

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
June 2003 Session

WHIRLPOOL CORPORATION v. SHERRY PRATT

**Direct Appeal from the Chancery Court for Davidson County
No. 00-2067-I Irvin H. Kilcrease, Chancellor**

**No. M2002-02449-WC-R3-CV - Mailed - September 25, 2003
Filed - October 28, 2003**

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 questions the trial court's award of 75 percent disability for a serious disfigurement. As discussed below, the panel has concluded the evidence fails to preponderate against the findings of the trial court.

Tenn. Code Ann. § 50-6-225(e) (2002 Supp.) Appeal as of Right; Judgment of the Chancery Court Affirmed

JOE C. LOSER, JR., SP. J., delivered the opinion of the court, in which FRANK F. DROWOTA, III, C. J., and FRANK G. CLEMENT, JR., SP. J., joined.

David T. Hooper, Hooper & Zinn, Brentwood, Tennessee, for the appellant, Whirlpool Corporation

M. Andrew Hoover and Mary A. Gabbett, Pulaski, Tennessee, for the appellee, Sherry Pratt

MEMORANDUM OPINION

The employer, Whirlpool, initiated this civil action for a declaration of its rights and liabilities resulting from a work related injury to the employee or claimant, Ms. Pratt. The employee presented a counterclaim for workers' compensation benefits. Following a trial on the merits, the trial court awarded permanent partial disability benefits for one hundred fifty weeks. The employer has appealed.

Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, 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 which 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). Conclusions of law are subject to de novo review on appeal without any presumption of correctness. Nutt v. Champion Intern. Corp., 980 S.W.2d 365, 367 (Tenn. 1998).

The claimant is thirty-seven years old with a high school education. She began working for the employer in 1996. On June 26, 2000, while working on the employer's assembly line, she became overheated, fainted and fell face first. Three teeth, two of them front teeth, were knocked out. Her upper lip was bruised and her bottom lip cut. She was taken to the emergency room, where a drug test was administered. The claimant was terminated the next day for refusing to be catheterized for another drug test.

The missing teeth were replaced with a removable bridge, but the claimant testified that the bridge is uncomfortable. She further testified that she feels uncomfortable because of difficulty communicating with the public with or without the bridge, that the condition has affected her employability and that she is seeking counseling to address her lack of self esteem and confidence, all because of her injury. At the time of the trial, she was employed in a position with another employer. The job does not require her to interact with the public.

Whirlpool concedes it is liable for reasonable medical and dental care made necessary by the injury, but contends the claimant's claim for serious disfigurement benefits is not compensable. Serious disfigurement to the head, face or hands, not resulting from the loss of a member or other scheduled injury, and so altering the personal appearance of an injured employee as to materially affect the injured worker's employability in the employment in which he or she was injured or any other employment for which the worker was qualified at the time of the injury, is compensable at the employee's weekly compensation rate for up to two hundred weeks. Tenn. Code Ann. § 50-6-207(3)(E). In one case, it was held that where the presence of a scar had caused the claimant to become self-conscious to the point that he attempted to conceal the scar with a beard and tried not to call attention to himself in meetings or gatherings at work, he was entitled to an award of permanent partial disability benefits for the scar, though he retained no anatomic impairment or physical dysfunction as a result of the scar and was regularly employed. Wilkes v. Resource Authority of Sumner County, 932 S.W.2d 458 (Tenn. 1996). The loss of permanent teeth may be a compensable disfigurement. Nichols v. Armour and Co., 223 Tenn. 569, 448 S.W.2d 423 (1969).

The facts of the present case are similar to those in Wilkes and involves the loss of permanent teeth. Giving due deference to the findings of the trial court, and for the above reasons, the issue of

compensability is resolved in favor of the claimant.

The employer further contends the award of benefits for 150 weeks, fifty fewer than the maximum allowable under the statute, at the claimant's compensation rate is excessive. 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). From our independent examination of the record, we cannot say the evidence preponderates against the trial court's finding with respect to the extent of the claimant's permanent vocational disability caused by serious disfigurement.

The judgment of the trial court is therefore affirmed. Costs are taxed to the appellant.

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 will be paid by the Appellant, Whirlpool Corporation, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM