

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

**FILED**

January 3, 1997

Cecil W. Crowson  
Appellate Court Clerk

EMMA J. TOY,	}	DAVIDSON CHANCERY
	}	No. 94-497-I Below
Plaintiff/Appellee	}	
	}	Hon. Irvin H. Kilcrease,
vs.	}	Chancellor
	}	
AMERICAN GENERAL LIFE AND	}	No. 01S01-9604-CH-00071
ACCIDENT INSURANCE COMPANY}	}	
and NATIONAL UNION INSURANCE}	}	
COMPANY OF PITTSBURGH,	}	
	}	AFFIRMED AS MODIFIED.
Defendants/Appellants	}	

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 one-half by plaintiff and one-half by defendants for which execution may issue if necessary.

IT IS SO ORDERED on December 6, 2000.

PER CURIAM

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

**FILED**

January 3, 1997

Cecil W. Crowson  
Appellate Court Clerk

AT NASHVILLE  
(October 22, 1996 Session)

EMMA J. TOY, )  
 )  
 ) Plaintiff-Appellee, )  
 )  
 v. )  
 ) No. 01SO1-9604-CH-00071  
 )  
 ) AMERICAN GENERAL LIFE AND )  
 ) ACCIDENT INSURANCE COMPANY )  
 ) and NATIONAL UNION INSURANCE )  
 ) COMPANY OF PITTSBURGH, )  
 )  
 ) Defendants-Appellants. )

For Appellant:

Susan West Carey  
James H. Tucker  
Manier, Herod, Hollabaugh & Smith  
Nashville, Tennessee

For Appellee:

Joe P. Binkley, Jr.  
Nashville, Tennessee

MEMORANDUM OPINION

Members of Panel:

Frank F. Drowota, III, Associate Justice, Supreme Court  
Robert S. Brandt, Senior Judge  
Joe C. Loser, Jr., Special Judge

AFFIRMED AS MODIFIED

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. In this appeal, the employer argues the award of permanent partial benefits based on forty percent disability to the body as a whole is excessive. As discussed below, the panel has concluded the judgment should be modified to provide an award based on twenty-five percent to the body as a whole.

The claimant, Ms. Toy, is 56 years old with a high school education and computer training. She has worked for National Life since 1957 as an office assistant. On July 15, 1991, she slipped and fell, landing on her backside and suffering immediate and lasting pain. She has worked continuously since the accident except for vacations and holidays.

She was treated by an orthopedic surgeon, who diagnosed aggravation of pre-existing degeneration and arthritis. The doctor prescribed conservative care and estimated her permanent impairment at seven percent to the whole person.

Another orthopedic surgeon estimated her permanent impairment at five percent to the whole person. Because of pain, the claimant has been required to change her lifestyle, but is not disabled from performing her duties at work.

The trial court awarded permanent partial disability benefits based on forty percent to the body as a whole. The employer contends, in its argument, the award should not exceed fifteen percent. Appellate review of the judgment is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, 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. Wingert v. Government of Sumner County, 908 S.W.2d 921 (Tenn. 1995).

Once the causation and permanency of an injury have been established by expert testimony, the courts may consider many pertinent factors, including age, job skills, education, training, duration of disability and job opportunities for the disabled, in addition to anatomical impairment, for the purpose of evaluating the extent of a claimant's permanent disability. McCaleb v. Saturn Corp., 910 S.W.2d 412 (Tenn. 1995). Compensatory damages are not recoverable from an employer under the Workers' Compensation Act, which provides only for the recovery of certain benefits.

From a consideration of the relevant factors in this case, particularly the employee's age, job skills, education, training, duration of disability and medical impairment, we find the evidence to preponderate against an award based on forty percent and in favor of one based on twenty-five percent to the body as a whole. The judgment is modified accordingly.

As modified, the judgment of the trial court is affirmed. Costs on appeal are taxed one-half to the plaintiff and one-half to the defendants.

---

Joe C. Loser, Jr., Judge

CONCUR:

---

Frank F. Drowota, III, Associate Justice

---

Robert S. Brandt, Judge