

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

NELLIE MYRTLE FARLEY,)

Plaintiff/Appellee)

v.)

LIBERTY MUTUAL INSURANCE)
COMPANY and TEXAS BOOT)
COMPANY,)

Defendants/Appellants)

TROUSDALE CIRCUIT

Hon. Bobby Capers,
Judge

NO. 01S01-9509-CV-00147
(No. 3113-0-87 Below)

FILED

April 26, 1996

**Cecil Crowson, Jr.
Appellate Court Clerk**

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For the Appellee:

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MEMORANDUM OPINION

Members of Panel:

Justice Frank F. Drowota, III
Senior Judge John K. Byers
Special Judge Robert L. Childers

**AFFIRMED AS MODIFIED
AND REMANDED**

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.

The defendants below appeal the trial court's award of 75% permanent partial disability to each upper extremity. They challenge the amount of the award, its commutation to a lump sum, and the trial court's award of temporary total disability benefits from May 26, 1994 to December 1, 1994.

We modify the trial court's award, finding that the evidence preponderates against an award of 75% permanent partial disability to each extremity and towards a finding of 45% permanent partial disability to each extremity. As modified, we affirm the judgment of the trial court.

Plaintiff, 63 at the time of trial, has a sixth grade education. She worked for the defendant-employer for almost 26 years. In late October 1993, she was found to have bilateral carpal tunnel syndrome. She continued to work until January 3, 1994, when she took an early retirement. She testified at trial that she retired early because her arms were "messed up." Carpal tunnel releases were performed in February and May 1994. At trial, she testified that she reached maximum medical improvement in early December 1994. She has not applied for any job since her retirement.

Dr. Abbey, an orthopedic surgeon, treated the plaintiff and testified, by deposition, on behalf of the defendant. He testified that the plaintiff did well post-operatively and that he assigned her a zero percent impairment rating. He also testified that after he assigned her this rating, the plaintiff had problems with swelling and discomfort and, between the two surgeries, she developed triggering in her left long finger. He opined that the plaintiff reached maximum medical improvement on May 23, 1994 for her carpal tunnel syndrome, although she probably had not reached that stage for her triggering finger. He assigned no permanent restrictions.

Dr. Robert Paul Landsberg, another orthopedist, examined the plaintiff at the request of her attorney and testified, also by deposition, on her behalf. He

diagnosed the plaintiff as post-bilateral carpal tunnel release with continuing mild bilateral carpal tunnel syndrome and triggering of the long fingers in the right and left hand. He opined that these injuries were caused by her carpal tunnel syndrome injury resulting from her work. He assigned the plaintiff a ten percent impairment rating for each upper extremity for her carpal tunnel syndrome and five percent for triggering finger. He assigned permanent restrictions against repetitive gripping or squeezing, use of vibrating tools, lifting more than two to three pounds with either hand, although stating that she could lift up to five to ten pounds supporting with her forearms.

Dr. Richard Fishbein, an orthopedist, also examined the plaintiff at her attorney's request and drafted an evaluation report which was submitted into evidence. He opined that plaintiff retained a ten percent impairment rating to each upper extremity due to mild carpal tunnel syndrome. He imposed restrictions similar to those imposed by Dr. Landsberg, except for lifting restrictions of no more than 25 pounds occasionally and less than five pounds frequently.

Although Dr. Abbey testified that, pre-surgery, the plaintiff's left carpal tunnel syndrome was more severe in her left arm, both of the evaluating orthopedists found, post-surgery, that plaintiff's right carpal tunnel syndrome was more severe than that in her left arm.

At trial, the plaintiff testified that she continues to experience pain, numbness and tingling in her arms. She further testified as to her difficulty in performing even everyday tasks.

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

We find that the evidence preponderates against a finding of 75% permanent partial disability to each upper extremity. We modify the award to 45% permanent partial disability to each upper extremity.

We find that the evidence does not preponderate against the trial court's award of temporary total disability benefits from May 26, 1994 to December 1, 1994.

From Dr. Abbey's testimony, it appears that this condition was unresolved at the time she reached maximum medical improvement for her carpal tunnel syndrome, and we have only the plaintiff's testimony upon which to base her maximum medical improvement for her triggering finger.

Plaintiff testified that she would use a lump sum payment to purchase a home. She currently lives in the house that belonged to her parents, now deceased. She does not pay rent, but neither does she own the home; she is one of six heirs. She testified that she would place any excess in a savings account, where it would earn interest. We find the trial court did not abuse its discretion in commuting the award to a lump sum payment.

As modified, the judgment is affirmed. Costs are assessed to the defendants/appellants, and the case is remanded to the trial court for entry of any order necessary to carry out this judgment.

John K. Byers, Senior Judge

CONCUR:

Frank F. Drowota, III, Justice

Robert L. Childers, Special Judge