IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
June 2, 2014 Session

RUSSELL KYLE v. STATE FARM FIRE & CASUALTY COMPANY

Appeal from the Circuit Court for Shelby County
No. CT-001654-12 Robert L. Childers, Judge

No. W2013-01505-WC-R3-WC - Mailed August 18, 2014; Filed October 2, 2014

An insurance adjuster was injured when he fell from a ladder after inspecting a roof for his employer. Consistent with a voluntary agreement with his employer, the employee received sick leave payments in lieu of temporary total disability payments. After returning to work for two months, the employee retired. In addition to the employee's medical records, the parties introduced into evidence the deposition of a physician selected through the Medical Impairment Registry. The physician assigned an impairment of nine percent to the body as a whole. The trial court, however, awarded permanent disability benefits based on an impairment of fourteen percent and awarded additional temporary total disability benefits. The trial court also granted the employer a setoff for payments made to the employee pursuant to his accrued sick leave. The employer appealed. We conclude that the trial court erred by awarding a set-off of the payments made under the employer's sick leave policy and by adopting an impairment rating other than that assigned by the MIR physician. We remand the case for additional proceedings and findings by the trial court.

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

DONALD P. HARRIS, SP. J., delivered the opinion of the Court, in which JANICE M. HOLDER, J. and JON KERRY BLACKWOOD, SR. J., joined.

Todd I. Heird, Knoxville, Tennessee, for the appellant, State Farm Fire & Casualty Company.

James W. Cook, Germantown, Tennessee, for the appellee, Russell Kyle.

OPINION

Factual and Procedural Background

Russell Kyle began working for State Farm Fire & Casualty Company ("State Farm") as a claims adjuster in 1988. Mr. Kyle worked for approximately eight years as auto claims adjuster, two and one-half years as a fraud investigator, and spent the remainder of his career with State Farm as an adjuster in the catastrophe claims ("CAT") division. As a CAT adjuster, Mr. Kyle frequently went to disaster areas to assess damage and process claims from tornados, hurricanes, and other disasters. At the time of his injury in November 2007, Mr. Kyle was working on the "high and steep" team, which required him to climb ladders and inspect roofs up to fifty feet off the ground. For approximately three weeks prior to his injury, Mr. Kyle had been in Kentucky processing a number of claims arising from a hailstorm. On November 29, 2007, Mr. Kyle's supervisor asked him to inspect a client's roof. With a partner, Mr. Kyle ascended to the roof with a ladder and took the photos and measurements necessary to process the claim. When Mr. Kyle began climbing down from the roof, the bottom of the ladder "kicked out," and he fell twelve to fifteen feet onto a concrete surface. Mr. Kyle's partner descended from the roof and immediately took Mr. Kyle to a local emergency room where he was diagnosed with a broken nose, received an injection for pain, and was prescribed pain medication.

Mr. Kyle returned to his hotel and was unable to leave his room for the next two days. After that time, he drove himself to the local State Farm office, but his co-workers took him back to the hospital when they saw his condition. Mr. Kyle was diagnosed with six broken ribs and contusions to his arm and leg. He rested in his hotel room until he was able to transport himself back to his home in northern Mississippi.

After Mr. Kyle returned home from Kentucky, he entered into a voluntary written agreement with State Farm to receive his full pay in the form of sick leave pay, in lieu of temporary total disability benefits. Pursuant to this agreement, Mr. Kyle received payments from November 30, 2007 through January 16, 2009. These payments were initially in the amount of $1,635.93 but increased to $1,662.49, although he occasionally received larger payments.

Mr. Kyle returned to work for State Farm on May 1, 2010, and retired on August 1, 2010. On March 29, 2012, the parties attended a Benefit Review Conference but were unable to resolve their differences. On April 12, 2012, Mr. Kyle filed the present action in the Circuit Court for Shelby County, and the matter was tried on April 29 and 30, 2013.

Mr. Kyle testified at trial that he was not able to return to work as a "high and steep" CAT adjuster due to the restriction against working on ladders placed by Dr. Varner and by

various other physicians. He stated that although he could have remained a CAT adjuster working out of the field offices, State Farm refused to make that accommodation and only offered him a sedentary position as an adjuster in either Dallas or Jacksonville. Mr. Kyle explained that his last six years on the job as a CAT adjuster required him to be away from home for weeks or sometimes months at a time. He also testified that when working on a disaster site, he often worked seven days a week and received extra pay in those situations. His earnings in 2005 and 2006 were $95,000 and $104,000. Mr. Kyle testified that he owned a small farm and a truck leasing business, both of which were located in Mississippi. Mr. Kyle testified that he had not applied for any jobs since retiring from State Farm.

At trial, Mr. Kyle introduced the medical records of Dr. Jerry Engelberg, a neurosurgeon.[1] Mr. Kyle's primary care physician, Dr. Richard Wanderman, referred him to Dr. Engelberg in August 2008. Dr. Engelberg provided conservative treatment to Mr. Kyle although he discussed the possibility of surgery on Mr. Kyle's cervical spine. Dr. Engelberg wrote a letter to Mr. Kyle's attorney on May 22, 2009, in which he diagnosed Mr. Kyle with "cervical spondylosis, ulnar neuropathy, and lumbar spondylolisthesis at lumbar 5-sacral 1" and opined that although Mr. Kyle's conditions "were [not] caused by the fall, if in fact Mr. Kyle was asymptomatic . . . , all of these conditions could be aggravated by the fall of November 29, 2007."[2] In a clinical note of September 9, 2008, Dr. Engelberg stated that Mr. Kyle's conditions resulted in the following impairment:

> 1. Cervical spondylosis has an 5% impairment rating of the body as a whole according to the AMA Guides to the Evaluation of Permanent Impairment Fifth Edition.
>
> 2. Ulnar neuropathy has an 3% impairment rating of the body as a whole according to the AMA Guides to the Evaluation of Permanent Impairment Fifth Edition.
>
> 3. Lumbar 5-sacral 1 spondylolisthesis has an 5% impairment rating of the body as a whole according to the AMA Guides to the Evaluation of Permanent Impairment Fifth Edition.

The May 22, 2009 letter was offered into evidence as an exhibit to the deposition of Dr. John Lochemes, who performed an evaluation of Mr. Kyle under the aegis of the MIR

---

[1] Dr. Engelberg neither testified nor completed a C-32.

[2] Dr. Engelberg's May 22, 2009 letter referred to a letter dated September 13, 2008, in which he assigned permanent impairment for each of Mr. Kyle's conditions. We were unable to locate the September 13, 2008 letter in the record.

process. State Farm objected to the letter's admissibility, which the trial court overruled. The September 9 note was introduced through the record keeper's testimony, along with the remainder of Dr. Engelberg's records.

As previously mentioned, Dr. Lochemes evaluated Mr. Kyle through the MIR process on January 4, 2012. He took a history from Mr. Kyle, reviewed the records of the many physicians who had treated him, and conducted a physical examination. He issued a report concluding that Mr. Kyle retained an impairment of ten percent to the body as a whole due to the injury of November 30, 2007. This was based on a four percent impairment of the cervical spine, a four percent impairment of the shoulder and a two percent impairment of the left arm due to ulnar nerve dysfunction. During cross-examination, Dr. Lochemes agreed that he had erroneously failed to convert the ulnar nerve rating to the body as a whole. This resulted in a corrected rating of nine percent to the body as a whole.

Mr. Kyle's primary care physician also referred him to Drs. Daniel M. Downs and Randall P. Frazier, both of whom are orthopedists. Their medical records were provided to Dr. Lochemes and were made an exhibit to his testimony.

At trial, State Farm introduced the medical records of Dr. James Varner, an orthopedic surgeon and Mr. Kyle's authorized treating physician.[3] Dr. Varner diagnosed a strain of the left wrist, contusions of the left shoulder and knee and rib fractures. He provided conservative treatment until August 29, 2008. At that time, Dr. Varner stated in his notes:

> The patient returns and continues to have some parasthesias along the ulnar border of the left hand. No motor intrinsic loss or atrophy. He has a negative Tinel exam over the cubital tunnel of the left elbow and no subluxation of the ulnar nerve. Sensation is intact to light touch. Dr. Engelberg has discussed with him the possible necessity for cervical spine surgical intervention. No further orthopedic intervention is indicated. His job does involve climbing ladders at an unprotected height sometimes 2 stories off the ground. It is my opinion that currently he can perform the essential elements of his job without this climbing responsibility prior to Dr. Engelberg's assessment and determination whether any additional neurosurgical treatment is indicated.

