IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
June 29, 2009 Session

TAMMIE HAAKE v. SATURN CORPORATION

Direct Appeal from the Chancery Court for Williamson County
No. 30938 Jeffrey S. Bivins, Chancellor

No. M2008-02476-WC-R3-WC - Mailed - September 8, 2009
Filed - November 18, 2009

In this workers' compensation case, the employee, Tammie Haake, sustained compensable injuries which required her to have surgery on both wrists. After the first procedure, she was able to return to work, although with modified duties. While she was temporarily disabled from the second surgery, her employer, Saturn Corporation, offered its workers an early retirement incentive program. She accepted the offer, and, as a result, did not return to work. The trial court found that her retirement was reasonably related to her work injuries, and therefore did not apply the "cap" of one and one-half times impairment contained in Tennessee Code Annotated section 50-6-241(d)(1)(A). Employer has appealed from that decision. We affirm the judgment. [1]

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

DONALD P. HARRIS, SR. J., delivered the opinion of the court, in which CORNELIA A. CLARK, J., and PATRICIA J. COTTRELL, SP.J., joined.

Kenneth M. Switzer, Nashville, Tennessee, for the appellant, Saturn Corporation.

Larry R. McElhaney, II, Nashville, Tennessee, for the appellee, Tammy Haake.

---

[1] 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 50-6-225(e)(3) for a hearing and a report of findings of fact and conclusions of law.

MEMORANDUM OPINION

Factual and Procedural Background

The employee, Tammie Haake, was sixty-four years old at the time of the trial. She was a high school graduate, had received training in cosmetology, and, at one time, held a cosmetology license. Her cosmetology license, however, had expired and she had not engaged in that business for many years. She had worked for General Motors ("GM") at various locations since 1978. In January 2004, she reported to GM that she was having burning pain in her hands. Through workers' compensation, she was eventually referred to Dr. Jeff Cook, an orthopaedic surgeon, for examination and treatment.

Dr. Cook testified by deposition. His diagnosis was that Ms. Haake had carpometacarpal degenerative joint disease. This is a form of arthritis that affects the joint between the bottom of the thumb and the top of the wrist. Dr. Cook stated that this form of arthritis was very common in women, and was caused by activities of daily living. He further was of the opinion that the types of work Ms. Haake had performed for GM, especially the jobs she performed in the months and years preceding 2004, had worsened the condition.

Dr. Cook initially prescribed conservative treatment, but, over time, Ms. Haake's symptoms worsened. In the summer of 2005, Dr. Cook recommended and performed a surgical procedure known as an arthroplasty. The first surgery was carried out on her left wrist on July 26, 2005. Ms. Haake reached maximum medical improvement for her left wrist injury on September 22, 2005, and returned to work at her previous job. Dr. Cook performed the same procedure on her right wrist on May 1, 2006. She reached maximum medical improvement in September 2006, but did not return to work for GM after the second surgery. Dr. Cook testified that the surgery on the left wrist was more successful than the surgery on the right wrist. He assigned 16% permanent anatomical impairment to the left arm, and 21% permanent anatomical impairment to the right arm as a consequence of the arthritis and surgeries.

Dr. Cook gave the following testimony concerning the limitations resulting from Ms. Haake's arthritic condition and surgery: "I explained to her it was best for her to do light sedentary type work because I felt it would be difficult for her to continue to do the heavy gripping, pushing, pulling that's required in the assembly work." He elaborated by stating: "Limited gripping, pushing, pulling. But operating a computer, operating a machine, doing some inspection, I think, would be reasonable."

While Ms. Haake was temporarily disabled due to the surgery on her right hand, GM offered a special early retirement plan to its employees for the purpose of reducing the size of its workforce. Ms. Haake was eligible for this plan, and chose to accept it in June 2006. She agreed to discontinue her employment, and received a lump sum payment of $140,000.00.

Elaine Long testified that, at the time of Ms. Haake's injuries and resulting absences, she was the coordinator of GM's "ADAPT" program that attempts to locate suitable jobs for employees who have medical restrictions. According to Ms. Long, after the 2005 surgery on Ms. Haake's left hand, GM was able to place her in a suitable position. After the 2006 surgery on Ms. Haake's right hand, GM was not able to accommodate the temporary restrictions initially imposed by Dr. Cook. In September 2006, Dr. Cook relaxed those restrictions somewhat, however, no attempt was made to place Ms. Haake at that time because she had already opted for early retirement under the attrition plan. Ms. Long testified that, based upon her review of the available positions, GM would have been able to accommodate the September 2006 restrictions because these restrictions permitted a wider range of potential job activities than those outlined in Dr. Cook's deposition. She conceded that GM did not have a position available that fell within the restrictions described by Dr. Cook in his deposition.

Dana Stoller, a vocational evaluator, testified on behalf of Ms. Haake. She opined that Ms. Haake had a 100% vocational disability as a result of the effects of carpometacarpal arthritis. Neither Ms. Stoller's testimony, nor her report, which was placed into evidence as an exhibit, refer to any testing to determine Ms. Haake's ability to read, write, or perform basic arithmetic.

Ms. Haake testified that she had constant pain in both of her hands. She also stated that, due to the pain in her hands, she was unable to perform any of the jobs which she had held while she was in the workforce. She began thinking that she would not be able to return to work for GM "almost immediately" after the surgery on her right hand in May 2006, and this belief was the reason she decided to accept the early retirement plan in June 2006. She acknowledged that the application for the plan included language that she was not retiring due to any disability. She testified that she attempted to remove this language from the application by striking it out, but her application was rejected as a result. For that reason, she signed and resubmitted a second application which included that language.

At the time of the trial, she had not sought employment and was receiving social security retirement benefits and retirement benefits from GM.

The trial court found that Ms. Haake had not had a meaningful return to work, and that her award was, therefore, not limited by the one and one-half times impairment cap. It awarded 100% permanent disability to both arms. GM has appealed, contending that the trial court erred by holding that the award of benefits was not limited to one and one-half times the impairment by Tennessee Code Annotated section 50-6-241(d)(1)(A) (2008).

Standard of Review

The standard of review of issues of fact is de novo upon the record of the trial court accompanied by a presumption of correctness. We may not overturn a trial court's findings of fact unless we find the preponderance of evidence is contrary to those findings. Tenn. Code Ann. § 50-6-225(e)(2) (2008). When credibility and weight to be given testimony are involved, considerable deference is

given the trial court when the trial judge had the opportunity to observe the witness' demeanor and to hear in-court testimony. Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 167 (Tenn. 2002). Where the issues involve expert medical testimony that is contained in the record by deposition, determination of the weight and credibility of the evidence necessarily must be drawn from the contents of the depositions, and the reviewing court may draw its own conclusions with regard to those issues. Bohanan v. City of Knoxville, 136 S.W.3d 621, 624 (Tenn. 2004); Krick v. City of Lawrenceburg, 945 S.W.2d 709, 712 (Tenn. 1997); Elmore v. Travelers Ins. Co., 824 S.W.2d 541, 544 (Tenn. 1992). A trial court's conclusions of law are reviewed de novo upon the record with no presumption of correctness. Perrin v. Gaylord Entm't Co., 120 S.W.3d 823, 826 (Tenn. 2003); Ganzevoort v. Russell, 949 S.W.2d 293, 296 (Tenn. 1997).

Analysis

This is the sixth appeal within the last year concerning employees of General Motors' Saturn facility who signed up for the early retirement plan while recovering from a work injury. The previous five are: Tryon v. Saturn Corp., 254 S.W.3d 321 (Tenn. 2008); Gibbs v. Saturn Corp., No. M2007-02263-WC-R3-WC, 2009 WL 141895 (Tenn. Workers' Comp. Panel Jan. 22, 2009); Iacono v. Saturn Corp., No. M2008-00139-WC-R3-WC, 2009 WL 648962 (Tenn. Workers' Comp. Panel Mar. 12, 2009); Erdman v. Saturn Corp., No. M2008-00281-WC-R3-WC, 2009 WL 1607905 (Tenn. Workers' Comp. Panel June 10, 2009); and General Motors Corp. v. Frazier, No. M2008-00523-WC-R3-WC, 2009 WL 1643447, (Tenn. Workers' Comp. Panel Apr. 2, 2009).

In Tryon, 254 S.W.3d at 328-30, the Supreme Court undertook a comprehensive review of the case law addressing application of Tennessee Code Annotated section 50-6-241 when an employee voluntarily leaves his or her employment. The Court described the standard as follows:

> [A]n employee has not had a meaningful return to work if he or she returns to work but later resigns or retires for reasons that are reasonably related to his or her workplace injury. Accordingly, the [higher] multiplier is applicable. If, however, the employee later retires or resigns for personal reasons or other reasons that are not reasonably related to his or her workplace injury, the employee has had a meaningful return to work. . . .

Tryon, 254 S.W.3d at 328-29 (citations omitted). In Tryon, the trial court found that, although the employee had returned to work for a period of time after recovering from his injury, he eventually chose to retire based upon the advice of his treating physician. On that basis, it applied the higher multiplier contained in Tennessee Code Annotated section 50-6-241(b) in awarding permanent partial disability benefits. Under those circumstances, the Supreme Court held that the evidence did not preponderate against the trial court's finding, and affirmed the judgment. Tryon, 254 S.W.3d at 335.

The panels which decided Gibbs, Iacono, Erdman, and Frazier all applied the Tryon standard in analyzing the facts before them. In Gibbs, the employee reported his gradual shoulder injury after

he had retired from GM under an agreement which contained language similar to the agreement executed by Ms. Haake in this case. The trial court held that he had not had a meaningful return to work because, after the surgery required to treat his injury, the employee "could not have returned to work and lasted very long." 2009 WL 141895 at *3. The panel noted that the language of the agreement provided "relevant insight into whether or not Reverend Gibbs's retirement was reasonably related to the [work injury]." Id. at *5. In addition, the medical testimony was that the effects of his injury would not have prevented his return to work. Id. Based upon those factors, the panel determined that the evidence preponderated against the trial court's conclusion, even though the employee was specifically found to be a credible witness.

The employees in Iacono, Erdman, and Frazier, like Ms. Haake, chose to accept incentives to voluntarily retire while still temporarily disabled due to their work injuries. Each employee signed an agreement containing language similar or identical to the language of the agreement in this case, stating that he or she was not retiring due to any physical disability. Based upon those considerations, among others, the trial courts found in each case that the employee's resignation was not reasonably related to his work injury, and applied the lower cap. In all three cases, the appeals panel reviewed the evidence and determined that it did not preponderate against the trial court's decision.

GM asserts that the facts of those cases are substantially similar to those in this case. It argues that the unifying themes among the cases are that the employees were limited to the lower cap in each because he or she had deprived the employer of the ability to offer a meaningful return to work, and that each employee had certified that his or her retirement was not related to any disability.

In response, Ms. Haake argues that the underlying principle of all of the cited cases is that the existence of a meaningful return to work is an issue of fact, to be determined by the trial court and reviewed by the appellate court based upon the weight of the evidence at trial. She asserts that the primary evidence concerning the motivation for her retirement is her own testimony, and that the trial court made an explicit finding that she was a credible witness. Against that background, she submits that the evidence at trial was sufficient to show that she retired because she believed she would ultimately be unable to return to work. She contends that these factors distinguish her case from the prior early retirement cases, because in each of those cases, the trial court found that the employee was motivated to retire for reasons unrelated to his or her work injury. Cf. Robbins v. Graphic Packaging Int'l, Inc., No. M2006-02213-WC-R3-WC, 2007 WL 2458788, at *6 (Tenn. Workers' Comp Panel Aug. 31, 2007) (employee's belief that he might be moved to a job beyond his restrictions held not reasonably related to work injury).

Ms. Haake's written certification that her retirement was unrelated to any disability is troublesome. Tennessee Code Annotated section 50-6-114(a) (2008) provides, however, that "[no] contract or agreement, written or implied, or rule, regulation or other device, shall in any manner operate to relieve any employer, in whole or in part, of any obligation" created by the Workers' Compensation Law. Thus, the agreement signed by Ms. Haake cannot operate to limit GM's liability under that law. The substance of the certification, however, directly contradicts Ms. Haake's trial

testimony that she resigned because she felt her injuries would prevent her from returning to work. In order to reach a decision in this case, it was necessary for the trial court to determine which of her statements was true, and which was not. It had the opportunity to observe Ms. Haake as she testified, and hear her words as she spoke them. Based upon its observations, it found that her in-court explanation of her actions was worthy of belief.[2] That finding is entitled to deference by this panel. Dr. Cook's testimony provides support for Ms. Haake's explanation. Additionally, she attempted to strike the words relating to disability from her acceptance of the plan but it was rejected as a result. The record indicates that once the benefits of the early retirement plan were explained to the individual employee, that employee had a seven day period within which to accept or reject the plan. Ms. Haake found herself in a position where she either had to accept the plan or reject it prior to learning whether she would be able to return to work. With those factors in mind, we are unable to find that the evidence preponderates against the trial court's finding. While it appears Ms. Haake obtained an enhanced early retirement benefit by means of a misrepresentation, a workers' compensation action is not the proper means for GM to obtain relief for such an impropriety.

Conclusion

The judgment of the trial court is affirmed. Costs are taxed to the appellant, Saturn Corporation, and its surety, for which execution may issue if necessary.

_____

DONALD P. HARRIS, SENIOR JUDGE

[2] Cf. Frazier, in which the trial court and appeals panel expressed reservations about the employee's credibility, in part because the language of the early retirement application conflicted with his testimony about the reason for his retirement. 2009 WL 1643447 at *5.

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

TAMMIE HAAKE v. SATURN CORPORATION

Chancery Court for Williamson County
No. 30938

No. M2008-02476-SC-WCM-WC - Filed - November 18, 2009

JUDGMENT ORDER

This case is before the Court upon the motion for review filed by Saturn Corporation pursuant to Tennessee Code Annotated section 50-6-225(e)(5)(A)(ii), 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 appellant, Saturn Corporation, and its surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

Cornelia A. Clark, J., not participating