

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT KNOXVILLE

November, 2001 Session

**BRENDA BRADEN, v. MODINE MANUFACTURING COMPANY, INC .**

**Direct Appeal from the Circuit Court for Anderson County  
No. 99LA-0327, James B. Scott, Circuit Judge**

**Filed February 7, 2002**

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**No. E-2001-00219-WC-R3-CV -**

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The issue in the appeal on this workers' compensation case is whether the evidence supports the finding of the trial court that the plaintiff is forty percent disabled where the treating physician found no impairment, where the independent medical examiner found ten percent impairment to each upper extremity and where the plaintiff testified to continuous pain necessitating medication following surgical releases of carpal tunnel syndrome. Based upon a review of the record, the briefs of the parties and the argument of counsel, we affirm the judgment of the trial court.

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

W. NEIL THOMAS, III, Special Judge, delivered the opinion of the court, in which William M. Barker, Justice, and John K. Byers, Judge, joined.

Michael J. Mollenhour, Knoxville, for the appellant, Modine Manufacturing Company, Inc.

Roger L. Ridenour, Clinton, for the appellee, Brenda Braden

**MEMORANDUM OPINION**

Modine Manufacturing Company, Inc. ("Modine") appeals from the judgment of the court below finding that each upper extremity of the plaintiff, Brenda L. Braden ("Braden"), is forty percent disabled as a result of carpal tunnel syndrome after surgical procedures to release the carpal tunnel syndrom. For the following reasons, we affirm the judgment of the trial court.

This action was commenced by Braden against Modine on August 19, 1999. The complaint alleges that Braden suffered bilateral carpal tunnel syndrome as a result of her employment with Modine. Modine filed an answer on September 20, 1999, generally denying the allegations of the complaint. The lawsuit was tried on December 1, 2000, and judgment was entered January 8, 2001.

Notice of Appeal was filed January 29, 2001.

The evidence which was received consisted of the testimony of the plaintiff; her treating physician, Dr. Joseph DeFiore, Jr.; her supervisor, Dave Deganie; and an independent medical examiner, Dr. Cletus J. Mahon, Jr. Dr. Mahon opined that Braden has residual damage to her median nerve and has ten percent permanent physical impairment to each upper extremity after surgical procedures which released each carpal tunnel syndrome. Dr. DeFiore opined that Braden has no impairment and that she was released by him on June 18, 1999. Mr. Deganie testified that he has supervised Braden for four years and that she has not complained of pain or numbness in her hands.

Braden testified that she is 58 years old and has worked for Modine for 25 years. She performs TIG welding for Modine and generally welds 600-700 units per shift with at least four welds per unit. When changing a weld type on October 15, 1998, she experienced pain in her wrists. She saw Dr. DeFiore who performed surgery on her wrists and released her with restrictions on April 12, 1999. Although she received physical therapy from Healthsouth, she continues to take pain medications “to get through the day and to sleep at night.” Finally, she testified that her life consists of going to work and then going home.

At trial the parties stipulated that the “plaintiff was an employee of the defendant in October, 1998, when she developed bilateral carpal tunnel syndrome.” At the conclusion of the trial the trial court entered judgment in favor of the plaintiff for forty percent permanent partial disability to each arm and awarded Braden \$36,028.80. The trial court further awarded Braden discretionary expenses in the amount of \$954.35. The latter award was not the subject of the appeal.

The review of the findings of the trial court is *de novo* with a presumption of the correctness of the decision unless a preponderance of the evidence is contrary to those findings. Spencer v. Towson Moving & Storage, Inc., 922 S.W. 2d 508 (Tenn. 1996). In addition, this Court is required make an independent determination as to the preponderance of the evidence. Galloway v. Memphis Drum Service, 822 S.W. 2d 584 (Tenn. 1991). As stated by the Court in Galloway, *supra* at 586, this Court “is not bound by a trial court’s factual findings but instead conduct an independent examination to determine where the preponderance of the evidence lies.” In making that assessment, however, an anatomical impairment rating is not always indispensable to a trial court’s finding of permanent vocational impairment. Walker v. Saturn Corp., 986 S.W. 2d 204 (Tenn. 1998). Thus, the lack of an anatomical rating by the treating physician is not dispositive. Modine contends that the treating physician was of the opinion that Braden’s post-surgery condition was attributable to her diabetic condition. On this point, however, Dr. DeFiore is equivocal because he simply says that the diabetes is “looming in the background”. He also states, “At this point some of these joint symptoms may also be just coming from the wearing out process that’s going on, with the underlying carpal tunnel are severe.” (sic)

Modine correctly points out that this Court must weigh in depth factual findings of the trial court and that vocational disability is a question of fact to be determined from all the evidence. This analysis is precisely the analysis conducted by this Court, and it cannot be said that the preponderance of the evidence lies against the trial court’s determination.

## CONCLUSION

For the foregoing reasons the judgment of the trial court is affirmed, and costs are taxed to the Appellant.

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W. NEIL THOMAS, III, Special Judge

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**No. E2001-00219-WC-R3-CV - Filed: February 6, 2002**

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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, Mondine Manufacturing Company, Inc. for which execution may issue if necessary.