

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

FILED

October 22, 1996

Cecil Crowson, Jr.
Appellate Court Clerk
WASHINGTON CHANCERY

PAMELA D. MILLSAP-FANN,)
)
Plaintiff/Appellee)
)
v.)
)
AETNA CASUALTY & SURETY)
COMPANY,)
)
Defendant/Appellant)

WASHINGTON CHANCERY
NO. 03S01-9605-CH-00052
Hon. G. Richard Johnson
Chancellor

For the Appellant :

T. Kenan Smith
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For the Appellee:

Olen G. Haynes
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MEMORANDUM OPINION

Members of Panel:

E. Riley Anderson, Justice
William H. Inman, Senior Judge
Joe C. Loser, Jr., Special Judge

**AFFIRMED
AS MODIFIED**

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 job-related accident from which the injury and disability arose occurred April 11, 1992. The case was heard January 12, 1996 resulting in a judgment that the plaintiff had sustained a 60 percent disability to her whole body. The employer appeals and presents for review the issue of whether the award is excessive.

Our standard of review is *de novo* on the record accompanied with a presumption of the correctness of the judgment unless the evidence otherwise preponderates. TENN. R. APP. P. 13(d); T.C.A. § 50-6-225. The application of this standard requires this Court to weigh in more depth the findings and conclusions of the trial courts in workers' compensation cases. *Corcoran v. Foster Auto GMC*, 746 S.W.2d 452, 456 (Tenn. 1988).

The plaintiff was involved in a traffic accident during the course of her employment as a family counselor. Her most serious injury was a broken hip which required a prosthetic replacement by Dr. Thomas L. Huddleston, an orthopedic surgeon, who testified by deposition that the plaintiff had a 37½ percent permanent partial impairment to her left leg, extrapolated to 15 percent for the whole body.

The plaintiff was 42 years old at the time of trial. She has a Master's Degree in her area of discipline. She was employed by the First Tennessee Human Resources Agency in November 1990 as a HomeTies specialist and, following her surgery, she returned to work with no prescribed limitations or restrictions. The proof shows a litany of physical activities in which she may engage by way of demonstrating the extent and range of her recovery and present condition, which include but are not limited to driving a car, hiking, backpacking, playing tennis and performing all normal household functions. Her discharge summary was, "Her hip was free of pain the range of motion of her hip was excellent" Her immediate supervisor testified that she was able to perform all of her duties, and the

most recent evaluation of her work scored her significantly above average in job performance.

Permanency and causation are not an issue. The employer questions the extent of disability, which may be determined from lay as well as expert testimony, *Kellwood Company v. Gibson*, 581 S.W.2d 645, 648 (Tenn. 1979), and a determination of disability requires a consideration of age, education, training, skills, job opportunities and other rational factors. *Federated Mutual Implement & Hardware Co. v. Cameron*, 422 S.W.2d 427, 429 (Tenn. 1967); T.C.A. § 50-6-241.

We agree with the appellant that the evidence preponderates against a finding that the plaintiff has a 60 percent permanent partial disability to her whole body; we find the evidence preponderates in favor of a finding that the plaintiff has a forty (40%) percent disability to her whole body, and the judgment is accordingly modified.

Costs are assessed to the parties evenly, and the case is remanded.

William H. Inman, Senior Judge

CONCUR:

E. Riley Anderson, Chief Justice

Joe C. Loser, Special Judge

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PAMELA D. MILLSAP-FANN,)	WASHINGTON CHANCERY
)	
Plaintiff-Appellee,)	No. 30073
)	
vs.)	No. 03S01-9605-CH-00052
)	
)	Hon. G. Richard Johnson
)	Chancellor
)	
AETNA CASUALTY & SURETY)	AFFIRMED
COMPANY.)	AS MODIFIED
)	
Defendant-Appellant.)	

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 on appeal are taxed evenly to the parties, Pamela D. Millsap-Fann and Aetna Casualty & Surety Company, for which execution may issue if necessary.

10/22/96

