

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
July 24, 2006 Session

**JESSIE GAIL CARUTHERS v. THE AEROSTRUCTURES
CORPORATION, a/k/a AEROSTRUCTURES CORPORATION, a/k/a
VOUGHT AIRCRAFT INDUSTRIES, INC.**

**Direct Appeal from the Circuit Court for Jackson County
No. 1446-0-277 Clara W. Byrd, Judge**

**No. M2005-01370-WC-R3-CV - Mailed - October 10, 2006
Filed - December 13, 2006**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated section 50-6-226(e)(3) for hearing and reporting of findings of fact and conclusions of law. The employer, Aerostructures Corporation, has appealed the trial court's award of permanent total disability benefits of 539.28 weeks in a reconsideration hearing. The employer asserts that Tennessee Code Annotated sections 50-6-241(a)(2) and (b) and 50-6-242(a) prevent a trial court from granting, in a reconsideration hearing, any award greater than six times the employee's medical impairment rating and in excess of 400 weeks. The employer claims that the trial court erred because it granted, in a reconsideration hearing, a permanent total disability award that exceeded such amounts. We disagree and hold that Tennessee Code Annotated sections 50-6-241(a)(2) and (b) and 50-6-242(a), which place limitations on permanent partial disability awards in a reconsideration hearing, do not apply to awards of permanent total disability. We therefore affirm the judgment of the trial court.

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

FRANK F. DROWOTA, III, delivered the opinion of the court, in which CORNELIA A. CLARK, J., and DONALD P. HARRIS, SR. J., joined.

Aaron S. Guin and Stephen W. Elliott, Nashville, Tennessee, for the Appellant, Aerostructures Corporation.

Debbie Holliman and Javin R. Cripps, Carthage, Tennessee, for the Appellee, Jessie Gail Caruthers.

MEMORANDUM OPINION

Jesse Gail Caruthers was employed by the Aerostructures Corporation (“Aerostructures”). On March 6, 2000, Ms. Caruthers suffered a cervical spine injury while working on an airplane assembly line. She was 57 years old at the time of the injury. Ms. Caruthers was examined by two doctors, Dr. Robert Landsberg and Dr. Daniel Burrus. Dr. Landsberg assessed Ms. Caruthers a fifteen percent medical impairment rating to the body as a whole based on the injury to her cervical spine. By contrast, Dr. Burrus assigned Ms. Caruthers a medical impairment rating of zero percent to the body as a whole based on her injury.

In May 2002, Ms. Caruthers and Aerostructures reached a settlement agreement representing a twenty-seven and one-half percent permanent partial disability rating to Ms. Caruthers’s cervical spine. Thereafter, Ms. Caruthers returned to work. She was, however, unable to perform the duties of her original position due to pain resulting from the cervical spine injury. Although Aerostructures assigned her to a new position, Ms. Caruthers was unable to perform the duties of her new position due to continued pain. Ms. Caruthers resigned her position on October 17, 2003. Thereafter, she petitioned the trial court for reconsideration of her workers’ compensation award pursuant to Tennessee Code Annotated section 50-6-241(a)(2).

At the reconsideration hearing, Ms. Caruthers, her husband, and her daughter testified regarding Ms. Caruthers’s physical limitations resulting from the cervical spine injury. Wes Cox, a vocational rehabilitation and disability consultant, testified that Ms. Caruthers was one-hundred percent vocationally disabled. The depositions of Dr. Landsberg and Dr. Roger McKinney, Ms. Caruthers’s family doctor, were also introduced into evidence at the reconsideration hearing.

At the conclusion of the hearing, the trial court found that Ms. Caruthers was permanently and totally disabled. Pursuant to Tennessee Code Annotated section 50-6-207(4)(A)(i), the trial court awarded 539.28 weeks of benefits, offset by 110.90 weeks of previous payments from the May 2002 settlement agreement, resulting in a total award of 428.38 weeks of benefits. Aerostructures appealed the decision to this Panel.

The standard of review in a workers’ compensation case is *de novo* upon the record, accompanied by a presumption of correctness of the trial court’s findings unless the evidence preponderates against those findings. Mannery v. Wal-Mart Distrib. Ctr., 69 S.W.3d 193, 196 (Tenn. 2002). The trial court’s conclusions of law are reviewed *de novo*, with no presumption of correctness accorded to the decision of the courts below. Kaplan v. Bugalla, 188 S.W.3d 635 (Tenn. 2006). Statutory construction questions are questions of law. Bostic v. Dalton, 158 S.W.3d 347, 350 (Tenn. 2005).

