluating physician's opinion of the extent of the employee's medical impairment, as not being based on statutorily approved guidelines, and (2) the award of permanent partial disability benefits based on 42 percent to the body as a whole is excessive under the circumstances. As discussed below, the panel has concluded the award exceeds the maximum prescribed by statute and the judgment should be vacated and the cause remanded with instructions.

Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Chancery Court Vacated and Cause Remanded with Instructions

JOE C. LOSER, JR., SP. J., delivered the opinion of the court, in which L. T. LAFFERTY, SR. J., and JANICE M. HOLDER, J., joined.

Mark W. Raines and R. Scott Vincent, Memphis, Tennessee, for the appellant, Crawford & Company

George L. Morrison, Jr., Jackson, Tennessee, and Mary Dee Allen, Cookeville, Tennessee, for the appellee, Faye Butterfield

MEMORANDUM OPINION

The employee or claimant, Faye Butterfield, is 51 years old with a bachelor's degree in nursing. She has varied experience in nursing and hospital administration from 1985 until 1997, when she began working for the employer, Crawford & Company, as a case manager for workers' compensation cases assigned to the employer, a claim adjusting company for employers and their insurers. Her duties included considerable traveling.

On October 20, 1998, she was injured in an automobile accident while traveling on the employer's business. She visited Dr. Eugene Gulish two days later and received conservative care. Tests revealed a possible early disc herniation and dehydration in her lower back. In August, 2000, the doctor concluded she had reached maximum medical improvement and estimated her permanent medical impairment to be 5 percent to the whole person, using AMA Guides. Some restrictions were prescribed.

She was examined and evaluated by Dr. Robert Barnett. Dr. Barnett observed some limitation of motion, prescribed restrictions and estimated her permanent medical impairment to be 10 percent to the whole person.

The claimant has since been laid off from the employer and continues to receive treatment from Dr. Gulish, as well as physical therapy. She continues to experience pain in her low back and left leg. The left leg is weak. At the time of the trial, she was working for a dialysis clinic earning approximately four dollars per hour less than when she last worked for Crawford & Company. She testified that her pain makes it difficult for her to work or perform household chores. She still takes prescription medication.

Upon the above summarized evidence, the trial court awarded, inter alia, permanent partial disability benefits based on 42 percent to the body as a whole. Appellate review of findings of fact is de novo upon the record of the trial court accompanied by a presumption of correctness of the findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2).

This tribunal is not bound by the trial court's findings but instead conducts an independent examination of the record to determine where the preponderance lies. Galloway v. Memphis Drum Serv., 822 S.W.2d 584, 586 (Tenn. 1991). Where the trial judge has seen and heard the witnesses, especially if issues of credibility and weight to be given oral testimony are involved, considerable deference must be accorded those circumstances on review, because it is the trial court that had the opportunity to observe the witnesses' demeanor and to hear the in-court testimony. Long v. Tri-Con Ind., Ltd., 996 S.W.2d 173, 178 (Tenn. 1999). The appellate tribunal, however, is as well situated to gauge the weight, worth and significance of deposition testimony as the trial judge. Walker v. Saturn Corp., 986 S.W.2d 204, 207 (Tenn. 1998). The extent of an injured worker's vocational disability is a question of fact. Story v. Legion Ins. Co., 3 S.W.3d 450, 456 (Tenn. 1999).

The employer first contends the opinion of Dr. Barnett, in the form of a written report, is flawed because he relied on the wrong section of the guidelines. The employee conceded in oral argument that the opinion of Dr. Barnett was flawed, but asked this tribunal to determine the extent of her impairment from medical and lay proof of her restrictions and limitations. We are not inclined to do so, because the extent of a claimant's medical or clinical impairment is a medical question, not a legal one. See Parks v. Tennessee Municipal League Risk Management Pool, 974 S.W.2d 677, 680 (Tenn. 1998).

In cases where an injured worker is entitled to permanent partial disability benefits to the body as a whole and the pre-injury employer returns 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 two and one-half times the medical impairment rating pursuant to the provisions of the American Medical Association Guides to the Evaluation of Permanent Impairment or the Manual for Orthopedic Surgeons in Evaluating Permanent Physical Impairment. Tenn. Code Ann. § 50-6-241(a)(1). 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 the above guidelines. Tenn. Code Ann. § 50-6-241(b). Thus, the employer contends, the maximum allowable award of permanent partial disability benefits in the present case is 6 times the 5 percent impairment rating of Dr. Gulish, or 30 percent.

The claimant argues that the trial court is not so limited because the Supreme Court has held an impairment rating is not always necessary for an award of permanent disability benefits. The present case is distinguished from those so holding, in that this record contains a competent medical opinion of the extent of the claimant's medical impairment. We hold that the multipliers contained in the above section do apply in cases where the proof includes a competent medical impairment rating, subject only to statutory exceptions, where the award is to the body as a whole.

Once the causation and permanency of an injury have been established by expert testimony, the trial judge may consider many pertinent factors, including age, job skills, education, training, duration of disability, and job opportunities for the disabled, in addition to anatomic impairment, for the purpose of evaluating the extent of a claimant's permanent disability. Tenn. Code Ann. § 50-6-241(b). The opinion of a qualified expert with respect to a claimant's clinical or physical impairment is a factor which the court will consider along with all other relevant facts and circumstances, but it is for the trial court to determine the percentage of the claimant's industrial disability. Federated Mut. Imp. and Hardware Ins. Co. v. Cameron, 220 Tenn. 636, 422 S.W.2d 427 (1967).

Because the award of permanent partial disability benefits exceeds the maximum provided by Tenn. Code Ann. § 50-6-241(b), the judgment of the trial court is vacated and the cause remanded for further consideration. On remand, the trial court should determine the extent of the claimant's permanent vocational disability without considering the impairment rating contained in Dr. Barnett's C-32 report. If the trial court finds that a multiplier of five times or greater is appropriate, the trial court shall make specific findings of fact as required by Tenn. Code Ann. § 50-6-241(b).

Costs are taxed to the appellee.

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JOE C. LOSER, JR.

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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, Faye Butterfield, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM