

IN THE SUPREME COURT FOR TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT JACKSON

December 9, 2004 Special Panel

ALICE WILLIAMSON v. A.O. SMITH CORPORATION, ET AL.

Direct Appeal from the Chancery Court for Lauderdale County  
No. 12,475 Dewey C. Whitenton, Chancellor

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W2004-00843-SC-WCM-CV - Mailed February 15, 2005; Filed April 28, 2005

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This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with Tenn.Code Ann. § 50- 6-225(e)(3) for hearing and reporting findings of fact and conclusions of law. In this appeal, the Second Injury Fund insists that the trial court improperly allocated 90% of the disability award to the Fund and further that the trial court erred in finding the employee permanently and totally disabled. For the reasons set out below, the panel has concluded that the evidence fails to preponderate against the findings of the trial court. Judgment of the trial court is affirmed with costs assessed against the Second Injury Fund.

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

CAROL L. MCCOY, SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and MARTHA BRASFIELD, SP. J., joined.

Richard Murrell, Nashville, Tennessee, for the appellant, The Second Injury Fund.

Bruce E. Williams, Roane Waring, III, Memphis, Tennessee, for the appellant, A.O. Smith Corporation.

T. J. Emison, Alamo, Tennessee, for the appellee, Alice Williamson.

MEMORANDUM OPINION

This workers' compensation case involves the award of permanent and total disability benefits to the employee and the apportionment of those benefits between her employer and the Second Injury Fund.

## Background

Alice Williamson, an employee of A.O. Smith Corporation, had two prior workers' compensation claims that were resolved by court-approved settlements. On July 18, 2001, she sustained a gradual, progressive injury to her left shoulder and left arm. On August 30, 2002, Ms. Williamson initiated this civil action to recover benefits for those injuries. The Chancellor found her permanently and totally disabled and allocated liability between the employer and the Second Injury Fund. The employer and Ms. Williamson submit that the Chancellor made the correct determination and allocation; the Second Injury Fund disputes both the finding of permanent and total disability and the allocation of liability.

## Standard of Review

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. T.C.A. § 50-6-225(e)(2). The reviewing court is required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. Wingert v. Government of Sumner County, 908 S.W.2d 921, 922 (Tenn. 1995). Conclusions of law are subject to de novo review on appeal without any presumption of correctness. Hill v. Wilson Sporting Goods Co., 104 S.W.3d 844, 846 (Tenn. 2002).

## Findings of Fact and Conclusions of Law

Alice R. Williamson, born March 14, 1947, was 56 years old at the time of trial. She graduated from Lauderdale High School, but had no additional formal or vocational training. Mrs. Williamson married her husband, James, over 38 years ago and they have five children, one of whom lives with them in Ripley, Tennessee. She had worked 29 years at the same plant, 18 years with the last company that owned the plant until the company moved its operations to Mexico in July 2003. Her employment history is limited to production and assembly work in Ripley, Tennessee.

Ms. Williamson had two prior work related injuries. In the first case, which involved her previous employer, MagneTek, Inc., she experienced bilateral carpal tunnel syndrome. In a court approved settlement, Ms. Williamson was awarded a 40% permanent partial disability to the left arm and a 20% permanent partial disability to the right arm.

In the second case, Ms. Williamson claimed bilateral de Quervains syndrome of the wrists, right carpal tunnel syndrome and a right shoulder rotator cuff tear. Again through a court approved settlement, Ms. Williamson was awarded a disability payment; the payment consisted of \$20,000 for an internal derangement of the right shoulder, resulting in a permanent partial disability award that equated to 20% of the body as a whole, with a stipulation that no claim had been demonstrated for the de Quervains syndrome or the right carpal tunnel syndrome.

On July 18, 2001, prior to the employer moving to Mexico, Ms. Williamson suffered a gradual, progressive injury to her left shoulder and arm and properly notified her employer. As a result of this injury, Dr. Marks S. Harriman performed a left shoulder arthroscopy and a left carpal tunnel release. When Ms. Williamson reached maximum medical recovery, Dr. Harriman assigned

her a 6% impairment rating to her body as a result of the left shoulder condition. Dr. Joseph C. Boals, III, also examined Ms. Williamson after her surgery and opined that Ms. Williamson had a 16% impairment to the body as a whole as a result of the 2001 injury. In addition, he assigned permanent restrictions in both lifting and repetitive motion activities.

Dr. Robert W. Kennon, a vocational expert who evaluated Ms. Williamson, testified that she had a verbal I.Q. of 72, with a performance I.Q. of 85 and a full scale I.Q. of 76, and that her test results indicated that she was deficient in reading, spelling and arithmetic. He concluded that she was 85% vocationally impaired in the national economy and 95% vocationally impaired in the five-county region surrounding her residence.

Another vocational expert, Brenda Dailey, testified that Ms. Williamson had a vocational disability of 5% to 10% due to her last injury. Ms. Dailey stated that the disability was no more than 10%, since 10% represented the jobs in the labor market that may involve repetitive overhead reaching and would be unavailable to Ms. Williamson, given her permanent medical restrictions.

Upon reaching maximum medical improvement, Ms. Williamson returned to work, although to a different position due to the lifting restrictions imposed upon her by her physician. Human Resources Manager Paul Avery, who originally hired Ms. Williamson, testified that he had known her for 18 years and had assigned her the "lightest" job in the facility, operating the "end head" machine, to accommodate her medical restrictions. Ms. Williamson continued to work in that position until the plant facility closed and the company moved its operations to Mexico. Thereafter, Ms. Williamson applied for unemployment benefits.

At the conclusion of the trial, the Chancellor found that Ms. Williamson only had an academic achievement level between the 4th and 6th grade, despite having a high school diploma. Further, he found Ms. Williamson permanently and totally disabled and stated that Ms. Williamson "had been able to keep her employment mainly due to the kindness and ability of her employer to give her some jobs that she could actually do" until the plant closed and she was laid off. The Chancellor further found that Ms. Williamson had become permanently and totally disabled because of her subsequent injury. He assessed her vocational disability to be 10% to the left upper extremity as a result of the injury she sustained in 2001. He assessed the remaining 90% vocational disability to the Second Injury Fund.

The Second Injury Fund contested the finding that Ms. Williamson is permanently and totally disabled because she returned to gainful employment after her injury and, further, because she applied for and accepted unemployment compensation benefits. The Second Injury Fund contends that both of these circumstances contradict a finding of permanent and total disability.

A careful reading of the record, however, supports the trial court's conclusion that Ms. Williamson is permanently and totally disabled. She suffers from high blood pressure, cervical arthritis, has undergone eight surgeries, has injured her left and right hands and shoulders and has had two prior worker's compensation injuries that resulted in permanent partial disabilities to her upper extremities with permanent medical restrictions. Ms. Williamson continues to experience weakness, burning and tingling in her left hand with noticeable weakness in her right hand. She wakes two or three times a night due to her shoulder injury and has impaired grip strength. She is

unable to move furniture in her home or to attend to her household chores. Her prior work experience is classified as manual labor with no supervisory skills and she has had little interaction with other employees. She has limited educational and intellectual function.

First, in determining the extent of an employee's impairment, courts must measure the worker's vocational disability. Corcoran v. Foster Auto GMC, Inc., 746 S.W.2d 452, 458 (Tenn. 1988). This assessment is based upon many factors, including the employee's age, education, skills and training, local job opportunities, and capacity to work at the kinds of employment available in his disabled condition. Newman v. National Union Fire Ins. Co., 786 S.W.2d 932, 934 (Tenn. 1990).

Second, 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, McCaleb v. Saturn Corp., 910 S.W.2d 412, 414 (Tenn. 1995), 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 trial court's findings with respect to credibility and weight of the evidence may generally be inferred from the manner in which the court resolves conflicts in the testimony and decides the case. See, Tobitt v. Bridgestone/Firestone, Inc., 59 S.W.3d 57, 61 (Tenn. 2001). The trial court's judgment is presumed to be correct and the appellant has the burden of overcoming that presumption. See, Clarendon v. Baptist Memorial Hospital, 796 S.W.2d 685 (Tenn. 1990).

In this instance, the appellant has failed to overcome the presumption that the trial court properly found Ms. Williamson to be permanently and totally disabled. The fact that Ms. Williamson applied for unemployment benefits and held herself out as "ready and willing to work" does not negate the evidence in the record. An employee is denied unemployment compensation benefits if the employee quits work voluntarily unless there is good cause related to work; only disability or illness related to work is sufficiently good cause. Ford v. Traugher, 813 S.W.2d 141 (Tenn. Ct. App. 1991). In this instance, Ms. Williamson did not voluntarily quit work. Further, Ms. Williamson is that treasured employee who attempts to work through her pain despite her numerous disabilities related to her employment. Willingness to work in a seriously disabled condition does not make a person employable. As noted herein, the purpose of the Second Injury Fund statute is to encourage the employment of injured workers. Ms. Williamson is a seriously injured worker who was laid off from a position carved into the employment sector by a caring employer. The goodwill of the employer and the earnestness of a disabled employee may be factors that the court considers when evaluating the employability of an employee in a disabled condition; they are not a prohibition to a finding of total and permanent disability in the face of substantial evidence to the contrary. We affirm because the evidence does not preponderate against the trial court's decision.

#### Apportionment

The Second Injury Fund also asserted that the trial court erred in allocating 90% of the liability to the Fund. The Second Injury Fund's liability is governed by T.C.A. § 50-6-208(a) which provides that if (1) the employee has previously sustained a permanent physical disability from any cause or origin, either compensable or noncompensable, and (2) the employee becomes permanently and totally disabled as the result of a subsequent injury, the employer pays only for the disability that results from the subsequent injury that rendered the employee permanently and totally disabled,

without consideration of any prior injuries. Scales v. City of Oak Ridge, 53 S.W.3d 649, 655 (Tenn. 2001). In other words, under subsection (a), an employer is responsible only for that disability that would have resulted from the subsequent injury had the earlier injury or injuries not existed. Id.

The trial court correctly applied the statutory language in allocating the liability between the employer and the Second Injury Fund. The trial court determined that Ms. Williamson had a 10% permanent partial disability from the July 17, 2001 injury. The Chancellor found that this injury, in combination with her prior disabilities and other limitations, rendered her permanently and totally disabled. Thereafter, the Chancellor properly allocated 10% permanent partial disability to the employer and the remaining 90% to the Second Injury Fund.

The evidence demonstrates that Ms. Williamson is permanently and totally disabled under T.C.A. § 50-6-208(a). As noted above, the trial court is instructed to select the subsection that favors the employer because the purpose of the law is to encourage the hiring of injured workers by limiting employer liability. The argument by the Second Injury Fund is without merit and the trial court is affirmed in its allocation of the liability.

#### Conclusion

The evidence fails to preponderate against the trial court's findings. The trial court properly determined that Ms. Williamson is totally and permanently disabled and correctly allocated 10% percent of the liability to the employer and 90% percent of the liability to The Second Injury Fund. Accordingly, the trial court's findings of fact and conclusions of law are adopted and affirmed. Costs will be paid by the Appellant, The Second Injury Fund, for which execution may issue if necessary.

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CAROL L. McCOY, SPECIAL JUDGE

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**ORDER**

This case is before the Court upon motion for review pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), 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 motion for review is not well-taken and should be denied 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 appellant, Second Injury Fund, the applicant.

IT IS SO ORDERED this 28th day of April, 2005.

PER CURIAM

Holder, J. - not participating.