

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT NASHVILLE  
JUNE 2000 SESSION

**CLAUDEAN EDWARDS HULSEY, v. PETERBILT MOTORS COMPANY**

Direct Appeal from the Circuit Court for Robertson County  
No. 9000, Hon. James Walton, Judge

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No. M1999-00350-WC-R3-CV - Mailed - July 17, 2000  
Filed - August 17, 2000

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This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. In this case, the employer contends that the award of permanent partial disability benefits is excessive. The employee asserts that the appeal is frivolous. The panel has concluded the award should be affirmed and no damages should be awarded for a frivolous appeal.

**Tenn. Code Ann. § 50-6-225(e)(3) Appeal as of Right; Judgment of the Circuit Court Affirmed**

Turnbull, Sp. J., delivered the opinion of the court, in which Drowota, J., and Loser, Sp. J. joined.

Patrick Alan Ruth, Gracey, Ruth, Howard, Tate & Sowell, Nashville, Tennessee, for the appellant, Peterbilt Motors Company, Appellant

William R. Underhill, Springfield, Tennessee, for the appellee, Claudean Edwards Hulse

## **MEMORANDUM OPINION**

### **Background**

The employee Claudean Hulsey, is 52 years old. She left high school during the 11th grade and has had no further school or vocational training. Her job experience is limited to occupations requiring repetitive use of her hands. She began to work for Peterbilt Motors Company in February of 1984. For the past 10 years, Hulsey worked in the “hood/box” department where she installed cloth and vinyl lining into sleeper boxes using impact air screwdrivers and power drills. Her work required forceful repetitive hand intensive activities.

In 1996, Hulsey began experiencing numbness and pain in her right arm, symptoms of carpal tunnel syndrome. She then began to be treated by Dr. Michael McHugh. In April of 1998, Dr. McHugh performed a right sided carpal tunnel release. Hulsey returned to work with restrictions from Dr. McHugh for a week or two following the surgery.

Peterbilt employees went on strike for seven months during the summer and fall of 1998 before Hulsey had a full work trial. In December of 1998, Hulsey returned to work in the “hood/box” department. She began experiencing pain and tingling in her hand again and returned to Dr. McHugh in April of 1999. Dr. McHugh diagnosed her with DeQuervains Tenosynovitis, right hand lateral column pain and possible early recurrence of right carpal tunnel syndrome.

Dr. McHugh placed permanent restrictions on Hulsey. She is to use impact tools no more than 4 hours in the course of the day, do only occasional gripping or squeezing, and only occasional strenuous pushing or pulling. Hulsey now has accommodated lighter duties but continues to experience pain in her right wrist at work. She lines sleeper boxes four hours per day and drives a tractor pulling truck hoods off the paint line for the remainder of her shift. Dr. McHugh assigned a 5% impairment to the upper right extremity. Dr. David W. Gaw, who examined Husley once in 1998, assigned a 10% impairment of the upper right extremity, and applied similar restrictions.

The trial judge found that the employee had a 40% vocational disability to the right

upper extremity after crediting the impairment rating given by Dr. Gaw.

**Analysis**  
**Percentage of Disability**

Our analysis begins by recognizing the applicable standard by which to review worker's compensation cases. Issues of fact are reviewed de novo upon the record of the trial court, accompanied by a presumption that the findings of the trial court are correct, unless the preponderance of the evidence is otherwise. E.g., McIlvain -v- Russell Stover Candies, Inc., 996 S.W.2d 179, 183 (Tenn. 1999) When a trial court has seen and heard witnesses, especially where issues of credibility and weight of oral testimony are involved, considerable deference must be accorded the trial court's factual findings. E.g., Collins -v- Howmet Corp., 970 S.W.2d 941, 943 (Tenn. 1998) Where medical testimony is by deposition this court may draw its own conclusions about the weight and credibility of that testimony since we are in the same position as the trial judge. E.g., Krick -v- City of Lawrenceburg, 945 S.W.2d 709, 712 (Tenn. 1997) However, our analysis of the deposition medical testimony must give deference to credibility findings of the trial judge regarding an injured worker's residual symptoms as they may affect or relate to impairment ratings assigned by a medical expert. E.g., Long -v- Tri-Con Industries, LTD, 996 S.W.2d 173, 179.

The extent of vocational disability is a question of fact to be determined from all the evidence, including both lay and expert testimony. McIlvain, 183 Factors to be considered in determining the extent of vocational disability include the employee's job skills and training, education, age, extent of anatomical impairment, duration of impairment, local job opportunities, and the employee's capacity to work at the kinds of employment available to in her disabled condition. E.g., Perkins -v- Enterprise Truck Lines, Inc., 896 S.W.2d 123, 127 (Tenn. 1995). The employee's own assessment of her disabilities is competent testimony and cannot be disregarded in assessing vocational disability. Tom Still Transfer Co. v. Way, 482 S.W.2d 775, 777 (Tenn. 1972).

Hulsey's previous and current employment is limited to jobs involving the repetitive use of her hands. As a result of Hulsey's wrist problems, she has had limitations placed on her by Dr. McHugh. Hulsey now works only four hours per day at her normal job, which is one-half of the time she worked prior to her injury.

Hulsey testified that despite the limitations imposed by Dr. McHugh, she continues to have pain in her right arm with her job at Peterbilt. The trial court found Hulsey's testimony to be "very candid, very trite, truthful, and she tells it like she sees it."

Under all the circumstances, including the claimant's lack of education, training and experience in jobs other than manual, hand-intensive labor, and the stability of her job at Peterbilt, this panel is persuaded that Hulsey is entitled to 40% vocational disability benefits as awarded by the trial judge.

#### Frivolous Appeal

Damages for frivolous appeal are awarded in circumstances when the appellant seeks the appeal only for the purposes of delay or when the appellant cites no evidence or rule of law that would entitle it to a reversal from the decree of the trial court. Bailey v. Knox County, Tenn., 732 S.W.2d 597, 598 (Tenn 1987). The panel is not persuaded that the appeal is frivolous, even though considering the trial judge's findings on credibility and his careful analysis of the testimony, the chances of a downward modification of the award were slim at best.

The judgment of the trial court is affirmed. Costs on appeal are taxed to the employer, Peterbilt Motors Company.

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**JUDGMENT**

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 Memorandum 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 Memorandum 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 will be paid by employer, Peterbilt Motors Company, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM