

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
July 1, 2004 Session

DAVID E. HUNTER v. GOODYEAR TIRE AND RUBBER COMPANY

**Direct Appeal from the Chancery Court for Obion County
No. 23,448 Ron E. Harmon, Chancellor**

No. W2003-02143-WC-R3-CV - Mailed July 19, 2004; Filed August 20, 2004

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 insists the award of permanent benefits based on 90 percent permanent partial disability benefits to the right leg is excessive as being against the preponderance of the evidence. 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 JANICE M. HOLDER, J., and JAMES F. BUTLER, SP. J., joined.

Randy M. Chism and Kirk L. Moore, Elam, Glasgow & Chism, Union City, Tennessee, for the appellant, Goodyear Tire and Rubber Co.

Jeffrey A. Garrety and Joseph R. Taggart, for the appellee, David E. Hunter

MEMORANDUM OPINION

The employee or claimant, Mr. Hunter, initiated this civil action to recover workers' compensation benefits for a work related injury. The employer, Goodyear, admitted liability but the parties were unable to agree on the extent of the claimant's permanent disability. After a trial on the merits, the trial court awarded permanent partial disability benefits on the basis of 90 percent to the right leg. 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). The extent of an injured worker's permanent disability is a question of fact. Seals v. England/Corsair Upholstery Mfg., 984 S.W.2d 912, 915 (Tenn. 1999).

Mr. Hunter is approximately 52 years old with less than a fifth grade education, a learning disability and a history of working at jobs requiring moderately heavy manual labor. He previously suffered injuries to his left knee and shoulder. He cannot read and can only write his name. He began working for the employer in 1970. On April 16, 2001, while performing his assigned duties for the employer, he slipped and fell as he was stepping down to the floor from a tow truck, injuring his right knee.

The plant doctor, Dr. James Batey, referred the claimant to Dr. Claiborne Christian, an orthopedic surgeon. Dr. Christian diagnosed a torn medial meniscus, a partial tear of the anterior cruciate ligament and a bone bruise of the proximal tibia. The claimant, exercising his "Doctor of Choice" option, a right he possessed via the collective bargaining agreement between Goodyear and its union employees, chose Dr. Kurt Spindler, another orthopedic surgeon, as his treating physician. Dr. Spindler performed a partial medial meniscectomy, a partial lateral meniscectomy and anterior cruciate ligament reconstructive surgery on June 14, 2001. The claimant made a good recovery and returned to work, without restrictions, on December 12, 2001. In his deposition, Dr. Spindler estimated the claimant's permanent anatomical impairment to be 27 percent to the right leg as a result of his work related injury.

Thereafter, the claimant was seen again by Dr. Christian, who estimated the claimant's permanent anatomical impairment to be 13 percent to the right leg. He was also seen by Dr. Joseph Boals, yet another orthopedic surgeon, for evaluation. Dr. Boals estimated his permanent anatomical impairment at 19 percent to the right leg. All three surgeons used the same guidelines, provided by the American Medical Association, in evaluating the claimant's permanent impairment.

The claimant has returned to work with pain. He testified he has difficulty performing his assigned duties because work aggravates his pain and causes discomfort both during and after work. He further testified that he has been forced to restrict his leisure activities and could not perform many of his pre-injury assignments, because he has difficulty with repetitive bending, stooping, standing, walking, squatting, kneeling and getting in and out of vehicles. The trial court found the claimant to be a credible witness.

The employer first contends the evidence preponderates against the trial court's award because the claimant has returned to work without medical restrictions. The fact of employment after injury is a factor to be considered in determining the extent of an injured worker's disability, but that fact is to be weighed in light of all other considerations, including the employee's skills and

training, education, age, local job opportunities, capacity to work at all kinds of employment in his or her disabled condition, rating of anatomic disability by a medical expert and the employee's own assessment of his or her physical condition and resulting disability. Vinson v. United Parcel Service, 92 S.W.3d 380, 384-85 (Tenn. 2002); Cleek v. Wal-Mart Stores, Inc., 19 S.W.3d 770, 774 (Tenn. 2000). From our independent consideration of the relevant factors, and giving due consideration to the findings of the trial court, we cannot say that the evidence preponderates against the trial court's award of permanent partial disability benefits.

The employer further contends the trial judge was incompetent to consider the case because of lack of experience. From our examination of the record, it appears the trial court weighed the evidence carefully and understood and applied the law to that evidence. The contention is utterly without merit.

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

JOE C. LOSER, JR.

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JUDGMENT ORDER

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 Appellant, Goodyear Tire and Rubber Company, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM