

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

**FILED**  
October 17, 1996  
Cecil W. Crowson  
Appellate Court Clerk

SHIRLEY DIANE TRAIL,	)	FRANKLIN CHANCERY
	)	
Plaintiff/Appellee,	)	No. 01SO1-9505-CH-00071(B)
	)	No. Below 13,720
v.	)	
	)	
ROYAL INSURANCE COMPANY	)	HON. JEFFREY F. STEWART
and CKR INDUSTRIES, INC.,	)	CHANCELLOR
	)	
Defendants/Appellants.	)	

**For the Appellant:**

Randolph A. Veazey  
Connie Jones  
GLASGOW & VEAZEY  
Washington Square  
222 Second Avenue North, Suite 312  
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Nashville, Tennessee 37219-8681

**For the Appellee:**

Clinton H. Swafford  
SWAFFORD, PETERS & PRIEST  
100 First Avenue, SW  
Winchester, Tennessee 37398

**MEMORANDUM OPINION**

**Members of the Panel:**

Justice Frank Drowota, III  
Senior Judge John K. Byers  
Special Judge Robert L. Childers

**AFFIRMED.**

**CHILDERS, Special 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. Our review is *de novo* on the record accompanied by the presumption that the findings of fact of the trial court are correct unless the evidence preponderates otherwise. TENN. CODE ANN. § 50-6-225(e)(2).

The trial court awarded Ms. Trail \$19,421.00 permanent partial disability benefits, representing one-hundred (100) weeks at the benefit rate of \$194.21 per week, or twenty-five percent (25%) to the body as a whole; and future medical benefits pursuant to the Tennessee Workers' Compensation Act. The trial court also allowed attorneys fees of twenty percent (20%) of the award, in the amount of \$3,884.20, to be paid in a lump sum.

The Appellant contends that the trial court erred in:

1. Finding that a vocational disability based upon a permanent medical restriction, with medical testimony of no medical impairment rating in accordance with the A.M.A. Guidelines for Evaluation of Permanent Impairment, constitutes a compensable permanent partial disability under the Workers' Compensation Act.
2. Awarding permanent partial disability benefits to the Plaintiff that were excessive and against the weight of the evidence.

We affirm the judgment of the trial court.

Ms. Trail filed her complaint in the Chancery Court for Franklin County, Tennessee, against her employer, Defendant CKR Industries, seeking to recover unpaid benefits under the Tennessee Workers' Compensation Act for work-related injuries. Ms. Trail alleged that she suffered injuries as a result of exposure to chemicals in use at the CKR Plant. The case was consolidated with three (3) other cases for trial due to significant similarities in the cases. The opinion of the Court on the first issue is contained in the case of *Angela K. Hill v. Royal Insurance Company and CKR Industries, Inc.*, No. 01S01-9505-CH-0071, filed simultaneously with this opinion. The Court held that the trial court did not err in finding that a vocational disability existed based upon the testimony of the medical experts that a permanent medical restriction existed which constitutes a permanent partial disability under the Worker's Compensation Act, even though no medical impairment rating was given by any of the

medical experts.

As to the second issue, the Appellants argue that the amount of permanent partial disability awarded to Ms. Trail was excessive and against the weight of the evidence. Ms. Trail is thirty-nine (39) years old and has a ninth grade education. Her work experience includes working at Jack Daniels Distillery and as a sewing machine operator.

Ms. Trail worked on a notching machine, notching rubber pieces at CKR. In the course of her employment, she was moved to the spraying booth right beside the Mucote spray operation. She subsequently broke out in a rash all over her arms, chest, face, and legs and began suffering from headaches, nausea, and a burning sensation in her lungs. Ms. Trail testified that she suffered from memory loss, could not remember where things were in her house, could not drive a car, and felt like she had been asleep.

At the trial Ms. Trail also testified that since her termination from employment by CKR she has suffered from headaches and had a burning sensation in her nose when she has been around a tow motor. She also has become sick or felt a burning sensation on her face when she has been around perfume with a strong odor or ammonia. On various occasions Ms. Trail has also been required to go to the clinic to receive a shot to diminish her adverse reaction to these substances.

Dr. Worthington treated Ms. Trail and determined that she was suffering from loss of memory and unconsciousness and concluded that Ms. Trail was suffering from a neurological problem. Dr. Worthington referred her to Dr. Clinton who indicated that she suffered from toxic encephalopathy due to exposure to Mucote. Dr. Worthington opined that Ms. Trail suffered no permanent physical impairment as a result of her exposure and advised her that she should avoid contact with the chemicals causing her reaction.

Mr. Edwards, a vocational consultant with over twenty years experience, testified on Ms. Trail's behalf at trial. He testified that the chemicals causing Ms. Hill's problems, or chemicals similar to those, are found in twenty-five percent (25%) of the work places. He opined that in his experience an individual with a respiratory insult should not work in an industrial environment that has respiratory irritants. He also conducted an evaluation of Ms. Trail to assess industrial disability. His opinion was that she suffered

a seventy (70%) to ninety percent (90%) industrial wage earning loss.

Once causation and permanency have been established by expert medical testimony, the trial judge may consider many pertinent factors, including age, job skills, education, training, duration of disability, anatomical disabilities established by medical experts, and job opportunities available to a worker with those anatomical disabilities, to determine the extent of the worker's industrial disability. *Worthington v. Modine Manufacturing Co.*, 798 S.W. 2d 232, 234 (Tenn. 1990). Even where an expert testifies as to vocational disability, the trial judge is not required to accept without reservation the expert's opinion, but is charged with making an independent evaluation based on the factors above. *Miles v. Liberty Mutual Insurance Co.*, 795 S.W. 2d 665, 666 (Tenn. 1990). The evidence does not preponderate against the trial court's finding that Ms. Trail suffered a twenty-five percent (25%) vocational disability.

The judgment of the trial court is affirmed. Costs are assessed to the Appellants. We remand the case to the trial court for the entry of any order necessary to carry out this judgment.

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Robert L. Childers, Special Judge

CONCUR:

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Frank F. Drowota, III, Justice

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John K. Byers, Senior Judge

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AT NASHVILLE

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SHIRLEY DIANE TRAIL,  
Plaintiff/Appellee

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FRANKLIN CHANCERY  
No. 13,720 Below

vs.

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Hon. Jeffrey F. Stewart,  
Chancellor

ROYAL INSURANCE COMPANY  
and CKR INDUSTRIES, INC.,

}  
}

No. 01S01-9505-CH-00071(B)

Defendants/Appellants

}

AFFIRMED.

JUDGMENT ORDER

*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 will be paid by appellants and their surety for which execution may issue if necessary.*

*IT IS SO ORDERED on October 17, 1996.*

PER CURIAM

