

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

AT JACKSON  
(February 6, 1997 Session)

PAMELA SUE HIGGINS,	)	HARDIN CIRCUIT
	)	
Plaintiff-Appellee,	)	Hon. C. Creed McGinley
	)	Judge
	)	
Vs.	)	No. 02S01-9605-CV-00050
	)	
ANGELICA CORPORATION,	)	
a/k/a ANGELICA UNIFORM	)	
GROUP, INC., a/k/a ANGELICA	)	
MANUFACTURING PLANT,	)	
	)	
Defendant-Appellant.	)	

**FILED**

April 17, 1997

Cecil Crowson, Jr.  
Appellate Court Clerk

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For Appellee:

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MEMORANDUM OPINION

Members of Panel:

Lyle Reid, Associate Justice, Supreme Court  
Joe C. Loser, Jr., Special Judge  
Leonard W. Martin, Special Judge

AFFIRMED

Martin, 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 to the Supreme Court of findings of fact and conclusions of law.

Defendant appeals from the trial court's award of 45 per cent (45%) permanent partial vocational disability of each arm, following surgery on each wrist for carpal tunnel syndrome. Defendant raises three (3) issues, that the plaintiff's injuries are not causally related to her employment and therefore, not compensable; that the plaintiff did not give proper notice as required by Tenn. Code Ann. section 50-6-201; and that the preponderance of the evidence does not support the trial judge's finding that the plaintiff suffered a 45 per cent (45%) permanent partial vocational disability to each arm. The panel has concluded that the judgment of the trial court should be affirmed.

The employee, Ms. Pamela Sue Higgins, is thirty-eight (38) years old, quit school in the eighth (8th) grade, and she has performed sewing work for different manufacturers for twenty (20) years. Ms. Higgins began her employment with Angelica on January 14, 1991. Shortly after going to work for Angelica she was seen by Doctor James H. Thomas, a family practitioner, with the specific complaint that her right wrist had hurt for five (5) days. Approximately two and one-half (2 1/2) months later she returned to Doctor Thomas with the same complaint. Doctor Thomas soon concluded that her problem was carpal tunnel syndrome in nature and referred her to Doctor L. David Johnson, an orthopaedic surgeon, for treatment. After treating her conservatively, excluding other possible causes of her symptoms, and based upon electrodiagnostic studies performed by Doctor Ron Bingham, on May 13, 1991, Doctor Johnson diagnosed her as having moderate carpal tunnel syndrome on the right, and severe carpal tunnel syndrome on the left. Doctor Johnson subsequently performed carpal tunnel surgeries on both right and left wrists. She was also seen by Doctors Cohn and Cramer, and Pechacek, in consultation, in the process of eliminating other causes for her symptoms and confirming her diagnosis. Doctor

Johnson also testified that it was July of 1992 before he came to a conclusion as to the causation of her problems. When asked the question, “Up to that point in time, would a lay person have any way of knowing or diagnosing the nature or cause of her problems?”, he answered, “No”. Subsequent to her surgeries, Doctor Johnson evaluated her as having a 15 per cent (15%) anatomical impairment to each upper extremity. It should also be noted that she had a trigger release surgery on her thumb which completely resolved her thumb problem. Another significant point with regard to the notice issue, is that in Doctor Johnson’s deposition, it was revealed that on October 4, 1991, he signed a health insurance claim form on which it was checked or indicated that Ms. Higgins injuries/symptoms were not work related.

Appellate review of the award of disability benefits 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 evidence to determine where the preponderance of the evidence lies. **Wingert v. Government of Sumner County, 908 S.W.2d 921, (Tenn. 1995)**. Because the standard of review is more rigorous than its predecessor, the material evidence rule, we are required to weight in more depth all of the relevant evidence. **Corcoran v. Foster Auto GMC, Inc., 746 S.W.2d 452, 458 (Tenn. 1988)**. Where the trial judge has seen and heard the witnesses, especially if issues of credibility and weight to be given oral testimony are involved, considerable difference must be accorded those circumstances on review. **Humphrey v. David Witherspoon, 734 S.W.2d 315 (Tenn. 1987)**.

When medical testimony is presented by deposition, this court is able to make its own independent assessment of the medical proof to determine where the preponderance of the evidence lies. **Landers v. Fireman’s Fund Ins. Co., 775 S.W.2d 355, 356 (Tenn. 1989)**; **Henson v. City of Lawrenceburg, 851 S.W.2d 809, 812 (Tenn. 1993)**. It should be noted that this panel has no hesitancy about delving into the intricacies of Ms. Higgins’ medical history and has carefully read the medical depositions and related exhibits.

With regard to the issue of whether or not Ms. Higgins’ injuries are

causally related to her employment, the preponderance of the evidence clearly establishes that Ms. Higgins has bi-lateral carpal tunnel syndrome which was caused by twenty (20) years of working in sewing factories, and that it became disabling while she was employed by Angelica. In **Brown Shoe Company v. Reed, 357 S.W.2d, 65 (Tenn. 1961)**, an early gradual injury case, the court quoted with approval from **Larson, Section 39.5**, the following:

“The date of accident for gradual loss of use of the hands was held to be the date on which this development finally prevented claimant from performing his work. The problem is thus solved in a manner which is familiar in a comparable area of occupational diseases.”

It has long been the law that in gradual occurring injury cases, such as carpal tunnel syndrome cases, you do not go back and try to apportion the injury out amongst all previous employers, but rather the employer for whom the employee is working at the time the injury becomes disabling is the one that has to pay. This is too clearly established to require the citation of authorities. Clearly, Ms. Higgins was working for Angelica when her carpal tunnel syndrome problem became disabling.

The second issue is whether the plaintiff gave proper notice of her work related injury as required by Tenn. Code Ann. section **50-6-201**.<sup>1</sup> In the case of **Central Motor Express Company, Inc., v. Richard M. Burney, 377 S.W.2d 947, (Tenn. 1964)**, the Supreme Court held as follows:

“Under the doctrine of **Brown Shoe Company v. Reed, supra**, which we have held to be applicable in the present case, the beginning date for computing notice is the date on which the disability manifests itself to such an extent that petitioner was forced to leave work.”

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**50-6-201. Notice of injury.** - Every injured employee or such injured employee's representative shall, immediately upon the occurrence of an injury, or as soon thereafter as is reasonable and practicable, give or cause to be given to the employer who has not actual notice, written notice of the injury, and the employee shall not be entitled to physician's fees or to any compensation which may have accrued under the provisions of the Workers' Compensation Law from the date of the accident to the giving of such notice, unless it can be shown that the employer had actual knowledge of the accident; and no compensation shall be payable under the provisions of this chapter unless such written notice is given the employer within thirty (30) days after the occurrence of the accident, unless reasonable excuse for failure to give such notice is made to the satisfaction of the tribunal to which the claim for compensation may be presented.

It took Doctor Johnson a while to ascertain for sure that Ms. Higgins' problem was carpal tunnel syndrome and that it was work related. Ms. Higgins has an eighth (8th) grade education and in her trial she testified, "I honestly didn't know what was causing my problem." She also testified that she told Angelica everything that the doctors told her.

The third and final issue is whether the trial judge's finding that the plaintiff suffered a 45 per cent (45%) permanent partial vocational disability to each arm is supported by the preponderance of the evidence.

The extent of vocational disability is a question of fact to be determined from all of the evidence, including lay and expert testimony. **Worthington v. Modine Mfg. Co., 798 S.W.2d 232, 234 (Tenn. 1990)**. A medical expert's rating of anatomical disability is one of the relevant factors, but the vocational disability is not restricted to the precise estimate of the anatomical disability made by a medical witness. **Corcoran v. Foster Auto GMC, Inc., 746 S.W.2d 452, 458 (Tenn. 1988)**. Once the causation and permanency of an injury have been established by expert testimony, the trial judge 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. Tenn. Code Ann. section 50-6-241(a)(2).

After careful consideration of all the relevant factors in this case, the panel finds that the evidence fails to preponderate against the judgment of the trial court.

The judgment of the trial court is therefore affirmed. Costs are taxed to the defendant-appellant.

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Leonard W. Martin, Judge

CONCUR:

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Lyle Reid, Associate Justice

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Joe C. Loser, Jr., Judge

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Defendant/Appellant.

) HARDIN CIRCUIT  
) NO. 2184  
)  
) Hon. C. Creed McGinley,  
) Judge  
)  
) NO. 02S01-9605-CV-00050  
)  
)  
)  
) AFFIRMED.

**FILED**  
  
**April 17, 1997**  
  
**Cecil Crowson, Jr.**  
Appellate Court Clerk

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 Appellant, and surety, for which execution may issue if necessary.

IT IS SO ORDERED this 17th day of April, 1997.

PER CURIAM

(Reid, J., not participating)

