FILED
June 15, 2016
TENNESSEE
WORKERS' COMPENSATION
APPEALS BOARD
Time: 10:06 A.M.

TENNESSEE BUREAU OF WORKERS' COMPENSATION
WORKERS' COMPENSATION APPEALS BOARD

Robert Parrish	)	Docket No. 2015-07-0467
	)	
v.	)	
	)	State File No. 54013-2015
Digit Dirt Worx, Inc., et al.	)	
	)	
	)	
Appeal from the Court of Workers' Compensation Claims Allen Phillips, Judge	)	

Affirmed and Remanded – June 15, 2016

In this interlocutory appeal, the employee alleges the employer miscalculated his average weekly wage by failing to exclude from the calculation certain days on which the employee claims he did not work. The trial court conducted a review of the file and concluded the employee did not come forward with sufficient evidence from which it could determine he would likely prevail on this issue at a hearing on the merits. As a result, the trial court denied the employee's request to award additional temporary disability benefits and the employee appealed. Discerning no error, we affirm and remand the case.

Judge Timothy W. Conner delivered the opinion of the Appeals Board, in which Judge Marshall L. Davidson, III, and Judge David F. Hensley joined.

Robert Parrish, Weaverville, North Carolina, employee-appellant, pro se

Allen Grant, Nashville, Tennessee, for the employer-appellee, Digit Dirt Worx

Opinion

Robert Parrish ("Employee") reported sustaining a work-related injury on July 10, 2015, when he was struck by a large drill press as it was being moved by a forklift. The employer, Digit Dirt Worx, Inc. ("Employer"), initiated temporary disability benefits at a

compensation rate based on its calculation of Employee's average weekly wage. On December 18, 2015, Employee filed a Petition for Benefit Determination, seeking temporary disability benefits at a higher weekly compensation rate. Following the issuance of a dispute certification notice, which listed Employee's average weekly wage as the only disputed issue, Employee filed a request for expedited hearing and asked the trial court to review the file and issue a decision without holding an evidentiary hearing, as authorized by Tenn. Comp. R. & Regs. 0800-02-21-.14(1)(c) (2015).

In its decision, the trial court considered, without objection, all documentation submitted by the parties. Thereafter, the trial court concluded that Employee did not produce sufficient evidence of any miscalculation of the average weekly wage. As a result, the trial court entered an order denying additional temporary disability benefits.

Upon careful review of the record, we agree with the trial court's finding that Employee did not come forward with sufficient evidence to show an error in Employer's calculation of the average weekly wage. Employee did not establish a particular number of days during which he earned no wages, did not offer evidence of the reason(s) for any missed days from work, and did not offer an explanation of the typical variance of work hours from week to week in his particular occupation. *See Cantrell v. Carrier Corp.*, 193 S.W.3d 467, 472 (Tenn. 2006). Under these circumstances, we discern no error in the trial court's order.

For the foregoing reasons, we hold that the preponderance of the evidence supports the trial court's order. *See* Tenn. Code Ann. § 50-6-239(c)(7) (2015). We further find that the trial court's decision does not violate any of the standards set forth in Tennessee Code Annotated section 50-6-217(a)(3) (2015). Accordingly, the trial court's decision is affirmed and the case is remanded for any further proceedings that may be necessary.

Timothy W. Conner, Judge
Workers' Compensation Appeals Board

FILED
June 15, 2016
TENNESSEE
WORKERS' COMPENSATION
APPEALS BOARD
Time: 10:06 A.M.

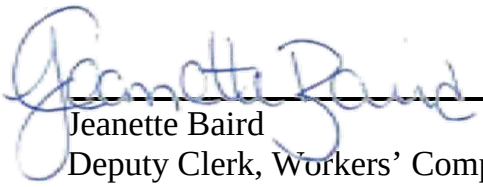
TENNESSEE BUREAU OF WORKERS' COMPENSATION
WORKERS' COMPENSATION APPEALS BOARD

Robert Parrish	)	Docket No. 2015-07-0467
	)	
v.	)	
	)	State File No. 54013-2016
Digit Dirt Worx, et al.	)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Appeals Board's decision in the referenced case was sent to the following recipients by the following methods of service on this the 15th day of June, 2016.

Name	Certified Mail	First Class Mail	Via Fax	Fax Number	Via Email	Email Address
Robert Parrish					**X**	Robertj777@icloud.com
Allen Grant					**X**	AGrant@morganakins.com
Allen Phillips, Judge					**X**	Via Electronic Mail
Kenneth M. Switzer, Chief Judge					**X**	Via Electronic Mail
Penny Shrum, Clerk, Court of Workers' Compensation Claims					**X**	Penny.Patterson-Shrum@tn.gov



Jeanette Baird
Deputy Clerk, Workers' Compensation Appeals Board
220 French Landing Dr., Ste. 1-B
Nashville, TN 37243
Telephone: 615-253-0064
Electronic Mail: Jeanette.Baird@tn.gov