

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
(May 23, 1997 Session)

FILED

August 18, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

JANICE FARMER,
Plaintiff/Appellee,

VS.

NO. 02S01-9701-CH-00005

S & R OF TENNESSEE, a/k/a SIEGEL
ROBERTS OF TENNESSEE and ITT
HARTFORD INSURANCE COMPANY,

LAUDERDALE CHANCERY
CHANCELLOR
JOHN HILL CHOSOLM

Defendants/Appellant.

FOR APPELLANT:

William B. Walk, Jr.
The Hardison Law Firm
Memphis, Tennessee

FOR APPELLEE:

Lisa June Cox
Jackson, Tennessee

MEMORANDUM OPINION
Mailed June ____, 1997

Members of Panel:

Janice M. Holder, Associate Justice, Supreme Court
Robert A. Lanier, Circuit Judge
Don R. Ash, Circuit Judge

AFFIRMED

Lanier, Judge

MEMORANDUM OPINION

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated Section 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. The only issue upon this appeal is the degree of compensation to be awarded to the claimant.

As a result of developing bilateral carpal tunnel syndrome, the claimant was referred by her employer to Dr. William L. Bourland for treatment. Dr. Bourland performed surgery in the form of carpal tunnel releases to each hand, on April 12 and April 26, 1994, respectively. Dr. Bourland was of the opinion that she had no permanent impairment to her left hand and five percent (5%) impairment to her right hand as a result of the condition and surgery. She returned to work with the same employer at the same wage. Some fourteen months later, she was referred by her attorney to Dr. Robert Christopher of Memphis for evaluation of her continuing complaints. Dr. Christopher examined her and gave her some tests and opined that she had a ten percent (10%) impairment of each upper extremity, which, based upon his reference to the AMA Guides to the Evaluation of Permanent Impairment, 4th Ed., translated to nineteen percent (19%) of the "combined values tables," and converts to an eleven percent (11%) impairment to the body as a whole. He felt that she should avoid any kind of work that required repeated wrist bending, either flexion or extension, and felt that bending her wrists many, many times per hour would be placing her at risk for further problems with her hands. He said that she should avoid jobs that require her to do repeated lifting of objects weighing more than twenty pounds, as well as pushing or pulling objects weighing more than twenty pounds and should avoid work that requires her to lift her arms above her shoulder height on a repeated basis. He said that she should not do work that required her to do severe exertion with her hands, such as squeezing tools or opening jars, or things of that sort, several times an hour.

The employer concedes that the claimant has some permanent disability in her right arm, but feels that the award by the trial court was too great.

After a trial, the Chancellor awarded a twenty-five percent (25%) permanent partial disability to each arm. Although there is some confusion in the judgment in the trial court and the briefs on appeal, the parties stipulated at oral argument that that was, indeed, the award actually made by the trial court.

Review on appeal 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. § 50-6-225(e)(2). In this case, no attack is made upon the qualifications of either physician. However, Dr. Christopher testified by deposition, subject to cross-examination. Only Dr. Bourland's records were introduced by the employer. The trial court was able to see the claimant in person and evaluate her credibility. He might very well have concluded from evaluating the plaintiff's credibility and reviewing the impressive credentials of Dr. Christopher that the latter's opinion was closer to the true facts.

Our independent examination of the evidence and the principles of law fails to preponderate against the trial court's findings in this case.

THEREFORE, the judgment of the trial court is affirmed. Cost on appeal are taxed to the defendants/appellants.

Robert A. Lanier, Circuit Judge

CONCUR:

Janice M. Holder, Associate Justice

Don R. Ash, Circuit Judge

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HARTFORD INSURANCE COMPANY,

Defendants/Appellants.

) LAUDERDALE CHANCERY
) NO. 9533

)
) Hon. John Chisolm,
) Chancellor

)
)
) NO. 02S01-9701-CH-00005

) AFFIRMED.

FILED

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

IT IS SO ORDERED this 18th day of August, 1997.

PER CURIAM

(Holder, J., not participating)