

IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE
MIDDLE DIVISION

FILED
IN THE CLAIMS COMMISSION
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CHARLIE MCRAE,)
) Claim No. 20070627041
 Claimant,)
)
 vs.)
)
 STATE OF TENNESSEE,) Workers' Compensation
) Regular Docket
 Defendant.)

FINAL JUDGMENT FOR CLAIMANT

This workers' compensation reconsideration claim was tried before Robert N. Hibbett, Commissioner and judge of the facts and the law, on November 13, 2013 in Legislative Plaza at the State Capitol. The Honorable Russell Belk, Esquire, appeared for the Claimant. Assistant Attorney General Eric Fuller appeared for the State of Tennessee. The original trial transcript and exhibits were forwarded to the Tribunal in December and then filed with the Clerk on January 3, 2014.¹ In support of their respective positions, the parties have stipulated to the introduction of the deposition of Dr. Scott West, M.D. and the report of Dr. Greg Kyser, M.D. The parties also stipulated the agreed order settling the original claim be made an exhibit as well as the Claimant's

¹ The Tribunal ordered the transcript to be filed with the Clerk of the Claims Commission. Instead, it was sent to the Tribunal first.

resignation letter and two e-mails from the Warden to the Claimant. The agreed compensation rate is \$463.37.

This matter came before the Tribunal on reconsideration after the original claim had been settled by the parties and the original Tribunal had entered an order. Subsequent to the settlement, the Claimant left employment with the Tennessee Department of Corrections (TDOC) and went to work in the Hickman County Jail. The Claimant eventually left employment at Hickman County to work for Expeditors International loading and unloading trucks.

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. Pursuant to Tenn. Code Ann. § 9-8-403(i), the Commission makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

The original agreed workers' compensation settlement order in this matter was filed on April 25, 2011 and set the Claimant's permanent partial disability at 26.25% to the body as a whole based on post-traumatic stress disorder. This was based on 17.5% PPI rating that was multiplied by 1.5 because the Claimant made

an initial full return to work. The Tribunal shall not look behind that order and adopts the PPI rating in this reconsideration.

Claimant's Education, Training and Employment

Claimant graduated from high school in 2001 and attended a week or two of college at Tennessee State University. Claimant has not had any other college or vocational training

During high school, he worked as a cashier at Kroger. Before and upon graduating from high school, Claimant worked installing floors. He then started working for Turney Center of the Tennessee Department of Corrections for four to six months and resigned to install floors again. He was hired at Charles Bass of the TDOC in 2005 and worked for TDOC until he resigned in May of 2011.

Claimant's Testimony

On June 12, 2007, while working for TDOC as a corrections officer, an inmate assaulted the Claimant. He suffered a broken nose, a fractured face and a seizure. After the assault, he started having symptoms of a racing heart, profuse sweating and nausea. He had trouble sleeping and had nightmares. He suffered anxiety while being with a large group of strangers. He continued to work at the Charles Bass facility of TDOC until August or September 2010. During that

period, he suffered fear while working in the same place where the assault occurred and was nervous, nauseous, weak, and suffered nightmares.

The Claimant was then transferred to Deberry Special Needs facility of TDOC. While at Deberry, he witnessed frequent assaults on guards in various forms. He continued to have violent nightmares concerning his work environment. In October of 2010, he was assaulted by an inmate in which his head was struck, and he suffered torn muscles in his chest. After this attack, he became very scared, and his sleep problem became worse. He found it difficult to think about going to work and became nauseous trying to get dressed.

