IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
September 24, 2012 Session

RAYMOND DARRYL YOUNG v. BRIDGESTONE AMERICAS TIRE OPERATIONS, LLC

Appeal from the Circuit Court for Wilson County
No. 2011-CV-93 Clara Byrd, Judge

No. M2011-02551-WC-R3-WC - Mailed December 4, 2012
FILED JANUARY 10, 2013

In this workers' compensation appeal, the employee injured his right shoulder in the course of his employment in July 2009. He missed only a few days of work and reached maximum medical improvement in August 2010. Prior to his reaching maximum medical improvement, a collective bargaining agreement reduced the hourly wages of all of the employer's production workers. The trial court held that he had a meaningful return to work, thereby limiting his award of benefits to one and one-half times the anatomical impairment in accordance with Tennessee Code Annotated section 50-6-241(d)(1)(A). The employee has appealed, contending that the trial court's interpretation of the statute was erroneous.[1] We affirm the judgment.

Tenn. Code Ann. § 50-6-225(e) (2008) Appeal as of Right; Judgment of the Circuit Court Affirmed

DONALD P. HARRIS, SP. J., delivered the opinion of the Court, in which CORNELIA A. CLARK, J. and CHARLES CREED MCGINLEY, SP. J., joined.

Neal Agee, Jr., Lebanon, Tennessee, for the appellant, Raymond Darryl Young.

Nicholas S. Akins, Nashville, Tennessee, for the appellee, Bridgestone Americas Tire Operations, LLC.

---

[1] Pursuant to Tennessee Supreme Court Rule 51, the appeal has been referred to the Special Workers' Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law.

MEMORANDUM OPINION

Factual and Procedural Background

The material facts in this case are undisputed. Raymond Young has been employed by Bridgestone/Firestone Americas Tire Operations ("Bridgestone") in Smyrna, Tennessee, since 1988. He sustained a compensable injury to his right shoulder on July 22, 2009. When his condition failed to respond to conservative treatment, he was referred to Dr. Christopher Stark, an orthopaedic surgeon. Dr. Stark performed surgery on the shoulder on March 4, 2010, and released Mr. Young from his care on August 27, 2010. Mr. Young continued to work for Bridgestone throughout his period of treatment and thereafter.

Dr. Stark assigned a 10% permanent impairment to the body as a whole for Mr. Young's shoulder. He attributed 7% of the impairment, however, to a previous injury and surgery and only 3% to the July 2009 injury. Dr. Stark recommended that Mr. Young lift no more than twenty-five pounds, no more than six times per hour, and avoid repetitive overhead or outstretched lifting.

Dr. Richard Fishbein performed an evaluation at Mr. Young's request and testified live at the trial. He stated that in his opinion a 7% permanent impairment resulted from the July 2009 injury. Dr. Fisbein recommended restrictions similar to those suggested by Dr. Stark.

Dr. David Gaw performed an evaluation at Bridgestone's request. He believed that Mr. Young sustained a 1–2% impairment from the most recent injury.

Brian Sears, Bridgestone's human resource manager, testified that in November 2009, a collective bargaining agreement was reached between Bridgestone and the union representing employees at the Smyrna facility. As a result of that agreement, the hourly wages of represented employees were reduced. Mr. Young's hourly wage at the time of his injury was $25.65 per hour. As a result of the 2009 collective bargaining agreement, that wage was reduced to $22.93 per hour, a decrease of $2.72 per hour. Mr. Sears testified that the Smyrna plant was in danger of closing due to economic conditions, and the wage reductions were negotiated and agreed to in an effort to keep the facility open.

At trial, Mr. Young contended that, because of the reduction of his hourly wage, he did not have a meaningful return to work and his award of permanent disability benefits was therefore not subject to the one and one-half times impairment cap set out in Tennessee Code Annotated section 50-6-241(d)(1)(A) (2008 & 2012). Bridgestone took the position that Mr. Young had a meaningful return to work, notwithstanding the plant-wide wage reduction, and

that the lower cap applied.

The trial court announced its decision from the bench. Relying on *Edwards v. Saturn Corp.*, No. M2007-01955-WC-R3-WC, 2008 WL 4378188 (Tenn. Workers' Comp. Panel Sept. 25, 2008) and *Blake v. Nissan North America, Inc.*, No. M2009-02173-WC-R3-WC, 2010 WL 4513390 (Tenn. Workers' Comp. Panel Nov. 10, 2010), the court found that the wage reduction resulting from the 2009 collective bargaining agreement "was not as a result of his being injured or unable to work," and that section 50-6-241(d)(1)(A) applied to his claim. The court adopted Dr. Fishbein's 7% impairment rating and awarded a 10.5% permanent partial disability to the body as a whole. The court made an alternative ruling that, if the award were not subject to the cap, Mr. Young sustained a 35% permanent partial disability. Mr. Young has appealed, contending that the trial court erroneously interpreted the statute. Bridgestone asserts that the trial court's ruling on the meaningful return to work issue was correct, but that the alternative award was excessive.

Standard of Review

Appellate review of workers' compensation cases is governed by Tennessee Code Annotated section 50-6-225(e)(2) (2008 & 2012), which provides that appellate courts must review the trial court's findings of fact "de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding[s], unless the preponderance of the evidence is otherwise." The determinative issue raised on this appeal is, however, a question of law. "The interpretation of a statute and its application to undisputed facts involve questions of law." *Seiber v. Reeves Logging*, 284 S.W.3d 294, 298 (Tenn. 2009). A trial court's conclusions of law are reviewed de novo upon the record with no presumption of correctness. *Id.*; *Ridings v. Ralph M. Parsons Co.*, 914 S.W.2d 79, 80 (Tenn. 1996).

Analysis

Tennessee Code Annotated section 50-6-241(d)(1)(A) provides:

> For injuries occurring on or after July 1, 2004, in cases in which an injured employee is eligible to receive any permanent partial disability benefits either for body as a whole or for schedule member injuries, . . . and the pre-injury employer returns the employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of the injury, the maximum permanent partial disability benefits that the employee may receive is one and one half (1½) times the medical impairment rating determined pursuant to the provisions of § 50-6-204(d)(3).

As set out above, although Mr. Young continued to work for Bridgestone after the 2009 collective bargaining agreement took effect, his wage was $2.72 per hour less than it had been on the date of his injury. Mr. Young argues that the plain wording of the statute authorizes him to receive a disability award in excess of one and one-half times his anatomical impairment.

The cases relied upon by the trial court lead to the opposite conclusion. In *Edwards v. Saturn Corp.*, the employee sustained a compensable injury to his shoulder and returned to work at a qualifying wage. 2008 WL 4378188 at *2. While his lawsuit for permanent disability benefits was pending, he was laid off for an extended period of time in order for the plant to be re-tooled to produce a new product. *Id.* The evidence showed that, while he was laid off, the employee continued to receive benefits such as health insurance and seniority credits. He also received a combination of payments approximating 95% of his normal wages. *Id.* At trial, the employee argued that his award should not be subject to the lower "cap." *Id.* His argument was based upon both his laid-off status and the 5% reduction in his wage during the layoff period. *Id.* The trial court rejected those arguments, and awarded benefits in accordance with the lower cap in section 50-6-(d)(1)(A). *Id.* On appeal the Special Workers' Compensation Appeals Panel affirmed the trial court's ruling. *Id.* at *9, 11.

Addressing Mr. Edwards's contention that the 5% reduction in his wage caused by his layoff triggered a right of reconsideration, the Panel stated:

> Having determined that Mr. Edwards received a "wage" during his lay-off period, we now turn to Mr. Edwards' second argument that he was not receiving a "wage equal to or greater than the wage [he] was receiving at the time of the injury." Tenn. Code Ann. §§ 50-6-241(b) & -241(d)(2)(A). This argument stems from the fact that during his lay-off, Mr. Edwards is only receiving 95% of the wage he received before lay-off.
>
> Upon review of the Workers' Compensation Act and previous case law interpreting the Act, we do not find that the Legislature intended for the statutory minimums to be removed in this situation. Instead, we find that the reduction in Mr. Edwards' and the other 2,600 Saturn employees' take-home pay is analogous to an employer deciding to reduce the wages of its entire workforce by five percent because of economic hardship. It does not appear to this Panel that this is the type of situation that the General Assembly envisioned when it drafted the workers' compensation laws. *See W.S. Dickey Mfg. Co. v. Moore*, 208 Tenn. 576, 581, 347 S.W.2d 493, 495 (1961) (stating that one of the purposes of the workers' compensation system is to increase the

> right of employees to be *compensated for injuries* growing out of their employment); *Mathis v. J.L. Forrest & Sons*, 188 Tenn. 128, 130, 216 S.W.2d 967, 967 (1949) (stating that the general purpose of the workers' compensation statutes is to provide compensation for loss of earning power or capacity sustained by workers through injuries in industry); *see also* Tenn. Code Ann. § 50-6-116 (stating "[t]he rule of common law requiring strict construction of statutes on derogation of common law shall not be applicable to the provisions of the Workers' Compensation Law, compiled in this chapter but the same is declared to be a remedial statute, which shall be given an equitable construction by the courts, to the end that the objects and purposes of this chapter may be realized and attained"). The plant-wide reduction in pay imposed on all employees as a result of the shutdown does not result in a finding that the employer failed to meet the requirements of Tennessee Code Annotated sections 50-6-241(a) or -241(d)(1)(A). Accordingly, under the particular circumstances of this case, this Panel finds that Mr. Edwards is subject to the statutory minimums of either Tennessee Code Annotated section 50-6-241(a)(1) or -241(d)(1)(A).

2008 WL 4378188 at *9.

In *Blake v. Nissan North America*, the employee sustained a compensable injury to his arm in February 2006. 2010 WL 4513390 at *1. Like Mr. Edwards and Mr. Young in this case, he successfully returned to his pre-injury job. *Id.* Eighteen months after his return to work, but before his workers' compensation lawsuit was heard, his employer, in response to economic conditions, announced a plant-wide reduction in scheduled hours of work from forty hours per week to thirty-two hours per week. *Id.* The stated purpose of this action was to avoid layoffs. *Id.* Shortly thereafter, Mr. Blake accepted a voluntary buyout offer, resigned his employment, and went on active duty with the National Guard. *Id.* At trial, he asserted that his award of benefits should not be subject to the lower cap because of the loss of income resulting from the plant-wide workweek reduction. *Id.* at *2. The trial court agreed and awarded permanent disability benefits based upon three times the anatomical impairment. *Id.*

On appeal, the Special Workers' Compensation Appeals Panel concluded that the trial court had erred in its application of section 50-6-241(d). *Id.* at *5. The Panel relied upon *Edwards*, and noted that the language of 2010 Public Chapter 1034, which became effective after the appeal was heard, was consistent with the reasoning of *Edwards*.

More recently, in *Robinson v. Bridgestone Americas Tire Operations, LLC*, No. M2011-02238-WC-R3-WC, 2012 WL 5877497 (Tenn. Workers' Comp. Panel Nov. 21,

2012), the Special Workers' Compensation Appeals Panel reviewed a case based upon the same collective bargaining agreement at issue here. Mr. Robinson had settled a workers' compensation claim subject to the one and one-half times impairment cap before the collective bargaining agreement went into effect. 2012 WL 5877497 at *1. He sought reconsideration of the settlement, contending that the wage reduction resulting from the collective bargaining agreement triggered his right to seek reconsideration pursuant to Tennessee Code Annotated section 50-6-241(d)(1)(B). *Id.* The trial court found that he was not entitled to seek reconsideration, and the Panel affirmed, stating:

> In our view, the purpose of the two-tiered benefit system created in Tenn. Code Ann. § 50-6-241 is to protect the interests of several categories of employees, including (1) those who are unable to return to work for their employer because of the effects of their work injuries, (2) those who are able to return, but at a lesser wage because of the effects of their work injuries, and (3) those who, for reasons outside their control, are placed into the job market to compete against unimpaired applicants.
>
> . . . .
>
> We do not find any basis in the language of the statute, or of the cases interpreting it, to conclude that the General Assembly intended to grant a windfall to employees who returned to work at their pre-injury wage and continued to work for their pre-injury employer, but who, at some later time, are affected by an across-the-board reduction of pay as part of the employer's even-handed attempts to address deteriorating market conditions such as those that affected the automotive industry beginning in 2008.

Id. at *4. We agree with this analysis, and therefore conclude that the trial court correctly found that section 50-6-241(d)(1)(A) applied in this case. In light of that finding, it is not necessary to address Bridgestone's arguments concerning the court's alternative finding.

Conclusion

The judgment of the trial court is affirmed. Costs are taxed to Raymond Young and his surety for which execution may issue if necessary.

_____

DONALD P. HARRIS, SPECIAL JUDGE

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

RAYMOND DARRYL YOUNG v. BRIDGESTONE AMERICAS TIRE OPERATIONS, LLC

Circuit Court for Wilson County
No. 2011-CV-93

No. M2011-02551-WC-R3-WC - FILED JANUARY 10, 2013

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 Raymond Young and his surety, for which execution may issue if necessary.

PER CURIAM