

SUPREME COURT OF TENNESSEE

Allen v. City of Gatlinburg

36 S.W.3d 73 (Tenn. 2001) · Decided January 19, 2001

SUMMARY

The Tennessee Supreme Court interpreted Tenn. Code Ann. § 50-6-208, governing apportionment of workers' compensation liability between an employer and the Second Injury Fund. The court held that the trial court must specifically determine the disability attributable to the subsequent injury without considering the prior injury, and remanded for that determination. The court taxed appellate costs to the Second Injury Fund.

CASE DETAILS

COURT	Supreme Court of Tennessee
WRITING FOR THE COURT	Birch, J.; Drowota, J.; Holder, J.; Barker, J.
JURISDICTION	Tennessee
DECIDED	January 19, 2001
DISPOSITION	remanded
PROCEDURAL POSTURE	The City appealed a workers' compensation award to the Special Workers' Compensation Appeals Panel, which upheld the trial court's apportionment of liability between the City and the Second Injury Fund. The Tennessee Supreme Court granted the City's motion for review and reviewed the statutory apportionment issue.
STANDARD OF REVIEW	Workers' compensation findings are reviewed de novo on the record with a presumption of correctness unless the evidence preponderates otherwise. Questions of law, including statutory construction, are reviewed de novo without a presumption of correctness.
PRECEDENTIAL VALUE	Published Tennessee Supreme Court opinion; precedential.
PARTIES	City of Gatlinburg, Tennessee Municipal League Risk Management Pool v. Garry L. Allen, Second Injury Fund

TOPICS

- workers compensation
- statutory interpretation
- standard of review
- appellate procedure
- municipal law

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Tenn. Code Ann. § 50-6-208(a) and (b) require the trial court to determine the extent of disability attributable to the subsequent injury without considering the employee's prior injury before apportioning liability between the employer and the Second Injury Fund.
2. Whether the trial court properly apportioned Allen's permanent-total-disability award by assigning 80 percent to the City and 20 percent to the Second Injury Fund.
3. Whether the trial court erred in finding that Allen suffered a compensable injury, was permanently and totally disabled, and was required to prove permanent total disability by a preponderance rather than clear and convincing evidence.

HOLDINGS

1. Under both Tenn. Code Ann. § 50-6-208(a) and (b), the trial court must determine the extent of disability resulting from the subsequent injury without considering the prior injury.
2. The apportionment was not adequately supported because the trial court failed to make a specific finding of fact regarding the percentage of disability caused by the 1995 injury without considering the 1992 injury.
3. The trial court did not err in finding that Allen suffered a compensable injury, was permanently and totally disabled, and was required to prove permanent total disability by a preponderance of the evidence.

KEY QUOTATIONS

“Under either subsection (a) or (b), it is essential that the trial court determine the extent of disability resulting from the subsequent injury without consideration of the prior injury.” (77)

“On remand, the trial court should make a specific finding of fact regarding the extent of disability caused by the 1995 injury without consideration of the 1992 injury.” (78)

FACTUAL BACKGROUND

Garry L. Allen, a diesel mechanic for the City of Gatlinburg, sustained a lower-back disk injury in 1992 and received a settlement based on a 20 percent permanent partial disability to the body as a whole. In 1995, he sustained a second back injury, received additional work restrictions, and was terminated after the City could not provide permanent full-time work within those restrictions. The trial court credited testimony that Allen was permanently and totally disabled, but it apportioned 80 percent of the award to the City and 20 percent to the Second Injury Fund without making a specific finding regarding the disability caused by the second injury alone.

PROCEDURAL HISTORY

Allen received a prior workers' compensation settlement for a 1992 back injury resulting in a 20 percent permanent partial disability to the body as a whole. After a second back injury in 1995, the trial court found him

permanently and totally disabled and apportioned 80 percent of the award to the City and 20 percent to the Second Injury Fund. The Special Workers' Compensation Appeals Panel affirmed, but the Tennessee Supreme Court remanded because the trial court had not specifically determined the disability attributable to the second injury considered independently of the prior injury.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The trial court must reconsider the apportionment and make a specific finding of fact regarding the extent or percentage of disability caused by the 1995 injury without considering the 1992 injury.

CASES CITED

- Spencer v. Towson Moving and Storage Inc., 922 S.W.2d 508, 509 (Tenn. 1996)
- Smith v. U.S. Pipe & Foundry Co., 14 S.W.3d 739, 742 (Tenn. 2000)
- Perry v. Sentry Ins. Co., 938 S.W.2d 404, 406-407 (Tenn. 1996)
- Owens v. State, 908 S.W.2d 923, 926 (Tenn. 1995)
- Lindsey v. Smith & Johnson, Inc., 601 S.W.2d 923, 925 (Tenn. 1980)