

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT NASHVILLE  
February 2000 Session

**PAMELA HARPER v. TRAVELERS INSURANCE COMPANY, ET.AL.**

**Direct Appeal from the Criminal Court for Macon County  
No. 98-69 Honorable James O. Bond, Judge**

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**M1999-01913-WC-R3-CV - Mailed October 24, 2000  
Filed - November 28, 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. Section 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. Plaintiff commenced this cause of action on March 18, 1998 alleging that she had developed bilateral carpal tunnel syndrome due to the repetitive use of her hands and arms while employed at Flex Technologies, Inc. The trial court awarded permanent partial disability benefits based on the functional equivalent of 75% to both arms. Flex Technologies, Inc. and The Travelers Insurance Company, respectively, filed this appeal. Appellants contend that the trial court erred 1) by denying Appellants' motion for a continuance of the trial, 2) in accepting the opinion of an independent medical expert over the opinion of the treating physician, and 3) in awarding excessive permanent partial disability benefits. As discussed below, the Panel holds that the trial court's award of permanent partial disability benefits was not excessive and that the judgment of the lower court should be affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the trial court AFFIRMED.**

GAYDEN, Sp. J. delivered the opinion of the Panel, in which DROWOTA, J. and LOSER, Sp. J. joined.

Deanna B. Johnson, Spicer, Floynn & Rudstrom, Nashville, Tennessee, for the Appellants, Flex Technologies, Inc. and The Travelers Insurance Company.

Frank D. Farrar and William Joseph Butler, Farrar & Holliman, Lafayette, Tennessee for the Appellee, Pamela Harper.

**OPINION**

Claimant/Appellee, Pamela Harper, is a 23 year old female with an eighth grade education. Ms.

Harper has never passed the G.R.E. and claims to have no special skills or training. Her work experience has been limited to work with her hands, or what Appellee calls “just labor work.”

In March 1998, Appellee commenced this suit to obtain workers’ compensation benefits after allegedly developing carpal tunnel syndrome from the repetitive use of her hands and arms during the course and scope of her employment at Flex Technologies, Inc. Appellee was referred to Dr. Jack Miller who diagnosed bilateral carpal tunnel syndrome and recommended bilateral carpal tunnel release surgery which was performed on September 19, 1997. Post-surgical notes indicate that Dr. Miller also diagnosed synovitis. Dr. Miller assigned a permanent impairment rating of 5% to each arm for residual bilateral carpal tunnel syndrome, but did not address the synovitis. Dr. Miller also noted on the C-32 form “that the *AMA Guides* or the *Orthopaedic Manual* does not adequately assess the medical impairment of the Claimant.” An independent medical examination was performed on October 26, 1998 by Dr. S.M. Smith, an orthopaedic surgeon. Dr. Smith assigned Appellee a total of 26% permanent partial impairment to each upper extremity.

The case was set for trial on December 17, 1998. Defendants received a Notice of Deposition on November 13, 1998 indicating that Appellee would be taking Dr. Smith’s deposition on December 2, 1998. Appellants, therefore, attempted to schedule the deposition of the treating physician, Dr. Miller, but were unable to do so because Dr. Miller had just undergone surgery and was unavailable until after the first of the year. Appellants then moved for a continuance, without supporting affidavits, so that they might be able to obtain Dr. Miller’s deposition prior to trial. Said Motion was apparently denied, because the trial occurred as scheduled, however, the record on appeal does not contain any written Order denying Appellants’ Motion for a Continuance. At trial, Appellee submitted the Standard Form Medical Report for Industrial Injuries (C-32 Form) of Dr. Smith. Similarly, Appellant submitted Dr. Miller’s C-32 Form. The trial court awarded permanent partial disability benefits based on the functional equivalent of 75% to both arms, finding Dr. Smith’s opinion regarding the extent of Appellee’s permanent medical impairment to be more persuasive than that of Dr. Miller.

Tenn. Code Ann. Section 50-6-225(e)(3) instructs that, “Review of finding of fact by the trial court shall be de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise.” Applying this standard of review to the first issue to be addressed, whether the trial court erred by denying Appellant’s Motion for Continuance, it is the Panel’s determination that the trial judge did not abuse his discretion in denying said motion and refusing to postpone the trial. Furthermore, since both parties were able to obtain and present C-32 Forms as proof and were on an equal playing field, Appellants were not prejudiced. Blake v. Plus Mark, Inc., 952 S.W. 2d 413, 415 (Tenn. 1997).

Secondly, the trial court’s decision to apply greater weight to Dr. Smith’s impairment rating does not constitute an abuse of discretion and is affirmed. Considering Dr. Miller’s failure to follow the *AMA Guides* or *Orthopaedic Manual* in assigning Appellee’s impairment rating as required by Tenn. Code Ann. Section 50-6-204(d)(3), Dr. Miller’s failure to address his diagnosis of

synovitis, as well as the Appellee's lost earning capacity, this Panel cannot reverse the trial court's decision.

Finally, it is this Panel's decision not to disturb the trial court's award of permanent partial disability benefits. Deference must be given to the decision of the trial judge, as he had the opportunity to observe and evaluate the credibility of the Plaintiff/Appellee. Bowling v. Horsing Around, Inc., No., 03S01-9510-CV-00113 (Tenn. November 15, 1996), *no motion for review filed*, citing Walls v. Magnolia Truck Lines, 622 S.W. 2d 526 (Tenn. 1981). Apparently the trial court found Appellee to be a credible witness.

Thus, after careful review of the record, this Panel affirms the holdings of the trial court. Costs of appeal are taxed to Appellant.

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HAMILTON V. GAYDEN, JR, SPECIAL JUDGE

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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 the appellant, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM