IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
October 9, 2002 Session

DEXTER LEBRON JOSHEN v. MCKEE FOODS CORPORATION

Direct Appeal from the Chancery Court for Hamilton County
No. 99-0989 Part I W. Frank Brown, III, Chancellor

Filed December 9, 2002

No. E2002-00194-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 trail court found the plaintiff had sustained a compensable injury to his shoulder and fixed an award of 30 percent vocational disability to the body as a whole. The defendant says the trial judge fixed this award on the basis of a 6 percent medical impairment to the body rather than on the basis of 4 percent medical impairment, which the defendant asserts is the correct medical impairment rating. The plaintiff responds to the defendant's claim by saying he is satisfied by the ruling of the trial court on the award to the plaintiff. However, the plaintiff says if we reverse the trial court's judgment he wishes us to address the four assignments of error raised by him. These assignments concern the treatment of the plaintiff by a Dr. Alan Odom, who did surgery on the plaintiff's shoulder. The trial court found the treatment by Dr. Odom was not shown to be related to the compensable injury the plaintiff suffered while working for the defendant. We affirm the judgment of the trial court.[1]

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

JOHN K. BYERS, SR. J., delivered the opinion of the court, in which WILLIAM M. BARKER, J. and HOWELL N. PEOPLES, SP. J., joined.

Charles D. Lawson and J. Barlett Quinn, Chattanooga, Tennessee, attorneys for appellant, McKee Foods Corporation.

Gary W. Starnes, Chattanooga, Tennessee, attorney for appellee, Dexter Lebron Joshen.

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[1] We will not discuss the issues raised by the plaintiff other than to say the record supports the action of the trial judge in ruling on Dr. Odom's treatment of the plaintiff.

MEMORANDUM OPINION

At the time of this trial, the plaintiff was thirty-eight years of age. He is a high-school graduate and has no post high school education, vocational or academic. He is married and the father of a child who was seventeen at the time of trial.

For the most part the plaintiff's work history shows him to have been employed in low paying jobs such as a busboy and dishwasher, work as a brick mason during high school and as a cook in a restaurant.

The plaintiff became employed by the defendant in 1985, and continued in this job until May 17, 1999. The plaintiff's job required him to remove cartons from a conveyor and stack them into a trailer (truck) for delivery. This required lifting, turning and reaching above the shoulders. There is no dispute that the plaintiff injured his right arm and shoulder on May 17, 1999 in the course of doing the stacking required by his job.

Medical Evidence [2]

Dr. Dennis Lee Stohler, an orthopaedic surgeon, first saw the plaintiff on June 11, 1999. He diagnosed the plaintiff's condition as a result of the injury as left rotator cuff tendinitis with subacromial bursitis with mild left biceps tendinitis. Dr. Stohler treated the plaintiff and determined he had reached permanent medical impairment of 10 percent to the upper extremity, which in medical jargon encompasses the shoulder, which we consider a part of the whole body. He converted this to 6 percent medical impairment to the body as a whole.

Dr. Stohler testified that a clinical examination showed that the plaintiff's range of motion had improved by December 21, 1999. He testified that if there had been improvement the original assessment of 6 percent "can be certainly [inaccurate] in that original impairment." Upon being further questioned about the range of motion, Dr. Stohler testified it would reflect a 4 percent whole body impairment. Dr. Stohler based this evaluation on the 4th Edition of the AMA Guidelines.

Upon further questioning, Dr. Stohler testified he did not give any consideration for pain in reaching his evaluation. The evidence shows the plaintiff continued to suffer pain and the 4th Edition considers pain as pertinent in fixing the extent of medical impairment from an injury.

Discussion

There is little discussion needed in this case. The only question is whether the trial court should have found the medical impairment was 6 percent or 4 percent to the body as a whole.

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[2] We will not discuss the testimony of Dr. Odom because Dr. Odom testified the injury he treated could not have been caused by the May 17, 1999 injury.

The trial judge found the 6 percent impairment rating given by Dr. Stohler was applicable. We agree with this finding. The testimony of Dr. Stohler concerning the 6 percent rating was clear and unambiguous. The rating of 4 percent was not clear of ambiguity. Much of the doctor's testimony was in the context of "if or can" and the doctor failed to consider pain in reaching the evaluation, for which the AMA guides provide.

We, therefore, find the judgment of the trial court is supported by the evidence and we affirm the judgment. The costs of this appeal are taxed to the defendant.

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JOHN K. BYERS, SENIOR JUDGE

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AT KNOXVILLE, TENNESSEE

DEXTER LEBRON JOSHEN V. MCKEE FOODS CORPORATION
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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 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 appellant, McKee Foods Corporation, and its surety, for which execution may issue if necessary.