

Successful Appellate Victory

fax:

LWDN attorneys Chris Brown and Adam Russell secured a successful appellate victory in a recent case.

The employee was injured when she fell on the employer's premises. She alleged to have injured her neck and back as a result of the fall. She was subsequently diagnosed with a herniated disc in her cervical spine. The employee was placed at MMI and released to return to work with light duty restrictions around eleven months after her injury. Thereafter, the employer offered the employee a job that fell within her restrictions. Nonetheless, the employee failed to even attempt to return to work despite the fact that she was aware that she was being released by an authorized treating physician.

At the trial court level the employer argued that the employee should be limited to one and one half times the anatomical impairment pursuant to Tennessee Code Annotated § 50-6-241 (d)(1)(A). Pursuant to said statutory section, the employer argued that the Tennessee case law requires that the employee at least attempt to return to work provided the offer of employment falls within the employee's restrictions. The employee took the position that she was unable to perform the requirements of her pre-injury employment, but acknowledged that she had not tried to work within her restrictions. The trial court awarded the employee six times her anatomical employment rating for a total monetary award of approximately \$212,000.00.

The employer appealed the judgment to the Special Workers' Compensation Appeals Panel. The employer raised the argument that Tennessee case law stands for the proposition that the employee must at least try to work once she is released and offered a job that fell within the restrictions. The appellate court agreed with the employer's position and thereby modified the employee's award to one and one half times her permanent medical impairment rating, which reduced her monetary award to approximately \$53,000.00.