Dr. Varner's notes make no mention of complaints, symptoms, or findings related to the lumbar spine.

The trial court issued its ruling from the bench. It initially adopted Dr. Lochemes' impairment rating of nine percent to the body as a whole and awarded thirty-six percent

[3] Dr. Varner neither testified nor completed a C-32.

permanent partial disability. After a colloquy with Mr. Kyle's attorney, however, the trial court held that Dr. Engelberg's letters had overcome the presumption of correctness created by Tennessee Code Annotated section 50-6-204(d)(5) (2005 & Supp. 2007). The trial court therefore modified its assessment of Mr. Kyle's impairment to fourteen percent to the body as a whole and awarded fifty-four percent permanent partial disability. The trial court found that Mr. Kyle was temporarily and totally disabled from the date of his injury until May 1, 2010, the day he began his job in Jacksonville. Consequently, Mr. Kyle was entitled to receive temporary total disability benefits during that time frame. The trial court further found that Mr. Kyle had entered into a voluntary agreement to receive sick pay in lieu of temporary disability benefits and that State Farm was entitled to a setoff for payments made under that agreement. Judgment was entered in accordance with those findings. State Farm appealed, arguing that the trial court erred by (1) admitting Dr. Engelberg's letter; (2) considering that letter in making its determination of Mr. Kyle's impairment; (3) and awarding temporary total disability benefits beyond September 9, 2008. Mr. Kyle raises additional issues, contending that the trial court erred by failing to award temporary total disability benefits to the date of Dr. Lochemes's examination, by granting the setoff to State Farm for benefits paid pursuant to its agreement with him, and by failing to assess a twenty-five percent penalty against State Farm for late payment of benefits.

Analysis

Factual issues in workers' compensation cases are reviewed de novo on the record of the trial court and are accompanied by a presumption of correctness unless the evidence preponderates otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2008). When credibility and weight to be given testimony are involved, we must give considerable deference to the trial court when it had the opportunity to observe the witness' demeanor and to hear in-court testimony. Madden v. Holland Group of Tenn., 277 S.W.3d 896, 900 (Tenn. 2009). When the issues involve expert medical testimony contained in the record by deposition, however, the weight and credibility of the evidence derives from the depositions' content, and the reviewing court may therefore draw its own conclusions with regard to those issues. Foreman v. Automatic Sys., Inc., 272 S.W.3d 560, 571 (Tenn. 2008). A trial court's conclusions of law are reviewed de novo on the record with no presumption of correctness. Seiber v. Reeves Logging, 284 S.W.3d 294, 298 (Tenn. 2009).

Impairment Rating

We first address State Farm's assertion that the trial court erred by admitting Dr. Engelberg's letter of May 22, 2009, and subsequently including his impairment rating for Mr. Kyle's lumbar spine in arriving at a permanent disability award. The letter of May 22, 2009 addresses the cause of Mr. Kyle's alleged lumbar spine injury. Although the letter refers to a previous letter not contained in the record, Dr. Engelberg's opinion concerning impairment

is set out in a clinical note from September 2008 that was included in the trial record along with other records from Dr. Engelberg. All of Dr. Engelberg's records were introduced through the testimony of a records custodian.

State Farm objected to the admission of the May 2009 letter at trial, arguing that it was unauthenticated hearsay. The letter was introduced as one of many documents reviewed by Dr. Lochemes as part of his evaluation and assessment of Mr. Kyle's impairment. In our view, the recent decision of our Supreme Court in Holder v. Westgate Resorts, Ltd., 356 S.W.3d 373 (Tenn. 2011) controls in this case. In Holder, the Court stated:

> [Tennessee] Rule [of Evidence] 703 provides that an expert opinion may be based on inadmissible evidence. An expert opinion based on inadmissible evidence is permitted if the facts or data on which the opinion is based are trustworthy and "of a type reasonably relied upon by experts" in the field. Tenn. R. Evid. 703; see State v. Lewis, 235 S.W.3d 136, 151 (Tenn. 2007) (permitting an expert to testify to an opinion based on inadmissible hearsay evidence).
>
> However, the basis of an opinion, if not otherwise admissible, may be admitted only for the limited purpose of assisting the jury in understanding the opinion. Admission of otherwise inadmissible foundation evidence to assist the jury in understanding the opinion should be rare and should be accompanied by a limiting instruction. See State v. Jordan, 325 S.W.3d 1, 54 (Tenn. 2010) ("Where an expert witness is referring to hearsay statements not otherwise admissible . . . the trial court should instruct the jury that the hearsay statements are to be used only for evaluating the expert witness's testimony and should not be relied on as substantive evidence."). According to the rule in effect at the time of the trial, any admission of the basis of an opinion for the purpose of assisting the jury in understanding the opinion was subject to the provisions of Tennessee Rule of Evidence 403. See Tenn. R. Evid. 703 adv. comm. cmt. ("Unfairly prejudicial facts or data should be dealt with under Rule 403.").

373 S.W.3d at 379.

Thus, the trial court in this instance correctly admitted the letter but erred by considering it as substantive evidence as to causation or impairment. The clinical note of September 9, 2008, however, was admitted as a medical record, and no objection was lodged at that time. We have examined that document carefully and conclude that it contains no direct reference to the causal relationship between any of the rated injuries and Mr. Kyle's November 2008 accident. Although one could reasonably contend that the note is based on

an implicit finding of causation, we conclude that the trial court erred by relying on the document to assign impairment in this case.

During his deposition, Dr. Lochemes testified about Dr. Engelberg's findings concerning the condition of Mr. Kyle's lumbar spine, all of which were contained in the medical records that he reviewed. Dr. Engelberg also notes in his MIR report that he had reviewed the report of Dr. David Gaw, who also examined Mr. Kyle's medical records. Dr. Gaw stated in his report that Mr. Kyle first related low back pain to Dr. Engelberg on July 22, 2008, stating the pain had begun in June 2008. Dr. Gaw noted that this was more than six months after the injury and was of the opinion that the low back pain was unrelated to the fall. In his deposition, Dr. Lochemes testified that as an MIR physician, he only assigns ratings to the injuries or conditions that he determined within a reasonable degree of medical certainty were related to the event in question. Although he was not asked whether he considered Mr. Kyle's lumbar spine condition to have been caused or aggravated by Mr. Kyle's fall, it is evident to us that he did not believe it had been.

Tennessee Code Annotated section 50-6-204(d)(5) (2005 & Supp. 2007) provides, in pertinent part, that "[t]he written opinion as to the permanent impairment rating given by the independent medical examiner pursuant to this subdivision (d)(5) shall be presumed to be the accurate impairment rating; provided, however, that this presumption may be rebutted by clear and convincing evidence to the contrary." Other panels have concluded that "the presumption found in section 50-6-204(d)(5) may be rebutted by affirmative evidence that an MIR physician 'used an incorrect method or an inappropriate interpretation' of the AMA Guides." Smith v. Elec. Research & Mfg. Co-op., Inc., No. W2012-00656-WC-R3WC, 2013 WL 683192 (Tenn. Workers' Comp. Panel Feb. 22, 2013) (quoting Tuten v. Johnson Controls, Inc., No. W2009-1426-SC-WCM-WC, 2010 WL 3363609, at *4 (Tenn. Workers' Comp. Panel Aug.25, 2010). Dr. Engelberg's note does not address Dr. Lochemes's method or interpretation of the AMA Guides. Indeed, it could not because it was written more than two years before Dr. Lochemes' evaluation. The note, standing alone, is insufficient to overcome the statutory presumption. We therefore conclude that the trial court incorrectly assessed a fourteen percent permanent impairment to the body as a whole. We further conclude that the appropriate impairment rating is the nine percent to the body as a whole assigned by Dr. Lochemes. The trial court's initial award of thirty-six percent permanent impairment is therefore reinstated.

Temporary Total Disability

Both sides argue that the trial court incorrectly determined the date on which Mr. Kyle's temporary disability ended. State Farm argues that Mr. Kyle reached maximum medical improvement on September 9, 2008, the date that Dr. Varner's "temporary" work restriction of August 29, 2008 expired (and, coincidentally, the date on which Dr. Engelberg

assigned permanent impairment rating). In contrast, Mr. Kyle argues for several alternative dates: July 16, 2010, based on a note of Dr. Downs; March 16, 2011, based on a note of Dr. Frasier; and March 31, 2011, based on Dr. Lochemes' testimony and MIR report that Mr. Kyle reached maximum medical improvement on that date.[4]

Both parties' arguments are based in part on their interpretations of a few documents taken from the multitude of unfiltered medical records presented to the trial court. The trial court expressed concern about the paucity of actual medical testimony and offered to adjourn the trial to permit the parties to take depositions or obtain C-32 reports. The parties declined that offer. As a result, the trial court was burdened with attempting to discern which of several brief notations provided the most appropriate basis for determining the correct period of temporary disability. When Dr. Lochemes was asked during his deposition to explain the basis for his opinion that Mr. Kyle did not reach maximum medical improvement until March 31, 2011, he responded:

> It has to be based on ongoing records from some of these providers with ongoing treatments and/or change in the condition that that date was assigned, that that represented what I thought was the end point of that.
>
> There obviously was some deterioration in this man's condition from the time these people evaluated them [sic] until when I saw him. His exam changed.

Temporary total disability "refers to an injured employee's condition while disabled to work by his injury and until he recovers as far as the nature of his injury permits." Gray v. Cullom Machine, Tool & Die, Inc., 152 S.W.3d 439, 443 (Tenn. 2004) (internal quotation marks and citations omitted). According to Dr. Lochemes, Mr. Kyle's condition continued to deteriorate following his injury, and he did not recover as far as the nature of his injury would permit until March 31, 2011. An employee's entitlement to temporary total benefits terminates, however, when he or she returns to work. Id. The trial court chose Mr. Kyle's return-to-work date as the appropriate end point of his temporary disability. In light of the limited evidence presented by the parties on this subject, we are unable to conclude that the evidence preponderates against the trial court's findings.

[4] An MIR physician's opinions concerning matters other than impairment are not entitled to the statutory presumption of correctness. See Courier Printing Co. v. Wanda Sims, No. M2010-01279-WC-R3-WC, 2011 WL 2936350, at *6 (Tenn. Workers' Comp. Panel July 15, 2011)

Setoff

Mr. Kyle next contends that the trial court erred by permitting State Farm a setoff against his award for the amounts paid to him through its sick leave plan. The trial court found that Mr. Kyle voluntarily agreed to accept sick leave payments in lieu of temporary total disability benefits because it was to his financial advantage to do so. The correctness of this ruling depends on the nature of Mr. Kyle's accumulated paid sick leave and the application and interpretation of the statutes relating to this subject matter.

The parties did not present much evidence regarding the nature of Mr. Kyle's accumulated paid sick leave. There was evidence that sick leave was earned on a periodic basis and accumulated from year to year subject to a maximum cap after which it was lost if not used. Mr. Kyle agreed that he did not consider it a "personal insurance policy." There was evidence that in 2009, when Mr. Kyle retired, he received income from the sick leave and vacation time he had accumulated after returning to work for State Farm in Jacksonville.

Tennessee Code Annotated section 50-6-114 provides as follows:

> (a) 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 this chapter, except as provided in subsection (b).
>
> (b) Any employer may set off from temporary total, temporary partial, permanent partial and permanent total disability benefits any payment made to an employee under an employer funded disability plan for the same injury; provided, that the disability plan permits such an offset. The offset from a disability plan may not result in an employee's receiving less than the employee would otherwise receive under this chapter. In the event that a collective bargaining agreement is in effect, this subsection (b) shall be subject to the agreement of both parties.

The record reveals that State Farm offered its employees a disability plan but that it was employee-funded. Accordingly, subsection (a) of this statute applies.

In Frayser v. Dentsply Inter., Inc., 78 S.W.3d 242 (Tenn. Workers' Comp Panel 2002), an employee with a work-related injury was offered the option of using his non-occupational accident and sickness benefits in lieu of his workers' compensation benefits. The employee opted for the non-occupational disability benefits because it paid his entire salary rather than a portion of it. The Panel, construing Tennessee Code Annotated sections

50-6-108(a)[5] and 50-6-114(a) together, found that when a work-related injury arises out of and in the course of employment, an employee's only option is to proceed under the provisions the Workers' Compensation Act and that an employer's offer of an option to use the non-occupational accident and sickness benefits "in lieu of the workers' compensation law is impermissible." Id. at 249. Thus, the panel refused to enforce the employee's agreement to accept the alternate benefits.

Tennessee Code Annotated 50-6-243(2005) (repealed by 2013 Pub. Acts, c. 289, § 91 effective July 1, 2014), provides that:

> (a) An employee may sign an agreement before or after an injury resulting in temporary total disability due to an accident arising out of and in the course of employment in which the employee may receive from the employer, for up to six (6) months after the date of injury, an amount greater than the schedule of compensation for the injury in § 50-6-207. Any agreed payment that is greater than the amount provided by § 50-6-207 shall be credited as an offset to any subsequent award or settlement for permanent partial disability, permanent total disability, or death benefits.
>
> (b) If the employee's temporary total disability exceeds six (6) months from the date of injury, any payments greater than those provided by § 50-6-207, made after that date, shall not be credited as an offset to any subsequent award or settlement for permanent partial disability, permanent total disability, or death benefits.

In our view, this statute does not apply. State Farm did not agree to pay Mr. Kyle an amount greater than what he was entitled to receive under workers' compensation. Rather, they offered to allow him to use a vested benefit, his accrued sick leave, in lieu of the benefits to which he was entitled under the workers' compensation statutes.

Tennessee Code Annotated section 50-6-128 provides, in part:

> If any employer knowingly, willfully, and intentionally causes a medical or wage loss claim to be paid under health or sickness and accident insurance, . . . when the employer knew that the claim arose out of a compensable work-related injury and should have been submitted under its workers' compensation insurance coverage, . . . the employer may not offset any

[5] Tennessee Code Annotated § 50–6–108(a) provides: "The rights and remedies herein granted to an employee subject to the Workers' Compensation Law on account of personal injury or death by accident . . . shall exclude all other rights and remedies of such employee. . . ."

> sickness and accident income benefit paid to the employee against its temporary total disability benefit payment liability due to the employee pursuant to this chapter . . . .

In our view, Mr. Kyle's vested accrued sick leave was, in effect, an insurance policy that provided him a continuation of his salary if he became ill and was unable to work. Consequently, pursuant to the Tennessee Code Annotated section 50-6-128, State Farm's knowing use of Mr. Kyle's sick-leave benefit as a substitute for his workers' benefits prohibits it from claiming an offset of the amounts it paid. The record reveals that Mr. Kyle could have cashed in his sick-leave benefits at the time of his retirement. Instead, State Farm used those benefits to replace its obligations under the workers' compensation statutes. We therefore conclude that the agreement between Mr. Kyle and State Farm violates public policy and that the trial court erred by awarding State Farm a setoff.

Penalty

Finally, Mr. Kyle asserts that the trial court erred by failing to award a twenty-five percent penalty pursuant to Tennessee Code Annotated 50-6-205(c) for State Farm's alleged delay or failure to pay temporary disability benefits. Imposition of the penalties contained in section 50-6-205 must be based on a finding that the employer acted in bad faith. Mayes v. Genesco, Inc., 510 S.W.2d 882, 885 (Tenn. 1974); see also Fagg v. Hutch Mfg. Co., 755 S.W.2d 446, 453 (Tenn. 1988). The trial court here made no such finding. Our independent review of the record reveals no evidence of bad faith on State Farm's behalf. We conclude that the trial court correctly chose not to assess the statutory penalty.

Conclusion

The trial court's judgment is modified to reflect that Mr. Kyle sustained a nine percent impairment to the body as a whole. The award of permanent partial disability benefits is modified to thirty-six percent. We vacate the portion of the trial court's judgment granting State Farm a setoff for the sick leave benefits it paid to Mr. Kyle. The remainder of the judgment is affirmed. The cause is remanded to the trial court for entry of a revised judgment consistent with this opinion. Costs are taxed one-half to Russell Kyle and one-half to State Farm Fire & Casualty Company and its 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 JACKSON

RUSSELL KYLE v. STATE FARM FIRE & CASUALTY COMPANY

Circuit Court for Shelby County
No. CT-001654-12

No. W2013-01505-WC-R3-WC - Filed October 2, 2014

JUDGMENT ORDER

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 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 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 on appeal are taxed one-half to the Appellee, Russell Kyle, and one-half to the Appellant, State Farm Fire & Casualty Company and its surety, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM