IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
(July 12, 1999 Session)

FILED

October 6, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

WILLETTE NEWSOM,	)	
	)	
Plaintiff/Appellee,	)	
	)	**MADISON CHANCERY**
v.	)	
	)	**NO. 02S01-9811-CH-00110**
MURRAY, INCORPORATED,	)	
	)	**HON. JOE C. MORRIS,**
Defendant/Appellant.	)	**CHANCELLOR**
	)	

FOR THE APPELLANT:

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M E M O R A N D U M O P I N I O N

Members of Panel:

Justice Janice M. Holder
Senior Judge F. Lloyd Tatum
Special Judge C. Creed McGinley

OPINION FILED: _____

AFFIRMED

TATUM, SENIOR JUDGE

OPINION

This workers' compensation appeal was referred to the Special Workers' Compensation Appeals Panel of the Supreme Court pursuant to Tenn. Code Ann. § 50-6-225(e)(3) (Supp. 1998) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

This is a carpal tunnel syndrome case. Upon hearing the evidence, the trial court found that plaintiff suffered a 60 percent permanent partial disability to her right arm and a 35 percent permanent partial disability to her left arm. Defendant, Murray, Incorporated, appealed the judgment. The sole issue on appeal is whether the trial court's award is excessive. After careful review of the record, we find that the evidence does not preponderate against the trial court's award. Therefore, the judgment of the trial court is affirmed.

At the time of trial, plaintiff, Willette Newsom, was a 50 year old mother of three with a Bachelor of Science degree in business education. However, her previous work experience did not involve the use of her degree but consisted of employment as a file clerk, a restaurant employee, in home health services, and as a nurse's assistant at a nursing home. She began working for Murray in 1993 on the assembly line. She was subsequently transferred to the parts and service department for approximately two and one half years before being put back on the assembly line. Her job duties on the assembly line included repetitious use of her hands while tightening screws into motors with a power gun. After a few months back on the assembly line, she experienced a sharp pain in her right hand, which she reported to her employer. She was sent to Dr. Bingham for treatment and eventually to Dr. Lowell F. Stonecipher when she did not improve.

Plaintiff first saw Dr. Stonecipher, an orthopedic surgeon, on October 11, 1996, when Dr. Bingham's conservative treatment of plaintiff's moderately severe carpal tunnel syndrome was ineffective in relieving her symptoms. On November 13, 1996, Dr. Stonecipher performed an endoscopic carpal tunnel release on plaintiff's right hand. On November 26, plaintiff was released to light duty with restrictions on lifting more than twenty pounds. Because she was doing well in January, Dr. Stonecipher released plaintiff to regular duty on January 17, 1997, but advised her against the use of power tools. The

plaintiff returned in March with some residual symptoms from the surgery, at which time Dr. Stonecipher rated her at 3 percent impairment on the right. Plaintiff returned in June, July, and September with numbness and tingling in her right hand and arm. An EMG and nerve conduction study performed five months after plaintiff's surgery showed moderate sensory slowing, but plaintiff's Tinel's test was negative. Dr. Stonecipher admitted that he did not use the AMA Guidelines in arriving at his 3 percent impairment rating and that the Guidelines would rate plaintiff at 20 percent impairment to her right arm based on the results of the electronic studies.

After being released by Dr. Stonecipher, plaintiff returned to work on light duty and eventually to the assembly line. She testified that her right hand began to hurt when she tried to use it, so she switched to her left. Soon, she experienced a sharp pain in her left hand as well, which she reported to her supervisor. Dr. Stonecipher did not see her for the left arm.

On June 25, 1997, plaintiff saw Dr. Kenneth Warren, a family practitioner, with complaints of numbness, tingling, and pain of the left wrist. Upon examination, Dr. Warren found plaintiff's grip strength, Phalen's test, and Tinel's test to be normal. An EMG and nerve conduction study showed minimal entrapment of the left median nerve with no involvement of the motor fibers. On July 10, plaintiff reported that she was doing better and was wearing her arm splint at night. Dr. Warren felt that plaintiff would continue to improve and told her to return if she had further problems. Plaintiff did not return. Dr. Warren did not feel that plaintiff had any impairment of her left arm; however, he admitted that Table 16, page 57, of the AMA Guidelines would rate her at 10 percent disability on the left for mild nerve entrapment. He did not attempt to rate the right arm.

Plaintiff's attorney sent her to see Dr. Joseph C. Boals, III, an orthopedic surgeon, on August 18, 1997. Dr. Boals examination revealed that plaintiff had a positive Phalen's test but fairly normal grip strength tests. Dr. Boals's diagnosis was that plaintiff had residuals from the surgery, suspected carpal tunnel syndrome on the left, and suspected recurrent carpal tunnel syndrome on the right. Based on the May 1997 nerve studies and Table 16 of the AMA Guidelines, Dr. Boals opined that plaintiff suffered from a 20 percent impairment of the right upper extremity. Dr. Boals did not have the nerve studies from the

left side, but rated plaintiff at 10 percent impairment on the left based on the positive Phalen's test and her symptoms. He stated that persons with carpal tunnel syndrome cannot return to assembly line work, especially where hand-held guns that require heavy grip are used.