The Claimant resigned from TDOC in May of 2011 because he “couldn’t do it anymore.” He was nervous, worried and on edge. It was his decision to leave TDOC and not Dr. Scott West’s decision. After his resignation, he went to work for the Hickman County Sheriff’s Department to be a supervisor in the jail. He had less contact with prisoners in the jail than he did at TDOC and he believed it to be a safer environment. There were also more officers around when there was contact with the prisoners. However, an inmate assaulted him in December 2012 while working in the jail. After this assault, he resigned from the Hickman County Sheriff’s Department because that was all he “could take” and

he was “done.” He did not feel he could work in a corrections environment again because of his anxiety and nervousness. When he was job hunting, he was looking for “anywhere and anything that’s not a jail or a prison.” People behind him and big groups trigger his symptoms. He did not feel he could work on any job that required much contact with strangers.

The Tribunal accredits and believes the testimony of the Claimant.

Testimony of Dr. Scott West, M.D.

Dr. W. Scott West, M.D. treated the Claimant in this matter. Dr. West is a Board Certified Psychiatrist in private practice and is the Chief of Psychiatry at St. Thomas Hospital in Nashville, Tennessee. Dr. West had also provided the initial independent medical evaluation before he became the Claimant’s treating psychiatrist. His deposition was taken on behalf of the Claimant. Dr. West first saw the Claimant on October 19, 2009 after his initial attack by an inmate and injury. Dr. West concluded the Claimant had post-traumatic stress disorder and personality change due to a head injury. After the Claimant suffered another inmate attack in October of 2010, he continued to see the Claimant, and his diagnosis did not change. He directed the Claimant temporarily leave work on March 11, 2011, and Claimant returned to work at TDOC on March 23, 2011.

During the March 11, 2011 office visit, the Claimant complained he had torn cartilage and an increase in anxiety about the second attack and about being attacked at work. Furthermore, he suffered nausea, sweatiness, confusion, decreased sleep and nightmares of the fighting. Dr. West believes that anxiety, memory loss, and nightmares are all consistent complaints associated with the Claimant's assault.

Dr. West opined it was reasonable for the Claimant to resign from TDOC because of the environment at the Lois Deberry facility of TDOC. He also concluded had he stayed in this environment, it was more likely than not that Mr. McRae's psychological condition could have worsened. When Dr. West saw him in April 2013, he was still having nightmares involving the jail setting and fear of attacks, and he connects them with the initial attack in 2007 and the attack in 2010.

Dr. West went on to talk about the reasonableness of the Claimant resigning from working in a TDOC prison to go to work in a county jail. His response was, "A jail is a jail and a prison is a prison"² and he thought the Claimant would have some degree of comfort working in a jail setting. The

² Dr. West Deposition Transcript, page 34

Tribunal accredits the testimony of Dr. West and finds it has aided the Tribunal in applying the law to the facts of this claim.

Report of Greg Kyser, M.D.

The Tribunal shall discuss Dr. Kyser's original findings for the purpose of determining whether it was reasonable for the Claimant to resign from TDOC after his second assault by a prisoner. On October 27, 2010, Dr. Kyser concluded the Claimant suffered major depression, single episode, which was in partial remission. He suffered post-traumatic stress disorder, which was in partial remission. He also suffered cognitive disorder NOS and personality change secondary to head injury. Although the Claimant had reached MMI at the time, Dr. Kyser opined the Claimant would need *ongoing psychiatric care*. (Emphasis added) The Claimant's overall impairment rating corresponded to a 10-20 percent psychiatric impairment rating.

CONCLUSIONS OF LAW

The Workers' Compensation Act is a remedial statute that shall be given an equitable construction by the courts, to the end that the objects and purposes of this chapter may be realized and attained. Tenn. Code Ann. § 50-6-116 (1999). Therefore, the Court interprets workers' compensation statutes so "that these

laws should be rationally but liberally construed to promote and adhere to the Act's purposes of securing benefits to those workers who fall within its coverage." *Allen v. City of Gatlinburg*, 36 S.W.3d 73, 75 (Tenn. 2001) (quoting *Lindsey v. Smith & Johnson, Inc.*, 601 S.W.2d 923, 925 (Tenn.1980).