Tennessee Code Annotated section 50-6-241(a)(2) allows an employee to petition a court for reconsideration of industrial disability; it provides:

In accordance with this section, the courts may reconsider, upon the filing of a new cause of action, the issue of industrial disability. Such reconsideration shall examine all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's disabled condition. . . . In enlarging a previous award . . . any new award remains subject to the maximum established in subsection (b).

Tenn. Code Ann. § 50-6-241(a)(2).

Tennessee Code Annotated section 50-6-241(b) states, “[T]he maximum permanent *partial* disability award that the employee may receive is six (6) times the medical impairment rating. . . .” (emphasis added).

Tennessee Code Annotated section 50-6-242(a) places a limitation on the amount of time an employee may receive benefits for permanent partial disability. “[T]he trial judge may award employees permanent *partial* disability benefits, not to exceed four hundred (400) weeks, in appropriate cases where permanent medical impairment is found and the employee is eligible to receive the maximum disability award under § 50-6-241(a)(2) or (b).” (emphasis added).

Aerostructures contends that Tennessee Code Annotated sections 50-6-241(a)(2) and (b) and 50-6-242(a) prevent a court, in a reconsideration hearing, from authorizing permanent total disability awards that exceed six times the medical impairment rating or 400 weeks.

This Court previously addressed the applicability of the 400 week limitation to an award of permanent *total* disability in a reconsideration hearing. See Warren v. American Holding Co., 20 S.W.3d 621 (Tenn. 1999). In Warren, this Court held that a claimant whose previous award for permanent partial disability under a settlement agreement was enlarged to an award for permanent total disability was not subject to the statute providing for awards of permanent partial disability not to exceed 400 weeks. In its reasoning, the Warren Court stated that because Tennessee Code Annotated section 50-6-242(a) specifically provides for awards of “permanent partial disability” not to exceed 400 weeks, it is inapplicable, under its own terms, to awards of permanent total disability. Id. at 624. Although Warren does not specifically address the applicability of the six-times multiplier in Tennessee Code Annotated section 50-6-241(b), the same reasoning applies. Tennessee Code Annotated section 50-6-241(b) specifically provides for awards of permanent *partial* disability not to exceed six times the medical impairment rating. Therefore, Tennessee Code Annotated section 50-6-241(b) is also inapplicable, under its own terms, to awards of permanent total disability.

Aerostructures contends that the Special Workers' Compensation Panel decision in Betty Jo Sissom v. State Dep't of Labor Workers' Comp. Div. Second Injury Fund, 2004 WL 1949435 (Tenn. Sp. Workers Comp. Panel at Nashville, August 31, 2004), and not the decision in Warren, should control this case. However, Sissom involved a trial court's finding of permanent partial disability, not permanent total disability, during a reconsideration hearing,. Id. at *2. Therefore, Sissom is inapplicable to this case.

After careful review of the record, this Panel affirms the holdings of the trial court. Costs of the appeal are taxed to the appellant, Aerostructures Corporation.

FRANK F. DROWOTA, III, Special Judge

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

**JESSIE GAIL CARUTHERS v. THE AEROSTRUCTURES
CORPORATION A/K/A VOUGHT AIRCRAFT INDUSTRIES, INC.**

Circuit Court for Jackson County

No. 1446-0-277

No. M2005-01370-SC-WCM-CV - Filed - December 13, 2006

ORDER

This case is before the Court upon the motion for review filed by The Aerostructures Corporation 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 denied. 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 The Aerostructures Corporation, for which execution may issue if necessary.

PER CURIAM

Clark, J. - Not Participating

DECEMBER 13, 2006

TO: SANDRA VANCE, DEPUTY CLERK, NASHVILLE

FROM: WILLIAM M. BARKER, JUSTICE

RE: JESSIE GAIL CARUTHERS v. THE AEROSTRUCTURES CORPORATION
A/K/A VOUGHT AIRCRAFT INDUSTRIES, INC. - JACKSON CIRCUIT
NO. M2005-01370-SC-WCM-CV

MOTION FOR REVIEW:

DENIED