

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS COMPENSATION APPEALS PANEL  
AT KNOXVILLE  
(December 14, 2000 Session)

**MARTHA FRITTS V. BRADLEY HEALTHCARE AND  
REHABILITATION**

**Direct Appeal from the Circuit Court for Bradley County  
No. CV-98-1069 Lawrence Puckett, Circuit Court Judge**

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**No. E2000-00822-WC-R3-CV - Mailed - September 5, 2001  
Filed: October 9, 2001**

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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) for hearing and reporting of findings of fact and conclusions of law. The employer appeals and contends the trial court erred (1) in granting an award because the employee failed to establish causation by medical proof, and (2) in accepting the independent medical examiner's impairment rating. We affirm the judgment of the trial court.

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

HOWELL N. PEOPLES, SP. J., delivered the opinion of the court, in which WILLIAM M. BARKER, JR., JUSTICE, and JOHN K. BYERS, SR. J., joined.

Fred C. Stantum, III, Nashville, Tennessee, for the Appellant Bradley Healthcare & Rehabilitation  
M. Drew Robinson, Cleveland, Tennessee, for the Appellee Martha Fritts

## MEMORANDUM OPINION

### **Facts**

Martha Fritts, a certified nursing assistant, began caring for elderly patients in 1985 and has worked for Bradley Healthcare and Rehabilitation since 1990. She testified that she injured her right shoulder on April 30, 1998 while attempting to move a patient. She was treated by Dr. Alan Clifton Odom, who performed arthroscopic surgery upon her right shoulder on December 17, 1998. Dr. Odom testified that she has permanent restrictions on lifting patients and will need assistance with pushing, pulling and lifting patients. Because Dr. Odom does not do impairment ratings, she was referred to Dr. McKinley Snipes Lundy for assignment of a permanent impairment rating. Dr. Lundy assigned a 14 percent permanent impairment to the body as a whole. She returned to work at her pre-injury rate of pay, and continues to perform the pre-injury duties, except she now has help changing patients.

### Standard of Review

Review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). *Stone v. City of McMinnville*, 896 S.W.2d 548, 550 (Tenn. 1995). The application of this standard requires this Court to weigh in more depth the factual findings and conclusions of the trial courts in workers' compensation cases. *Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452 456 (Tenn. 1988).

### Discussion

Bradley Healthcare and Rehabilitation contends that the proof failed to establish a causal connection to the employment. Causation and permanency of a work injury must be shown in most cases by expert medical evidence. *Tindall v. Waring Park Ass'n*, 725 S.W.2d 935, 937 (Tenn. 1987). Causation in this case is established through the deposition of McKinley Snipes Lundy, M.D., who wrote:

“It is my opinion, based on a reasonable degree of medical certainty, utilizing the *AMA Guides to Evaluation of Permanent Impairment*, 4<sup>th</sup> ed. (American Medical Association, Chicago, IL, 1993), that Martha Fritts has 24% permanent impairment to the right upper extremity (which equates to 14% whole person permanent impairment) as a direct result of injuries sustained while performing duties working for her employer on May 1, 1998.” (Depo. of Dr. Lundy, Ex. 2)

Bradley Healthcare also contends the trial court erred in accepting the independent medical examiner's (Dr. Lundy) impairment rating because the majority of the impairment was based on loss of range of motion measurements which were contradicted by the treating

physician, the physical therapist and videotape surveillance of Ms. Fritts. The trial court has the discretion to accept the opinion of one medical expert over another medical expert. *Kellerman v. Food Lion, Inc.*, 929 S.W.2d 333 (Tenn. 1996); *Johnson v. Midwesco, Inc.*, 801 S.W.2d 804, 806 (Tenn. 1990). The trial judge expressed his distrust of the measurements made by the physical therapist because she used ultrasound, massage and ice to increase the range of motion, and noted that the treating physician (Dr. Odom) imposed limitations on lifting, pulling and pushing by Ms. Fritts. We find no fault with the trial court's reliance on the impairment rating of Dr. Lundy.

### **Conclusion**

The judgment of the trial court awarding Ms. Fritts permanent disability benefits is affirmed. Costs of the appeal are taxed against the Appellant.

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Howell N. Peoples, 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 facts 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, Bradley Healthcare & Rehabilitation and Fred C. Statum, III, surety, for which execution may issue if necessary.

10/09/01