

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

November 29, 2005 Session

SANDRA DAVID v. SATURN CORPORATION

**Direct Appeal from the Chancery Court for Maury County
No. 03113 Stella L. Hargrove, Judge**

**No. M2004-02104-WC-R3-CV - Mailed - March 10, 2006
Filed - May 26, 2006**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Tennessee Supreme Court in accordance with Tennessee Code Annotated section 50-6-225(e)(3) for hearing and reporting to the supreme court of findings of fact and conclusions of law. Saturn's employer-funded disability plan paid the Plaintiff disability benefits after reaching maximum medical improvement when she was placed out of work because her physician-ordered restrictions could not be accommodated. The Plaintiff claims error in the offsetting of these disability payments. The judgment of the trial court is affirmed.

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

WILLIAM H. INMAN, SR. J., delivered the opinion of the court, in which CORNELIA A. CLARK, J., and DONALD P. HARRIS, SR. J., joined.

Richard A. House, Nashville, Tennessee, attorney for appellant, Sandra David.

Marcia McShane Watson, Nashville, Tennessee, attorney for appellee, Saturn Corporation.

MEMORANDUM OPINION

The parties stipulated that the Plaintiff sustained a 6 percent permanent anatomical impairment to her whole body as a result of a work-related injury to her neck and shoulder. It was also stipulated that the injuries were to the "whole person," subject to the cap of two and one-half the impairment rating provided in Tennessee Code Annotated section 50-6-241(a)(1), resulting in a 15 percent vocational disability rating.

Saturn's Disability Plan [hereinafter "Plan"] - wholly funded by Saturn - paid the Plaintiff \$29,344.20 for disability from April 23, 2003 through June 15, 2004 and this amount was offset

against the workers' compensation award. The Plaintiff claims error in the offsetting of these disability payments, and this issue is presented for review, which is de novo on the record with no presumption of correctness. *Leab v. S & H Mining Co.*, 76 S.W.3d 344, 348 (Tenn. 2002).

The applicable statute, Tennessee Code Annotated section 50-6-114, provides:

(b) Any employer may set off from temporary total, temporary partial, and permanent partial and permanent total disability benefits any payment made to an employee under an employer funded disability plan for the same injury; provided, that the disability plan permits such an offset. Such an offset from a disability plan may not result in an employee's receiving less than the employee would otherwise receive under the Workers' Compensation Law. . . In the event that a collective bargaining agreement is in effect, this provision shall be subject to the agreement of both parties.¹

An employer-funded disability plan approved by collective bargaining agreement was in effect at the time of the Plaintiff's injury. This is not disputed. The Plaintiff argues that her employer's disability policy does not permit a set-off for the period in question, when she was placed out of work because her physician-ordered restrictions could not be accommodated. The Plaintiff points to sections 5.04(c)(2) and 5.05(c)(1) of article V of the Plan which provides that the employer may offset "any payments for time lost from work to which the employee is entitled under the Workers' Compensation Act," arguing that the payment is both for time lost from work and one for which the employee is entitled to benefits under the Workers' Compensation Act. The Plaintiff was released from medical care and returned to work on June 23, 2002 when she was out-placed by her employer. Hence, she argues, she was not entitled to "any payments for time lost from work under any workers' compensation law."

This argument essentially begs the question: What, then, was the reason for the disability payments? If the argument is accepted, the Plaintiff would receive disability benefits under the employer-funded plan, and permanent partial disability benefits for the same period of time, for the same injury. The set-off is allowed for permanent, partial benefits.

On November 19, 2001 the Plaintiff reported that she had injured her neck and shoulder while performing a job in an area known as small aluminum parts. Before this report she had been on disability leave from November 7, 2001 through November 19, 2001. Saturn contested the compensability of the Plaintiff's claimed November 2001 injury because the Plaintiff missed work many times in the months leading up to her alleged injury of November 2001, and she sought treatment by her family physician before she reported her injury to her employer.

¹ This statute was amended by Chapter 919 of the Public Acts of 1999, which effectively negated the holding in *McCabb v. Saturn Corp.*, 919 S.W.2d 412 (Tenn. 1995).

Because her workers' compensation claim was denied, the Plaintiff received disability benefits under Saturn's fully-funded disability policy. Credit for disability benefits paid during the period of temporary total disability are not in dispute in this appeal.

The benefits in dispute are disability benefits received by the Plaintiff after her maximum medical improvement. She had shoulder surgery by Dr. Adams and returned to work in June 2002, with restrictions. She was placed in her pre-injury department and worked for a short period of time within the restrictions placed upon her by Dr. Adams. Following a short period of time in her pre-injury department, she was transferred to an inspection job in order for Saturn to accommodate the restrictions provided by her treating physician. After being on restricted duty for 180 days, an employee is required to either be placed in a permanent job within her restrictions or the employee will be placed out and receive disability benefits from Saturn's fully-funded disability policy until a job within the employee's restrictions becomes available.

The Plaintiff was placed out because there was no permanent job within her restrictions and she began collecting disability benefits from Saturn's fully-funded disability policy. She was placed out for approximately one and a half years and received disability benefits the entire time. During this time she applied for jobs with Saturn. She understood that should she find a job outside of Saturn, she would no longer receive disability benefits and she did not want that to happen. She was returned to work at her full wage on June 14, 2004 and her disability benefits ceased at that time.

The employer makes the point that if Tennessee law did not allow an offset by coordinating benefits, the employer - or its benefits provider - can seek reimbursement directly from the employee, but because Tennessee law does provide for an offset by coordinating benefits, the 'carrier' waives its right to seek reimbursement from the employee, here, the Plaintiff. Reduced to simpler terms, the Plaintiff argues that she was not entitled to workers' compensation benefits during the subject period, (even though the trial court awarded her such benefits) and thus the offset statute was inapplicable. The extension of this argument is the assertion that the Plan payments were not payments for time lost from work. The anomaly of this argument is apparent and, if effected, would emasculate the legislative intent that *any payment* made to an employee-funded disability plan for the same injury is offset.

The trial judge made specific findings in the case. We agree that the outcome in this case is controlled by the decision in *Stavropoulos v. Saturn Corp.*, 1999 WL 194152 (Tenn. Workers Comp. Panel 1999). The judgment of the trial court is affirmed in all respects, with costs being taxed to Plaintiff.

WILLIAM H. INMAN, SENIOR JUDGE

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JUDGMENT

This case is before the Court upon the motion for review filed by Sandra David 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.

It appears to the Court that the motion for review is not well-taken and is therefore overruled. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to Sandra David for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

Clark, J., not participating