

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

<p>FILED</p> <p>January 17, 1997</p> <p>Cecil W. Crowson Appellate Court Clerk</p>

<p>LISA K. WHITED,</p> <p style="padding-left: 40px;">Plaintiff/Appellee</p> <p>v.</p> <p>TENNESSEE WOOLEN MILLS, INC. and THE TRAVELERS INSURANCE COMPANY,</p> <p style="padding-left: 40px;">Defendants/Appellants</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>WILSON CHANCERY</p> <p>NO. 01S01-9605-CH-00088</p> <p>HON. C. K. SMITH CHANCELLOR</p>
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For the Appellant:

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For the Appellee:

Hugh Green
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MEMORANDUM OPINION

Members of Panel:

Chief Justice Adolpho A. Birch, Jr.
Senior Judge John K. Byers
Special Judge William S. Russell

AFFIRMED

BYERS, 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.

Plaintiff injured her right arm, shoulder and neck while working on an assembly line at defendant's woolen mill. The trial court awarded her 50 percent permanent vocational disability.

We affirm the judgment of the trial court.

At the time of trial, plaintiff was 27 years old with a high school education and a variety of work experience, including fast food clerk, grocery store clerk, newspaper deliverer, tobacco stripper, and factory worker. All of these jobs have required steady use of her hands and arms.

On August 1, 1994, plaintiff was sitting in a chair at her sewing work station when she found that a blanket she was working on was hung on a cart. As she pulled the blanket, it snagged. She pulled firmly and when the blanket came loose, she "snapped back in her chair," and felt pain in her right arm, shoulder and neck.

She was referred by defendant to Dr. Johnson, who gave her physical therapy and medication and, after having no success, referred her to another company-approved physician, Dr. Roy Clarence Terry, an orthopedic surgeon.

Dr. Terry testified by deposition that he performed an arthroscopy and removed the ends of two bones in plaintiff's shoulder which were impinging on each other. Although plaintiff improved after surgery, she remained unable to fully raise her right arm, to lift things above her head, or to move her arm in all directions. She has continued to have severe pain in the arm. Dr. Terry discovered that she also had a symptomatic disc herniation in her neck, caused by the same accident. He assessed nine percent permanent partial disability to the body as a whole. She was totally unable to work when he last saw her, in June 1995, but he expected that with time she would be able to work with limitations.

Defendant asked Dr. Leon Ensalada, a medical doctor who is board-certified

in pain medicine and an expert medical disability evaluator, to examine plaintiff on January 20, 1995. Upon deposition, Dr. Ensalada opined that plaintiff had not given her best effort during the examination and that she could return to work with no limitations or accommodations. He assessed no permanent disability.

The plaintiff testified that after she was examined by Dr. Ensalada and the report was sent to her employer, she tried to go back to work but could not work due to pain. She went to see the human resources manager who, though sympathetic, told her that Dr. Ensalada did not give her any restrictions, and since she could not do the work, she should go home.

Several witnesses testified on behalf of the plaintiff. Her husband, Roy Whited, testified that before plaintiff's accident at work, she could do "anything she wanted to." He said that after the injury, she could no longer engage in her former hobbies of swimming, fishing, walking, or even needlework, because of pain in her arm and neck. At night she is unable to sleep and she wakes up crying with arm pain. Mrs. Patricia Phillips, plaintiff's former supervisor and current landlord, testified that plaintiff was an excellent worker, very dependable, with almost no supervision needed. She said that since the injury, she has observed plaintiff around her home at least several times a week when plaintiff was unaware she was being observed. She stated that plaintiff almost always holds her arm up and often cries from pain in the arm when she believes no one is around. Mrs. Phillips has a swimming pool which is available to plaintiff, but she can no longer swim because of her injuries.

The trial judge found the plaintiff and her witnesses to be "extremely credible."

Our review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the findings of fact, unless the preponderance of the evidence is otherwise. TENN. CODE ANN. § 50-6-225(3)(2). *Stone v. City of McMinnville*, 896 S.W.2d 584 (Tenn. 1991).

The trial court has the discretion to accept the opinion of one medical expert over another medical expert. *Dorris v. INA Insurance Company*, 764 S.W.2d 538, 542 (Tenn. 1989); *Johnson v. Midwesco, Inc.*, 801 S.W.2d 804 (Tenn. 1990).

Further, we are bound by the trial judge's finding on the credibility of the witnesses the trial judge has seen and heard testify.

We find that the evidence does not preponderate against the award of 50 percent permanent vocational disability, and we affirm the judgment of the trial court.

Costs are assessed to the appellant.

John K. Byers, Senior Judge

CONCUR:

Adolpho A. Birch, Jr., Chief Justice

William S. Russell, Special Judge

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

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LISA K. WHITED,
Plaintiff/Appellee

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WILSON CHANCERY
No. 9966 Below
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vs.

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}

Hon. C. K. Smith,
Chancellor

TENNESSEE WOOLEN MILLS,
INC. and THE TRAVELERS
INSURANCE COMPANY,

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}
}

No. 01S01-9605-CH-00088

Defendants/Appellants

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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 Defendants/Appellants and Surety for which execution may issue if necessary.

IT IS SO ORDERED on January 17, 1997.

PER CURIAM