

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT KNOXVILLE  
(July 3, 1996 Session)

**FILED**  
**November 25, 1996**  
**Cecil Crowson, Jr.**  
Appellate Court Clerk

REBECCA CALDWELL,	)	SULLIVAN CHANCERY
	)	
Plaintiff-Appellee,	)	Hon. John McClellan, III,
	)	Chancellor.
v.	)	
	)	No. 03S01-9603-CH-00022
KELLY SERVICES, INC. and	)	
CONTINENTAL CASUALTY	)	
COMPANY,	)	
	)	
Defendant-Appellant.	)	

For Appellant:

For Appellee:

Linda J. Hamilton Mowles  
Lewis, King, Krieg & Waldrop  
Bunn  
Knoxville, Tennessee

Myers N. Massengill  
Massengill, Caldwell, Hyder &  
Bristol, Tennessee

MEMORANDUM OPINION

Members of Panel:

Penny J. White, Associate Justice, Supreme Court  
Roger E. Thayer, Special Judge  
Joe C. Loser, Jr., Special Judge

REVERSED

Loser, Judge

## MEMORANDUM OPINION

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. section 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. The employer contends the evidence preponderates against an award of permanent partial disability benefits. The panel concludes the award of permanent partial benefits should be reversed.

On September 1, 1994, the employee or claimant, Caldwell, an employee of Kelly Services, was sent to work at Moore's Quality Snack Foods. While working there, she slipped and fell, landing on her hand and arm. After receiving emergency care at the emergency room of a hospital, she was referred to Dr. Michael Lady, who diagnosed tenosynovitis and prescribed a splint and rest from work until her bruising and swelling subsided.

On October 19, 1994, the claimant, while visiting a relative in Louisiana, saw Dr. Steiner, an orthopedic surgeon. Dr. Steiner eventually released her to return to work without any restrictions or permanent impairment. She did.

On December 2, 1994, she left work because her injured arm was hurting. The next day, she revisited Dr. Lady, who prescribed a wrist splint, medication and rest. The doctor continued to treat her conservatively. His testimony by deposition included the following relevant questions and answers:

Q. Okay. Now, Dr. Lady, based upon the American Medical Association guidelines, do you have an opinion which is also based upon a reasonable degree of medical certainty as the

percentage of permanent impairment or disability that Ms. Caldwell has sustained as a result of the injury of September 1, 1994 and re-injury of November 23, 1994?

A. My opinion as to her disability, her condition is, is that she has a recurrent tenosynovitis when, when exposed to repetitive work, as evidenced by her multiplicity of visits. When her tenosynovitis is present, I feel like she has approximately 15% disability based on limitation of range of motion, limitation of strength, although not total limitation of use of the arm....

The permanency is a difficult question for me to answer other than when her tenosynovitis is present, I feel she's unable to function and when it's not, she may appear to have a fairly normal exam. My inclination is to think it's probable if she continues repetitive work, that she'll have periods of disability as a result of that.

Dr. Harry Bachman, another orthopedic surgeon, testified, "I cannot find any evidence of any permanent impairment."

The chancellor found a permanent partial disability of seven and one-half percent and awarded benefits accordingly. Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. section 50-6-225(e)(2). This tribunal is required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. Galloway v. Memphis Drum Service, 822 S.W.2d 584 (Tenn. 1991).

Unless admitted by the employer, the claimant has the burden of proving, by competent evidence, every essential element of her claim. Mazanec v. Aetna Ins. Co., 491 S.W.2d 616 (Tenn. 1973). If the claim is for permanent

disability benefits, permanency must be proved. In all but the most obvious cases, permanency may only be proved through expert medical testimony. Corcoran v. Foster Auto GMC, Inc., 746 S.W.2d 452 (Tenn. 1988). An award may not be based on conjecture or speculation. Collins v. Liberty Mutual Ins. Co., 561 S.W.2d 456 (Tenn. 1978).

We have carefully considered the medical proof in the case and find the evidence preponderates against any award of permanent disability benefits. To the extent that such benefits were awarded, the judgment of the trial court is reversed. Costs on appeal are taxed to the plaintiff-appellee.

---

Joe C. Loser, Jr., Judge

CONCUR:

---

Penny J. White, Associate Justice

---

Roger E. Thayer, Judge

IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE

REBECCA CALDWELL,	)	SULLIVAN CHANCERY
	)	NO.
Plaintiff/Appellees,	)	
	)	Hon. John McClellan, III
V.	)	Judge
	)	
KELLY SERVICES, INC., and	)	S. Ct. No. 03-S-01-9603-
CH-00022	)	
CONTINENTAL CASUALTY COMPANY,	)	
	)	
Defendants/Appellant.	)	Reversed

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 dismissed; 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.

Cost will be paid by Plaintiff/Appellee, for which execution may issue if necessary.

It is so ordered this \_\_\_\_\_ day of \_\_\_\_\_,  
1996.

PER CURIAM