

**IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT JACKSON  
(October 9, 1995 Session)**

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JOHN IVORY, JR.,	)	
	)	
Plaintiff-Appellant,	)	GIBSON CHANCERY
	)	
V.	)	Hon. George Ellis,
	)	Chancellor
	)	
EMERSON MOTOR COMPANY,	)	No. 02S01-9505-CH-00042
	)	
Defendant-Appellee.	)	

**FILED**

**September 9, 1996**

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

For Appellant:

For Appellee:

Raymond L. Ivey  
Ivey, Parish & Johns  
Huntingdon, TN

P. Allen Phillips  
Waldrop & Hall, P.A.  
Jackson, TN

MEMORANDUM OPINION

Members of Panel:

\_\_\_\_\_ Lyle Reid, Associate Justice, Supreme Court  
Joe C. Loser, Jr., Special Judge  
Janice M. Holder, Special Judge

AFFIRMED

Holder, Judge

This workers' compensation appeal has been referred to the Special

Workers' Compensation Appeals Panel of the Supreme Court pursuant to Tenn. Code Ann. § 50-6-225 (e)(3) for hearing and reporting of findings of fact and conclusions of law. Our scope of review of findings of fact by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of correctness, unless the preponderance of the evidence is otherwise. Tenn.Code Ann. § 50-6-225(e)(2).

The employee contends the trial court erred in:

1. Failing to assign permanent partial disability to the right arm as opposed to the right hand; and
2. Limiting the award of permanent partial disability benefits to 55% to the right hand.

We affirm the trial court in all respects.

The plaintiff, John Ivory, Jr., (“Ivory”) is 25 years of age with an eleventh grade education. He received a G.E.D and successfully completed Job Corps training in brick masonry. His previous work experience included upholstering furniture, working as a construction laborer and as a production line worker at a cheese factory.

On August 15, 1992, Ivory was repairing a die cast machine for Emerson Motor Company when the machine activated, injuring the fingers of his right hand. Ivory was treated by Dr. Frederick Torstrick, an orthopedic surgeon, for crush injuries to the index, long and ring fingers, fractures to the index and ring fingers, and longitudinal lacerations to the top and bottom of his hand. A later surgical procedure performed to improve movement required incisions in each of the injured fingers, the removal of adhesions between the tendon and underlying bone and cutting of some of the tissues of the capsule of the joints. Ivory was referred to a work hardening program where there was some question of his cooperation.

Dr. Torstrick's deposition is the only medical proof offered. Basing his testimony on the American Medical Association Guides to the Evaluation of Permanent Impairment, Fourth Edition, he calculated the impairments to Ivory's index, long, ring and small fingers. He assessed an additional one percent (1%) impairment due to restriction in movement of the wrist and assessed a "cumulative" impairment rating of twenty-two percent (22%) to the right "upper extremity."

On cross examination, Dr. Torstrick's strict adherence to the AMA Guides was called into question and some discrepancies in the individual calculations for each finger were discussed. Taking the individual calculations of impairment, however, Dr. Torstrick testified that Ivory had a twenty-two percent (22%) impairment to the hand. This was a separate finding from the twenty-two (22%) impairment to the upper extremity that he had assessed.

The impairment of one percent (1%) to the upper extremity was made using his own method of determining impairment. Dr. Torstrick agreed that following the AMA Guides would require him to assess a zero percent (0%) impairment to the upper extremity as to Ivory's wrist motion, restriction and extension.

After a period of light duty, Ivory returned to full-time employment, including some overtime employment. He experienced some difficulty in performing some of the duties of his machine operator job and was moved to a monitoring position on the line, making adjustments to the machines when necessary. Because of his ability to quickly set up the machines, Ivory was required to report to work early.

Ivory was described as an "above average" employee. Although his labor grade changed, altering the wage ceiling available to him, Ivory's hourly rate increased from \$6.13 to \$8.74.

Ivory described and demonstrated his difficulty in making a fist and testified to his inability to use his hand to pull the trigger of his gun and to grip a baseball.

The chancellor found that Mr. Ivory suffered a fifty-five percent (55%) permanent partial disability to the dominant right hand as a result of the accident.

#### ASSESSMENT OF PERMANENT DISABILITY TO THE HAND

The claimant contends that the trial court erred in assigning a permanent partial disability to the hand instead of to the arm and makes the curious statement that the "only medical evidence available to the trial court assigned the anatomical disability to the upper extremity." Claimant argues that the medical proof shows that the upper extremity is affected "due to limited motion in the wrist, separate from the hand." This argument is unpersuasive.

That Dr. Torstrick assessed an impairment to the "upper extremity" as well as an assessment of impairment to the hand does not compel the trial court toward benefits to the arm. If there is an injury to a specified member under the statute and not to any other part of the body then the compensation awarded for the injury to such scheduled member is binding. Shores v. Shores, 395 S.W.2d 388 (Tenn. 1965). Statutory schedules must control a disability award for an injury to a scheduled member only. Wells v. Sentry, 834 S.W.2d 935, 938 (Tenn. 1992).

The medical treatment was to the hand and fingers exclusively. The treating physician's testimony centered on the mobility and flexibility of the hand and fingers. Dr. Torstrick provided an anatomical rating of twenty-two percent (22%) to the hand as well as to the upper extremity. The only testimony that would provide an argument for an extension of the disability to the arm was Dr. Torstrick's assessment of disability to the wrist of one percent (1%) using his own method of computation. The assessment under the AMA guidelines would have

been zero percent (0%).

To provide uniformity and fairness for all parties, any medical report prepared by a physician furnishing medical treatment to a claimant shall use the American Medical Association Guides to the Evaluation of Permanent Impairment, (American Medical Association) or the manual for Orthopedic Surgeons in Evaluating Permanent Physical Impairment, (American Academy of Orthopedic Surgeons). A physician shall utilize the most recent edition of either publication in determining the degree of anatomical impairment. A practitioner shall be required to give an impairment rating based on one (1) of the two (2) publications noted above.

Tenn. Code Ann. § 50-6-204 (d)(3).

The claimant's own testimony supports limitations to the use of his hand and not to the use of his arm.

AWARD OF FIFTY-FIVE PERCENT (55% )  
PERMANENT PARTIAL DISABILITY

Ivory contends that the trial court should have awarded a permanent partial disability in excess of fifty-five percent (55%). The test is whether there has been a decrease in the employee's capacity to earn wages in any line of work available to the employee. Corcoran v. Foster Auto GMC, Inc., 746 S.W.2d 452, 459 (Tenn. 1988).

The trial court may consider many pertinent factors, including age, job skills, education, training, duration of disability, anatomical disabilities established by medical experts, and job opportunities available to a worker with those anatomical disabilities, to determine the extent of the worker's industrial disability. Worthington v. Modine Manufacturing Co., 798 S.W.2d 232, 234 (Tenn. 1990). The extent of vocational disability is a question of fact to be determined from all of the evidence. Cooper v. Insurance Co. of North America, 884 S.W.2d 446, 451 (Tenn. 1994).

The claimant is 25 years of age. He is a valued employee whose job is in no danger and who works a forty-hour work week, with overtime. While his labor

grade has changed, his wages have increased since his injury. The evidence does not preponderate against the trial court's finding that Mr. Ivory suffered a fifty-five percent (55%) vocational disability.

The judgment is affirmed and the cause remanded to the trial court for collection of costs and enforcement of judgment. Costs on appeal are taxed to the plaintiff-appellant.

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Janice M. Holder, Judge

CONCUR:

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Lyle Reid, Associate Justice

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Joe C. Loser, Jr., Special Judge