Plaintiff testified that she tried to return to light duty at the same pay after seeing Dr. Warren, but eventually resigned in October of 1997 when the pain in her hands prevented her from working a full day. She stated that she did not want to resign, because she is unable to make the amount of money she was making at Murray. Since leaving defendant's employ, plaintiff has worked in home health care and has done some substitute teaching, which is sporadic. She testified that she is no longer able to do factory type work or other activities that require constant movement of her hands. Her arms are not as strong as before her problems began, and she can no longer perform simple tasks, such as unscrewing a bottle cap.

Larry Chapman, plaintiff's supervisor from approximately May of 1997 until she resigned in October 1997, testified at trial. He stated that plaintiff was on restricted light duty during this period dropping nuts and bolts into a bag and making boxes for grass catchers. Plaintiff was making approximately three to four hundred parts bags per day. Mr. Chapman knew plaintiff had carpal tunnel syndrome but denied that she ever told him that the light duty position was bothering her hands or that she was unable to do the job. He also stated that plaintiff is an honest and hardworking person.

The standard of review of factual issues in workers' compensation cases is de novo upon the record of the trial court with a presumption of correctness, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (1991 & Supp. 1998); Henson v. City of Lawrenceburg, 851 S.W.2d 809, 812 (Tenn. 1993). Under this standard, we are required to conduct an in-depth examination of the trial court's findings of fact and conclusions of law to determine where the preponderance of the evidence lies. See Thomas v. Aetna Life & Cas. Co., 812 S.W.2d 278, 282 (Tenn. 1991) (quoting Humphrey v. David Witherspoon, Inc., 734 S.W.2d 315 (Tenn. 1987); King v. Jones Truck Lines, 814 S.W.2d 23, 25 (Tenn. 1991). In making such a determination, this Court must give considerable deference to the trial judge's findings regarding the weight

and credibility of any oral testimony received. Townsend v. State, 826 S.W.2d 434, 437 (Tenn. 1992); Thomas, 812 S.W.2d at 283. However, the determination of factual issues in the present case involves medical testimony derived solely from depositions, so all impressions regarding weight and credibility must be drawn from the contents of the documents, rather than an evaluation of live witnesses. Thomas, 812 S.W.2d at 283. Therefore, this Court may draw its own conclusions about the weight, credibility, and significance of such testimony. Seiber v. Greenbrier Indus., Inc., 906 S.W.2d 444, 446 (Tenn. 1995).

It is well-established that the plaintiff in a workers' compensation case has the burden of proving causation and permanency of his injury by the preponderance of the evidence using expert medical testimony. See Thomas, 812 S.W.2d at 283; Roark v. Liberty Mutual Ins. Co., 793 S.W.2d 932, 934 (Tenn. 1990). However, such testimony is not evaluated in total isolation but must be considered in conjunction with the employee's testimony as to how his injury occurred and his subsequent physical condition. Thomas, 812 S.W.2d at 283. In determining where the preponderance of the evidence lies, this Court may choose which expert's view to believe among differing opinions and may consider the experts' qualifications, circumstances of their examination, what information was available to them, and how important that information was to other experts. See Orman v. Williams Sonoma, Inc., 803 S.W.2d 672, 676 (Tenn. 1991).

It appears from the record that the AMA Guidelines would assign plaintiff a 10 percent anatomical impairment rating to her left arm and a 20 percent rating to the right. The doctors whose depositions were offered at trial testified that this is what the Guidelines assign to plaintiff, whether they rated plaintiff using a different method or not. The extent of vocational disability is a question of fact for the trial judge, of which the anatomical disability rating is only a part. Williams v. Tecumseh Prod. Co., 978 S.W.2d 932, 936 (Tenn. 1998). He must make an independent evaluation of the evidence and must consider relevant factors, such as expert and lay testimony, the employee's age, education, skills, and training, as well as local job opportunities available with employee's restrictions. See Tenn. Code Ann. § 50-6-241(a)(1); Williams, 978 S.W.2d at 936.

We find that the evidence does not preponderate against the trial court's findings

of the percentages of vocational disability. Plaintiff is 50 years old with non-educationally based job experience. Most of her job experience is in positions requiring the use of her hands to a great extent. Plaintiff testified that she was forced to quit her job at Murray because of continued problems with her hands. Since that time, she has only been able to find employment sporadically at much lower pay and has problems with simple tasks that involve the use of her hands. Although she has a college degree in business education, she has no job experience in this field, and her degree has not helped her get full-time employment at an income level comparable to what she was making at Murray. Her last supervisor at Murray, Larry Chapman, testified that plaintiff is an honest and hard working person. The trial judge apparently believed plaintiff's testimony, and we must give considerable deference to his assessment of these live witnesses. In addition, Dr. Boals testified that a person with carpal tunnel syndrome cannot perform assembly line work, and the fact that the plaintiff has bilateral carpal tunnel syndrome certainly limits her ability to use her factory experience to any significant degree. We find that the evidence does not preponderate against the judgment of the trial court.

Therefore, we affirm the order of the trial court. Costs are assessed to the defendant.

F. LLOYD TATUM, SENIOR JUDGE

CONCUR:

JANICE M. HOLDER, JUSTICE

C. CREED MCGINLEY, SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

WILLETTE NEWSOM,	)	MADISON CHANCERY
	)	NO. 53905
Plaintiff/Appellee,	)	
	)	Hon. Joe C. Morris,
vs.	)	Chancellor
	)	
MURRAY, INCORPORATED,	)	NO. 02S01-9811-CH-00110
	)	
Defendant/Appellant.	)	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 Appellant and its surety, for which execution may issue if necessary.

IT IS SO ORDERED this 6th day of October, 1999.

PER CURIAM