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TENNESSEE
WORKERS' COMPENSATION
APPEALS BOARD

**TENNESSEE BUREAU OF WORKERS' COMPENSATION
WORKERS' COMPENSATION APPEALS BOARD**

Brad Wigdor) Docket No. 2022-07-0416
)
v.) State File No. 41066-2021
)
Electric Research & Manufacturing)
Cooperative, Inc., et al.)
)
)
Appeal from the Court of Workers')
Compensation Claims)
Robert V. Durham, Judge)

Affirmed and Certified as Final

The employee sustained a work-related injury to his right knee and received certain medical and temporary disability benefits. He was subsequently diagnosed with complex regional pain syndrome. The parties offered into evidence expert opinions of three physicians, including one physician selected from Tennessee's Medical Impairment Rating Registry. In addition to the dispute regarding the degree of permanent medical impairment, the employee asserted that various provisions of Tennessee's Workers' Compensation Law violate both the state and federal constitutions. Following a compensation hearing, the trial court concluded the employee had not come forward with clear and convincing evidence to rebut the opinion of the physician selected from the Medical Impairment Rating Registry, and it awarded permanent disability benefits based on that rating as well as future medical benefits. The trial court declined to address the employee's constitutional challenges, and the employee has appealed. We affirm the trial court's compensation order and certify it as final.

Presiding Judge Timothy W. Conner delivered the opinion of the Appeals Board in which Judge Pele I. Godkin and Judge Meredith B. Weaver joined.

Charles L. Holliday, Jackson, Tennessee, for the employee-appellant, Brad Wigdor

R. Dale Thomas, Jackson, Tennessee, for the employer-appellee, Electric Research & Manufacturing Cooperative, Inc.

Memorandum Opinion¹

Brad Wigdor (“Employee”) sustained a work-related injury to his right knee on May 7, 2021, while employed by Electric Research & Manufacturing Cooperative, Inc. (“Employer”). In this litigation, Employee has challenged the constitutionality of various provisions of Tennessee’s Workers Compensation Law. In addition, following entry of the court’s compensation order, the court entered a subsequent order correcting a typographical error in the compensation order, approving Employer’s attorney’s fee, and denying Employee’s motion for discretionary costs. That order was not appealed.

In *Pope v. Nebco of Cleveland, Inc.*, 585 S.W.3d 874, 881 (Tenn. 2018), the Tennessee Supreme Court’s Special Workers’ Compensation Appeals Panel addressed constitutional challenges to various provisions of the 2013 Workers’ Compensation Reform Act and explained as follows:

In *Richardson v. Board of Dentistry*, 913 S.W.2d 446 (Tenn. 1995), the Tennessee Supreme Court comprehensively addressed the question of when it is appropriate for an administrative tribunal to decide constitutional issues. According to the Court, the answer to that question “depends on the nature of the constitutional issue.” *Id.* at 454. The Court proceeded to identify three types of constitutional challenges: (1) challenges to “the facial constitutionality of a statute authorizing an agency to act,” (2) challenges to “the actions of an agency in applying a rule or statute,” and (3) challenges to “the constitutionality of the procedures employed by the agency.” *Id.* Ultimately, the Court concluded that administrative tribunals may only decide the second and third types of constitutional challenges but not the first type; the Court clearly held that administrative tribunals “have no authority to determine the facial constitutionality of a statute.” *Id.* at 455.

In his notice of appeal, Employee raises a single issue: “Constitutionality of the 2013 Workers’ Compensation Reform Act.” We have previously concluded we do not have the authority to address facial challenges to the constitutionality of Tennessee’s Workers’ Compensation Law. *See, e.g., Johnston v. Siskin Steel & Supply Co.*, Nos. 2015-01-0023, 2018-01-0003 & 2018-01-0008, 2020 TN Wrk. Comp. App. Bd. LEXIS 23 at *18-19 (Tenn. Workers’ Comp. App. Bd. Mar. 24, 2020). Thus, because Employee has not raised any issues on appeal other than the constitutionality of the Workers’ Compensation Law, we affirm the trial court’s compensation order and certify it as final. Costs on appeal are taxed to Employee.

¹ “The Appeals Board may, in an effort to secure a just and speedy determination of matters on appeal and with the concurrence of all judges, decide an appeal by an abbreviated order or by memorandum opinion, whichever the Appeals Board deems appropriate, in cases that are not legally and/or factually novel or complex.” Tenn. Comp. R. & Regs. 0800-02-22-.03(1) (2020).



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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 21st day of November, 2023.

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