

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

**FILED**  
December 19, 1996  
Cecil W. Crowson  
Appellate Court Clerk

JOHN D. BAGGETT, )  
 )  
Plaintiff/Appellant )  
 )  
v. )  
 )  
FIREMEN'S FUND INSURANCE )  
COMPANY, )  
 )  
Defendant/Appellee )

DAVIDSON CHANCERY  
NO. 01S01-9603-CH-00055  
Hon. Robert S. Brandt,  
Chancellor

**For the Appellant:**

Joseph M. Dalton, Jr.  
222 Second Ave. N.  
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Nashville, TN 37203-1652

**For the Appellee:**

Patrick A. Ruth  
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Suite 201  
Nashville, TN 37201-1652

**MEMORANDUM OPINION**

**Members of Panel:**

Adolpho A. Birch, Chief Justice  
William H. Inman, Senior Judge  
William S. Russell, Special Judge

**AFFIRMED AND REMANDED**

**INMAN, Senior Judge**

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 complaint alleges “[t]hat on or about the 22nd day of June, 1993, the Plaintiff, while operating a printing press, had his left thumb amputated when it became caught in the press.” In point of fact, he suffered an “avulsive injury of the distal aspect of his thumb, just distal to the IP joint with nerve and vascular damage within the thumb proximal to the point of severance.” The thumb fragment could not be re-attached and the amputation was surgically completed at the level of the interphalangeal joint, resulting in the loss of one-half of the thumb.

The defendant admitted the material allegations of the complaint and essentially conceded that the plaintiff was entitled to recover benefits for the loss of a thumb.

Notwithstanding that the complaint did not allege disability to the hand, the issue at trial was whether the injury so affected the hand as to justify an award for benefits thereto rather than for the loss of a scheduled member. The Chancellor limited benefits to the loss of the thumb; the employee appeals insisting that he is entitled to benefits for resultant partial permanent disability to his hand.

The treating surgeon was Dr. Bruce Shack, a reconstructive specialist from the Vanderbilt Medical Center. He testified:

Q. Now, Doctor, have you formed an opinion based upon a reasonable degree of medical certainty whether or not this injury Mr. Baggett suffered will result in any permanent impairment?

A. Yes, sir, I have.

Q. Will you tell the Court what that opinion is, sir.

A. Well, this is a relatively straight forward type of case where the amputation through the interphalangeal joint of the thumb allows us to utilize the Guides that are set forth in the American Medical Association's Guides to the Evaluation of Permanent Impairment and basing Mr. Baggett's impairment on the loss of the thumb through the interphalangeal joint, I had rated him as 20 percent impairment of the hand. And, of course, that using the conversion tables equals an 18 percent impairment of the upper extremity and 11 percent impairment of the whole person.

Q. Now, the injury to the thumb and hand as you've indicated, is that in anyway affected by the upper extremity?

A. Well, certainly the thumb is the digit that separates us from lower animals as far as the way we use our hand and without an opposable thumb, the hand becomes useless as far as grasping and these kinds of tasks, and fine motor tasks become very difficult to perform. If you just had to use your four unopposable digits, the fact that you can bring your thumb into a pinch opposition with your other fingers, it's what allows us to pick things up and grasp things and really what separates us from lower animals. So when you lose the thumb, even part of the thumb, it certainly affects the function of the whole hand based on that mechanism of activity.

Q. If Mr. Baggett testified under oath in response to Mr. Ruth's questions about certain functional losses that he's experienced, and he testified that he can't button his shirt, he can't tie his shoes, he can't fasten his belt, he can't grasp, are those consistent with this type of injury?

A. I would think so, yes.

\* \* \*

Q. Does he appear to have normal range of motion with what's left of the thumb?

A. He has good range of motion in the base of the thumb, yes, sir.

Q. Would it be fair to say that the anatomical injury is confined to the thumb?

A. It is, yes, sir.

\* \* \*

Q. Just one follow-up. The anatomical injury was confined to thumb. What impact has that had, functionally speaking, on his hand?

