

_____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.

The trial court awarded plaintiff 50% permanent partial disability to each arm. Defendant challenges 1) the finding of permanent vocational disability to the right arm and 2) the finding of 50% permanent partial disability to each arm.

We affirm the judgment of the trial court.

Plaintiff, 54 at the time of trial, has a high school degree and some college education, sufficient at least to be certified as a junior high school shop teacher in Texas. He taught for about two years. He has also been certified in mechanics by a vocational-technical school in Memphis. His work history includes work as a military supply clerk, factory worker, supervisor of inmates and of youths in juvenile detention and mechanic.

Plaintiff worked for defendant-employer as an installer of brakes and mufflers and as a manager. On November 4, 1992, he slipped on some oil while guiding a car into the shop and fell into the pit, about eight feet down, head first. He tried to catch himself with his hands.

Dr. Phillip Wright, an orthopedic surgeon, testified by deposition. He testified that plaintiff was diagnosed with a fracture of the left radial styloid (in the wrist), a fracture of the proximal phalanx of the left thumb and carpal tunnel syndrome in his right arm. Surgery was performed and a pin was temporarily placed in his left wrist. Plaintiff was given a splint for his right wrist and, in March 1993, was given a cortisone shot. After the shot, Dr. Wright did not testify to any complaints by plaintiff concerning his right arm.

Dr. Wright assigned ten percent permanent impairment to the plaintiff's left upper extremity. He testified that, if plaintiff continued to have the same symptoms in his right arm, plaintiff would have a ten percent impairment to his right upper extremity.

At trial, plaintiff testified that he now worked for the Memphis Housing Authority doing maintenance. He testified that he left defendant-employer because he could no longer do the overhead work required by his previous job, and the only other job available was sweeping the shop at slightly over minimum wage. He testified that he continued to experience pain in his left arm, particularly early in the mornings, and had difficulty keeping his grip when using his left hand above shoulder-level. He also testified that he continues to experience numbness in his right hand and that he sometimes has difficulty knowing whether he is holding something or not with his right hand. He testified that his symptoms in his right hand now are the same as they were when he was seeing Dr. Wright. He testified that he stopped complaining to Dr. Wright about his symptoms because he believed nothing could be done about his right hand.

A co-worker also testified as to plaintiff's difficulty performing above-the-shoulder work with both hands.

Our review is *de novo* upon the record accompanied by the presumption that the trial court's findings of fact are correct unless the evidence preponderates otherwise. TENN. CODE ANN. § 50-6-225(e)(2).

The defendant argues that the trial court erred in not considering the second deposition of Dr. Wright. It is not clear from the record whether or not this second deposition was properly before the trial court. At any rate, we find that this deposition does not affect the preponderance of the evidence. The only new evidence presented is Dr. Wright's testimony that he released plaintiff to light duty work using the right hand only in January 1993 and that he would not have done so if plaintiff had problems that interfered with his use of his right hand. However, Dr. Wright also testified to continuing complaints of numbness in plaintiff's right arm after this restricted release in January 1993 and, in fact, he provided the plaintiff with a splint for his right arm in February 1993 and a cortisone injection in March 1993.

We find the evidence in the record does not preponderate against the findings of the trial court. There must be medical evidence to show an impairment

exists, unless the impairment is obvious, to support an award of permanent disability. *Johnson v. Midwesco, Inc.*, 801 S.W.2d 804, 806 (Tenn. 1990).

However, the testimony of the expert witness must be considered in conjunction with the employee and other lay witnesses. *Thomas v. Aetna Life & Cas. Co.*, 812 S.W.2d 278, 283 (Tenn. 1991). We find the medical evidence in this particular fact situation, along with the trial testimony, supports a finding of permanent vocational disability to the right arm. We find the evidence does not preponderate against the trial court's finding that plaintiff sustained a 50% permanent partial disability to both arms.¹

The judgment of the trial court is affirmed, and the cost of appeal is taxed to the defendant-appellant. We remand the case to the trial court.

John K. Byers, Senior Judge

CONCUR:

Lyle Reid, Justice

Joe C. Loser, Special Judge

¹ The trial court awarded plaintiff 50% to each arm or 100 weeks for each arm based on a 200-week maximum for loss of function of an arm. Loss of function of two arms is an enumerated specific injury, TENN. CODE ANN. § 50-6-207(3)(A)(ii)(w), allowing for a maximum of 400 weeks of benefits. However, the result for plaintiff, 200 weeks of benefits, is the same.