

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT JACKSON  
August 31, 2000 Session

**LETA JOHNSON v. HENRY I. SIEGEL CO., INC., ET AL.**

**Direct Appeal from the Circuit Court for Benton County  
No. 98CCV-017     Julian Guinn, Judge**

---

**No. W1999-00408-WC-R3-CV - Mailed March 15, 2001; Filed May 4, 2001**

---

This workers' compensation appeal has been referred to the Special Workers' Compensation Panel of the Supreme Court in accordance with Tennessee Code Annotated § 50-6-225(e)(1999) for a hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The appellant presents the following issues for review: Whether the evidence preponderates against the trial court's determination of permanent partial disability. After a review of the entire record, briefs of the parties and applicable law, we affirm the trial court's judgment.

**Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Circuit Court is Affirmed.**

ROBERT L. CHILDERS, SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and WIL V. DORAN, SP. J., joined.

Terry J. Leonard, Camden, Tennessee, for the appellant, Leta Johnson.

Stephen D. Jackson, Huntingdon, Tennessee, for the appellees, Henry I. Siegel Co., Inc. and Royal Insurance Co.

**MEMORANDUM OPINION**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. §50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law.

Plaintiff, Leta Johnson, filed her Complaint on February 20, 1998, alleging that she was injured over a period of time while working for the defendant, Henry I. Siegel Co., Inc., (hereinafter H.I.S.) as a seamstress. The trial court found that plaintiff suffered a 25% vocational disability to each upper extremity. Plaintiff appeals the decision of the trial court, contending that the award is inadequate. For the reasons discussed below, we affirm.

## FACTS

Plaintiff was a sixty-two year old woman with an eighth grade education at the time of her injury. Ms. Johnson began work as a seamstress for H.I.S. at the age of seventeen. Except for one year, when she worked for another garment manufacturer, plaintiff has worked for H.I.S. for forty-one years. She ceased her employment with H.I.S. due to the pain she was experiencing in her arms.

Plaintiff sought treatment from her physician, Dr. Bourne. Dr. Bourne advised her that surgical intervention would most likely not provide relief because of her age. Dr. Robert J. Barnett examined the Plaintiff and determined that she sustained a 20% anatomical impairment to each upper extremity as a result of her occupation. Plaintiff is retired and is no longer seeking employment.

The trial court determined that since her retirement plaintiff's symptoms have not lessened and that she was restricted in her ability to push and pull, handle and feel. The trial court further held that plaintiff was unqualified to work in any other field due to her limited education and lack of vocational training.

## ANALYSIS

\_\_\_\_\_The trial court, after hearing testimony and weighing the evidence, determined that plaintiff suffered a 25% vocational disability to each upper extremity. Considerable deference must be given to the trial court's finding of fact, especially where issues of credibility are involved. *Collins v. Howmet*, 970 S.W.2d 941, 943 (Tenn. 1998). Review of the trial court's decision requires a determination of whether the preponderance of the evidence favors the trial court's judgment. The decision of the trial court will be upheld unless upon review it is determined that the evidence preponderates against the trial court's judgment. *Painter v. Toyo Kogyo of Japan*, 682 S.W.2d 944, 951 (Tenn. Ct. App. 1984). We must give the trial judge's findings regarding the weight and credibility of any oral testimony considerable deference. *Townsend v. State*, 826 S.W.2d 434, 437 (Tenn. 1992). We hold that the evidence does not preponderate against the trial court's assessment of a 25% vocational disability in each arm. Because arms are scheduled members, an award of permanent total disability to the body may not be granted. *Smith v. Empire Pencil Co.*, 781 S.W.2d 833 (Tenn. 1989).

The panel notes the trial court made separate awards to each arm. Tennessee Code Annotated, § 50-6-207(3)(A)(ii)(w) provides scheduled benefits for the loss of two (2) arms; therefore, we modify the award to twenty-five percent (25%) permanent partial disability to both arms which will neither increase nor decrease the award but will conform the trial court's judgment to the statute.<sup>1</sup>

---

<sup>1</sup>The trial court awarded twenty-five percent (25%) permanent partial disability to the right arm or fifty (50) weeks of benefits and twenty-five percent (25%) permanent partial disability to the left arm or fifty (50) weeks of benefits, based on a two hundred (200) week maximum loss of an arm for a total award of one hundred (100) weeks of benefits. Loss of two arms, Tenn. Code Ann. § 50-6-207(3)(A)(ii)(w), is a scheduled injury with a maximum of four hundred (400) weeks of benefits. Twenty-five percent (25%) permanent partial disability to both arms is also one

On appeal, plaintiff raised the issue of whether the defendants' counsel's admission that plaintiff has total permanent disability should be admitted as proof and considered. We find that the determination of this issue is not dispositive of the issue of the amount of vocational disability sustained by plaintiff to scheduled members and thus we do not address it.

### **CONCLUSION**

After review of the trial court's findings, the briefs and oral argument submitted by the parties, we find that the evidence does not preponderate against the judgment of the trial court. Costs are assessed to the plaintiff.

---

ROBERT L. CHILDERS, SPECIAL JUDGE

---

hundred (100) weeks of benefits.

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT JACKSON  
August 31, 2000

**LETA JOHNSON v. HENRY I. SIEGEL CO., INC., et al.**

**Circuit Court for Benton County  
No. 98CCV-017**

---

**No. W1999-00408-WC-R3-CV - Filed May 4, 2001**

---

**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 on appeal are taxed to the Appellant, Leta Johnson, for which execution may issue if necessary.

**IT IS SO ORDERED.**

**PER CURIAM**