The Claimant in this matter has requested reconsideration of his benefits because he left employment of the State because of his post-traumatic stress disorder. A claimant is entitled by statute to reconsideration under the following statutory language:

(B)(i) If an injured employee receives benefits for body as a whole injuries pursuant to subdivision (d)(1)(A) and the employee is subsequently no longer employed by the pre-injury employer at the wage specified in subdivision (d)(1)(A) within four hundred (400) weeks of the day the employee returned to work for the pre-injury employer, the employee may seek reconsideration of the permanent partial disability benefits.

(iii) Notwithstanding this subdivision (d)(1)(B), under no circumstances shall an employee be entitled to reconsideration when the loss of employment is due to either:
(a) The employee's voluntary resignation or retirement; provided, however, that the resignation or retirement does not result from the work-related disability that is the subject of such reconsideration; or
(b) The employee's misconduct connected with the employee's employment.
Tenn. Code Ann. § 50-6-241

The question the Tribunal must answer is whether the Claimant's resignation resulted from the work related disability of the original claim.

Our Supreme Court has given trial courts guidance in making this determination.

The circumstances to which the concept of "meaningful return to work" must be applied are remarkably varied and complex. See *Newton v. Scott Health Care Ctr.*, 914 S.W.2d 884, 886 (Tenn. Workers Comp. Panel 1995). When determining whether a particular employee had a meaningful return to work, the courts must assess the reasonableness of the employer in attempting to return the employee to work and the reasonableness of the employee in failing to either return to or remain at work. *Lay v. Scott County Sheriff's Dep't*, 109 S.W.3d 293, 297-98 (Tenn. 2003); *Nelson v. Wal-Mart Stores, Inc.*, 8 S.W.3d 625, 630 (Tenn. 1999). The determination of the reasonableness of the actions of the employer and the employee depends on the facts of each case. *Hardin v. Royal & Sunalliance Ins.*, 104 S.W.3d 501, 505 (Tenn. 2003) (quoting *Newton v. Scott Health Care Ctr.*, 914 S.W.2d at 886).

910 As a result of extensive litigation over the concept of "meaningful return to work" in the context of claims for permanent partial disability benefits, we have the benefit of many decisions in which this Court and the Appeals Panel have addressed whether a particular employee has had a meaningful return to work. These decisions provide that an 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 *329 injury. *Lay v. Scott County Sheriff's Dep't*, 109 S.W.3d at 298; *Hardin v. Royal & Sunalliance Ins.*, 104 S.W.3d at 505-06. *Tryon v. Saturn Corp.*, 254 S.W.3d 321, 328-29 (Tenn. 2008)

Therefore, we can surmise that if the Claimant returns to work, but later resigns for reasons that are reasonably related to his or her workplace then reconsideration of benefits may be contemplated.

Claimant is entitled to reconsideration of his benefits.

The parties have already agreed the Claimant suffers from post-traumatic stress disorder caused by the first assault by an inmate on June 12, 2007. The Claimant went back to work at TDOC and continued to work until an inmate seriously assaulted him again on October 12, 2010. After this second attack, the Claimant suffered an increase in anxiety and suffered nausea, sweatiness, confusion, decreased sleep and nightmares of the fighting. Dr. West testified all these symptoms are consistent to post-traumatic stress disorder. He also opined it was reasonable for the Claimant to resign after this second assault, and it was more likely than not his psychological condition would have worsened had he continued in that work environment. The State did not provide any expert testimony to refute this opinion. It is abundantly clear to the Tribunal that the Claimant's resignation was reasonably related to his post-traumatic stress disorder and his work environment at TDOC. Therefore, the Claimant is entitled to reconsideration.

