IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY, PART III

WILLIAM HAMM,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	**NO. 08-2324-II(III)**
	)	
WOLFE INDUSTRIAL, INC., LIBERTY MUTUAL INSURANCE COMPANY, and SUE ANN HEAD, Administrator of the Tennessee Second Injury Fund,	)	
	)	
Defendants.	)	

MEMORANDUM AND ORDER

The plaintiff, William Hamm, was injured on the job in August 2004. He made a meaningful return to work at his pre-injury wage.

In April of 2005, he entered into a settlement with his employer of two times the medical impairment rating. He was subsequently re-injured in August of 2007. Following his recovery from the second injury, his employment was terminated. The plaintiff now seeks reconsideration of his prior settlement pursuant to Tennessee Code Annotated section 50-6-241.

The defendants, his former employer Wolfe Industrial, Inc., and his employer's insurer, Liberty Mutual Insurance Company, have filed a Rule 12.20(6) motion to dismiss the Petition for Reconsideration for failure to state a claim. The defendants contend that Mr.

Hamm is not entitled to reconsideration, because, firstly, his original settlement was for an amount greater than that required of the employer by section 50-6-241(d)(1)(A), which specifies that "the maximum permanent partial disability benefits that the employee *may* receive is one and one half (1½) times the medical impairment rating . . . ." [emphasis added]. And secondly, section 50-6-241(d)(1)(B)(i) specifies that an employee receiving benefits under subdivision (d)(1)(A) who is not returned to work is entitled to reconsideration of his benefits. Defendants read this statement as exclusive—that is to say, only those employees receiving benefits under (d)(1)(A) are entitled to reconsideration. And Mr. Hamm is not receiving benefits under (d)(1)(A), defendants contend, because his settlement was for an amount greater than *may* be awarded under (d)(1)(A).

The plaintiff's response is that the defendants' construction and application of section 50-6-241 would amount to an unlawful waiver of the plaintiff's right to reconsideration, as established by the Tennessee Supreme Court in *Overman v. Altama Delta Corporation*, 193 S.W.3d 540. Moreover, plaintiff argued at his hearing that the word "may" is not to be read exclusively, but as conditional or dependent, and therefore allowing some leeway in the amount of benefits for which the employee is eligible.

The defendants' contention that the operative word "may" in (d)(1)(A) is to be read as exclusive is unpersuasive for several reasons. First, usually the word "may" indicates discretion, not that the action is mandatory. Secondly, (d)(1)(A) is provided for the benefit of employers, so that they may cap the settlement amounts to which they are liable. If anyone

has voided the benefit they may receive from (d)(1)(A), it is the defendants, who failed to use the law to their benefit by pointing to the maximum of 1½ times the impairment rating as a cap on the initial settlement. To now permit the defendants to turn around and utilize (d)(1)(A) as a sword as opposed to a shield is contrary to the policy of Tennessee law that the Worker's Compensation law is a remedial act for the benefit of workers. For these reasons the motion to dismiss is denied.

It is so ORDERED.

Ellen Hobbs Lyle

ELLEN HOBBS LYLE
CHANCELLOR

cc: Jill Draughon
Désirée Hill