A. Well, as I mentioned earlier, I think the thumb is the most important digit and allows us to use the rest of the hand to its fullest capacity. So clearly, an injury to the thumb will affect the use of the hand.

Q. And, Doctor, in light of that comment, is that why you rated his hand?

A. Yes, sir.

Q. And that's consistent with the Guidelines?

A. It is.

MR. DALTON: Thank you.

#### RE-CROSS-EXAMINATION

BY MR. RUTH:

Q. The Guidelines actually tell you to convert any thumb or digit rating to the corresponding hand rating to the corresponding arm rating to the corresponding body?

A. They do, that's right.

\* \* \*

#### FURTHER DIRECT EXAMINATION

BY MR. DALTON:

Q. One more question. Did you ever rate his thumb?

A. You know, I don't think I ever did. Although, if you look at the Guidelines, it is an IP – at the level of the IP joint is 50 percent impairment of the thumb, which equals 20 percent of the hand. That's where those numbers come from, as you all know as well as I do.

Appellate review is *de novo* on the record, accompanied by the presumption that the trial court's findings of fact are correct unless the evidence otherwise preponderates. T.C.A. § 50-6-225(e)(2).

Allied with this statutory mandate is the rule that we cannot substitute our judgment for that of the trial judge; our function is to conduct an in-depth review and

determine whether the preponderant evidence supports the findings of fact. Further allied is the rule that while the trial judge is the well-nigh exclusive arbiter of the credibility of witnesses, we are as well-situated as the trial judge to gauge the worth and weight of depositions testimony. *Cooper v. INA*, 884 S.W.2d 446, 451 (Tenn. 1994).

We have reproduced the contextual portions of the testimony of Dr. Shack to explicate the insistence of the appellant that he is entitled to an award for disability to his hand.

The function of the thumb is graphically described by Dr. Shack, whose opinion reflects not only conventional wisdom and common knowledge but essential common sense; the thumb is our single most significant digit. But we think the conclusion, perhaps non-contextual, that absent the thumb “the hand becomes useless as far as grasping [is concerned]” is somewhat of an overstatement, although there can be no doubt that the function of a partially thumbless hand is substantially curtailed with respect to physical activity requiring both hands.

From a careful consideration of the testimony of Dr. Shack it is apparent that the Chancellor would have been justified in finding that the partial loss of the thumb resulted in disability to the hand; i.e., that benefits are not limited to the loss of a scheduled member. See *Carney v. Safeco Ins. Co.*, 745 S.W.2d 868 (Tenn. 1988); *Federal Copper & Aluminum Co. v. Wright*, 504 S.W.2d 957 (Tenn.1974); *S.C. Weber Iron & Steel Co. v. Jeffrey*, 29 S.W.2d 656 (Tenn. 1930). Sixty weeks of benefits for loss of a thumb, and 150 weeks for the loss of a hand, are prescribed by T.C.A. § 50-6-207; by extrapolation, the loss of a thumb is equivalent, in benefits, to an award of 40% disability to the hand.

But we cannot find that the evidence preponderates against the finding of the Chancellor, not only as a matter of law but as a practical matter. The plaintiff retains a good range of motion of the base of his thumb; the anatomical injury was confined to the thumb and, from the Guidelines, “the level of the IP joint is 50% impairment of the thumb which equals 20% of the hand.”

The judgment is affirmed at the costs of the appellant, and the case is remanded.

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William H. Inman, Senior Judge

CONCUR:

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Adolpho A. Birch, Chief Justice

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William S. Russell, Special Judge

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( Davidson Chancery  
( No. 94-2121-III  
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( Hon. Robert S. Brandt,  
( Chancellor  
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( S. Ct. No. 01S01-9603-CH-00055  
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( AFFIRMED and REMANDED.

**JUDGMENT ORDER**

This case is before the Court upon motion for review pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), 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 motion for review is not well taken and should be denied; 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 plaintiff-appellant, for which execution may issue if necessary.

IT IS SO ORDERED this 19th day of December, 1996.

PER CURIAM

Birch, J. - Not participating.