

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

September 19, 2003 Session

**DINAH FAYE COFFMAN v. DTR TENNESSEE, INC.**

**Direct Appeal from the Circuit Court for Greene County  
No. 99-CV-877 Hon. Ben K. Wexler, Circuit Judge**

Filed January 16, 2004

**No. E2003-00641-WC-R3-CV**

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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 to the Supreme Court of findings of fact and conclusions of law. The trial court awarded the employee 66 2/3 percent permanent partial disability. The employer insists the evidence preponderates against the award. Judgment of the trial court is modified to indicate the award is to each arm and the judgment as modified is affirmed.

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

ROGER E. THAYER, SP. J., delivered the opinion of the court, in which E. RILEY ANDERSON, J., and JOHN K. BYERS, SR. J., joined.

Clarence Risin, of Knoxville, Tennessee, for Appellant, DTR Tennessee, Inc.

James M. Davis, of Morristown, Tennessee, for Appellee, Dinah Faye Coffman.

**MEMORANDUM OPINION**

The employer, DTR Tennessee, Inc., has appealed from the entry of a judgment awarding the employee, Dinah Faye Coffman, 66 2/3 percent permanent disability.

**Facts**

The employee was thirty-seven years of age and dropped out of school when she was in the ninth grade. She later obtained a G.E.D. certificate. Most of her prior work experience was in general labor work. She has been a smoker for many years.

She was working for DTR Tennessee on an assembly line where she operated several machines. The work involved repetitive use of her hand and arms. During January 1999, her hands were bothering her to such extent she notified company officials who referred her to a doctor. The doctor referred her to an orthopedic surgeon, Dr. Gorman, for treatment. She eventually became dissatisfied with him and decided to find another orthopedic doctor. She chose Dr. Minkin and he diagnosed her condition as bilateral carpal tunnel syndrome. He operated on her right arm during April 2000. Shortly after this surgery, she had a tonsillectomy and a biopsy indicated she had throat cancer. She was treated with chemotherapy and radiation. After having about nine surgical procedures for the cancer, it was determined she was cancer free and she returned to Dr. Minkin who performed surgery on her left arm during January 2002.

Ms. Coffman testified the surgery on her arms had improved her condition to some extent but she still had problems using them. She found it difficult to hold objects and often dropped them. She said it was hard to put her makeup on or comb her hair; that she still had some numbness and tingling; she could not do general housework; and she could not work at any of the jobs she had held in the past. She indicated she was drawing Social Security Disability benefits for her total condition and at one point during her examination, she said that her not being able to work was partly due to her cancer.

Dr. Paul W. Gorman, an orthopedic hand surgeon, testified by deposition and said he began treating her during June 1999. He said she had weakness in grip strength in both hands and the muscles were tender to touch. His diagnosis was: (1) chronic tobaccoism, (2) mild degree of carpal tunnel syndrome on the right, and (3) some mild degree of cubital tunnel syndrome, which is tenderness over the ulnar nerve at the elbow. The doctor was of the opinion that her smoking was contributing to her symptoms; that her problems had eventually resolved and that she had no permanent disability.

Dr. Bruce I. Minkin, an orthopedic hand surgeon, also testified by deposition. When he first saw her during November 1999, he diagnosed her as having bilateral carpal tunnel syndrome and performed the release procedures on each arm. The second procedure was much later because of her treatment for throat cancer. He found medical impairment to be 7 percent to the left arm and 3 percent to the right arm. He also recommended she stop smoking but did not attribute the smoking as a cause or contributing cause of her carpal tunnel problem.

Dr. William J. Gutch, a retired orthopedic surgeon, testified by deposition. He did not treat her but saw her only for an independent medical examination during July 2001, which was after the first arm surgery and before the last arm surgery. His diagnosis was bilateral carpal tunnel syndrome and he felt she had a 17 percent impairment to the whole body or a 9 percent impairment to each arm. Dr. Gutch did not see any connection between her smoking habit and the injury to her arms.

### **Standard of Review**

Our review of the case is *de novo* accompanied by a presumption that the findings of the trial

court are correct unless we find the evidence preponderates otherwise. Tenn. Code Ann. § 50-6-225(e)(2). In weighing conflicting testimony, the trial court is not bound by any witnesses' testimony but has the discretion to conclude that the testimony of one witness should be accepted over the testimony of another witness. *Thomas v. Aetna Life & Cas. Co.*, 812 S.W.2d 278 (Tenn. 1991); *Orman v. Williams-Sonoma, Inc.*, 803 S.W.2d 672, 676 (Tenn. 1991). On appeal the reviewing court may draw its own conclusions about the weight and credibility of expert testimony when the medical proof is presented by deposition or other written documents since we are in the same position as the trial court to evaluate such testimony. *Houser v. Bi-Lo*, 36 S.W.3d 68 (Tenn. 2001).

### **Analysis**

The judgment entered in the trial court awarded the employee 66 2/3 percent permanent vocational disability. It did not state whether the award was to scheduled members or the body as a whole. The trial judge's written opinion contained the same language. We find this to be a mere oversight as the record indicates the injuries were confined to the arms and no other part of the body was directly affected. We also note the judgment reflects the computation of the award was for a period of 267 weeks which represents 66 2/3 percent of 400 weeks, being the period payable for total disability to both arms. See Tenn. Code Ann. § 50-6-207(3)(A)(w). Therefore, we modify the judgment to indicate the award of 66 2/3 percent permanent partial disability is to each arm.

The employer argues the evidence preponderates against the award because the testimony of Dr. Gutch was not credible and also because the court failed to take into consideration the employees' disability for throat cancer.

We do not agree with these conclusion. Dr. Gutch's deposition was very short and hardly provided any medical evidence except to state the employee was suffering from bilateral carpal tunnel syndrome causing impairment to her arms and that her smoking had nothing to do with her arm injuries. We find this testimony was credible and the court could consider the same. Independent of this question, it is obvious that the court decided to accept the testimony of Dr. Minkin over that of Dr. Gorman.

As to the argument the court failed to consider the affect of throat cancer in fixing the award, there was no medical evidence concerning the cancer or that she had sustained permanent disability as a result of this illness. She did state the cancer was part of her reason for not being able to work, but she was not given a total disability award by the trial court and it is very speculative as to what part her cancer might be involved in this issue.

### **Conclusion**

We find the evidence does not preponderate against the award of 66 2/3 percent permanent

partial disability to each arm and the judgment as modified is affirmed. Cost of the appeal are taxed to the employer.

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ROGER E. THAYER, 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.

The costs on appeal are taxed to the appellant, DTR Tennessee, Inc., for which execution may issue if necessary.