The State, in its closing argument, has alleged this particular case is being observed by various state departments to set a standard in PTSD reconsideration cases. The State specifically argued:

I'll tell you bluntly, as far as the State is concerned, specifically the Department of Corrections and THP and all the other agencies that PTSD claims are not unusual, this claim is being watched. And if this is the standard, things may change. If I'm the general counsel of the TDOC or the Commissioner and an employee has a problem like the claimant, Mr. McRae here, I'm going look at it and say, Do you know what? We need to settle this as an uncapped case right now and let him go because realistically, the claimant is right about one thing. There is a perception of threat in a prison. It's not going to go away. And if you've got PTSD, maybe you just shouldn't be working at the prison. And maybe from now on the TDOC just needs to let everybody go who claims PTSD. (Trial Transcript page 102-03)

The decisions of the Claims Commission have no precedential value. Only our appellate courts set precedent. The Claims Commission is an administrative tribunal created by the General Assembly to adjudicate monetary claims against the State. Tenn. Code Ann. § 9-8-301(a) and § 9-8-307(a)(1). The Claims Commission has no other mandate but to adjudicate certain enumerated claims and render judgments against the State that may be appealed directly to the Court of Appeals. Tenn. Code Ann. § 9-8-403(a)(1). Under statute, it is allowed to promulgate rules and regulations

to fulfill its duties such as The Rules of the Tennessee Claims Commission to supplement the Tennessee Rules of Civil Procedure. Tenn. Code Ann. § 9-8-306 and § 9-8-403. It is not a legislative, governing or policymaking body. Therefore, the Executive Departments of the State of Tennessee should not place any binding or persuasive value on the judgment of the Tribunal.

Determination of the appropriate multiplier.

Since the 17.5 % permanent partial disability rating to the body as a whole is already set, then the only issue is the determination of the correct multiplier. The Claimant has asked his rating be multiplied by five giving him an 87.5% vocational disability.

The test in measuring vocational disability is “whether there has been a decrease in the employee’s capacity to earn wages in any line of work available to the employee.” *Orman v. Williams Sonoma, Inc.*, 803 S.W.2d 672 at 678 (Tenn. 1991). Relevant factors include “lay and expert testimony, the employee’s age, education, skills and training, local job opportunities, and capacity to work at the types of employment available in his disabled condition.” *Id.* The Claimant has had a decrease in his capacity to earn wages, but the Tribunal does not believe he

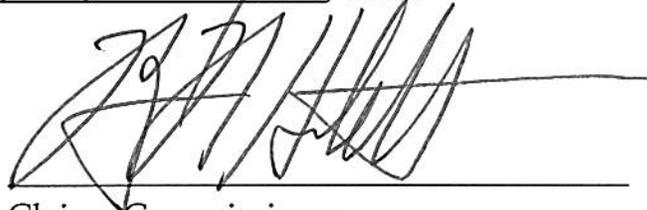
has an 87.5% vocational disability. The Claimant can work and has worked since his resignation from TDOC in jobs that are commensurate with his high school education although his pay has been reduced from what he was making with the State of Tennessee. The Tribunal shall set the multiplier at three and finds that he has a permanent partial disability of 52.5%. The State is given credit for the previous \$48,653.85 paid from the original settlement. The Claimant shall be awarded another \$48,653.85 in a lump sum payment in that the Claimant is capable of wisely managing and controlling the lump sum payment.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. The Tribunal finds the Claimant retains a 17.5% permanent partial impairment multiplied by three entitling the Claimant to receive \$48,653.85 in additional permanent partial benefits.
2. The Claimant shall continue to receive statutory lifetime 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 injury that occurred on June 12, 2007.
3. Claimant's Attorney is awarded 20% of the award, which is \$9,730.77.

4. After payment of the attorney's fees, the Claimant will receive \$38,923.08 in a lump sum payment.
5. The court costs, if any, are taxed to the State of Tennessee, including the costs of the trial court reporter.

ENTER this 4 day of February, 2014.

A handwritten signature in black ink, appearing to be 'J. P. Hill', is written over a horizontal line.

Claims Commissioner
Sitting as the Trial Judge of Record
Pursuant to Tenn. Code Ann. § 9-8-403(a)(1)

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 6th of Feb., 2014.



PAULA SWANSON
Administrative Clerk
Tennessee Claims Commission