

IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE
MIDDLE DIVISION

FILED
CLAIMS COMMISSION
CLERK'S OFFICE
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CHARLES HARRIS,)
) Claim No. 30100474855
 Claimant.)
v.)
)
STATE OF TENNESSEE) Workers' Compensation
) Regular Docket
 Defendant;)

FINAL JUDGMENT FOR CLAIMANT

This worker's compensation claim was tried before Robert N. Hibbett, Commissioner and judge of the law and the facts, on April 8, 2014. Matt McFarland, Esquire, appeared for the Claimant. Assistant Attorney General Joseph Ahillen, Esquire, appeared for the State of Tennessee. The trial transcript was filed with the Commission on April 23, 2014.

The Claims Commission has jurisdiction of this matter under Tenn. Code Ann. § 9-8-307(a)(1)(K), relative to workers' compensation claims by state employees.

STIPULATIONS OF FACT

The parties have agreed to the following stipulations:

1. The Claimant sustained a work-related injury to the left axilla on January 29, 2010 and is entitled to Workers' Compensation benefits.
2. The Claimant's insurance company, Cigna, paid medical expenses in the amount of \$13,409.85 for treatment on the Claimant's injuries and has been reimbursed for those expenses by the State.
3. The Claimant has personally paid \$1,530.00 in medical expenses and should be reimbursed for that amount by the State.
4. The Claimant's weekly rate of compensation was \$350.53.
5. The Claimant sustained a permanent impairment of 5% to the body as a whole.
6. The Claimant's attorney should be awarded a 20% fee of the medical expenses paid by Cigna and the Claimant.
7. The multiplier of 1.5 does not apply because the Claimant was released by the State within 400 weeks of his return to work.

The only issue in dispute is the appropriate multiplier to be applied to his permanent impairment rating. Pursuant to Tenn. Code Ann. § 9-8-403(i), the Commission makes the following findings of fact and conclusions of law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The appropriate determination of a multiplier is controlled by Tenn. Code

Ann. 50-6-241(d)(2)(A):

(2)(A) For injuries arising on or after July 1, 2004, in cases in which the pre-injury employer did not return the injured 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 for body as a whole and schedule member injuries subject to subdivision (d)(1)(A) may not exceed six (6) times the medical impairment rating determined pursuant to the provisions of § 50-6-204(d)(3). The maximum permanent partial disability benefits to which the employee is entitled shall be computed utilizing the appropriate maximum number of weeks as set forth in § 50-6-207 for the type of injury sustained by the employee. In making such determinations, the court shall consider all pertinent factors, including lay and expert testimony, the employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's disabled condition. Tenn. Code Ann. § 50-6-241 (West)

Our Supreme Court has reiterated these pertinent factors by opining:

The court may consider, among other things, the following factors when assessing vocational disability:

- 1) an employee's skill and training;
- 2) an employee's education;
- 3) an employee's age;
- 4) local job opportunities; and
- 5) an employee's capacity to work at the kinds of employment available in his disabled condition.

Roberson v. Loretto Casket Co., 722 S.W.2d 380, 384 (Tenn.1986). This Court has made it clear that there is a clear distinction in workers' compensation cases between anatomical impairment and a disability to work resulting from such impairment. *Holder v. Wilson Sporting Goods Co.*, 723 S.W.2d 104, 107–08 (Tenn.1987). Further, while expert testimony may be used to establish vocational disability, it is not required. *Corcoran v. Foster Auto, GMC, Inc.*, 746 S.W.2d 452, 458 (Tenn.1988). The extent of vocational disability can be established by lay testimony. *Hinson v. Wal-Mart Stores, Inc.*, 654 S.W.2d 675, 677 (Tenn.1983).
Perkins v. Enter. Truck Lines, Inc., 896 S.W.2d 123, 127 (Tenn. 1995)

The Tribunal shall look at the pertinent factors that are applicable to this case to determine the appropriate multiplier.

Employee's skill, training and education

The Claimant testified that he completed a four-year apprenticeship with ABC Contractors in Nashville and received a journeyman electricians' certificate. Although he held an IBEW journeyman wireman's card for twelve years, he is no longer a licensed electrician. He has 22 years of on-the-job experience in commercial/industrial electricity. He does not possess any other license or certification.

His limited education and the fact that he does not presently hold any license or certification, certainly hinders his marketability in the work force at large.

Employee's age

At the time of hearing, the Claimant was fifty years old. Because he has reached middle age, his job opportunities and probability of starting a new career have diminished.

Local job opportunities

Although there was no specific testimony concerning this factor, the Claimant had been unemployed for nine months and did not have a promise of full time employment at the time of trial. He did have the prospect of part-time employment but not in his career field.

Employment available in his disabled condition

The Claimant testified that he could still work as an electrician and his injury would not limit his ability to work.

FINDINGS OF THE TRIBUNAL

After considering the testimony of the Claimant and the record as a whole, the Tribunal finds that a multiplier of four (4) should be applied to his permanent impairment rating. Furthermore, since the Claimant did not suffer

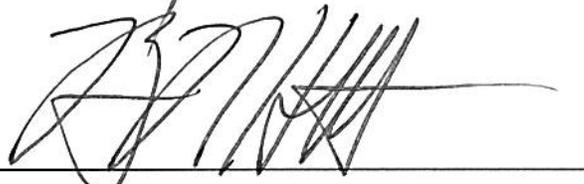
any loss in pay after his injury, he is not entitled to any past temporary total disability benefits.

IT IS, THEREFORE, ORDERED, DECREED, AND ADJUDGED:

1. The Claimant is awarded permanent partial disability benefits of \$28,042.40, which is a result of multiplying 4 times 5%, which is the equivalent of 80 weeks of benefits at the stipulated compensation rate of \$350.53.
2. The Claimant is awarded \$1,530.00 for reimbursement of out of pocket medical expenses.
3. The Claimant is not entitled to any past temporary total disability benefits.
4. The Claimant shall receive statutory future medical treatment pursuant to the Tennessee Worker's Compensation Law. Said future medical treatment must be provided by an authorized physician and must be demonstrated to be reasonable and necessary for the treatment of the injuries, which occurred on January 29, 2010.
5. The Claimant's attorney is awarded 20% of the permanent partial disability award, which totals \$5,608.48. He is also awarded 20% of the medical expenses, which totals \$2,987.97.

6. Each party shall be responsible for its own discretionary costs. The court costs, including the cost of the court reporter, are taxed to the State of Tennessee.

ENTERED this 6 day of MAY, 2014.

A handwritten signature in black ink, appearing to read 'R. N. Hibbett', written over a horizontal line.

ROBERT N. HIBBETT
Claims Commissioner
Sitting as the Trial Court of Record

CERTIFICATE OF SERVICE

This is to certify that a true and exact copy of the foregoing document has been served upon the following parties of record:

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This 12th of May, 2014.

Paula Swanson

PAULA SWANSON
Administrative Clerk
Tennessee Claims Commission