

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE MARCH 1996 SESSION

FILED

September 5, 1996

Cecil W. Crowson
Appellate Court Clerk

MART E. KOBECK,)	LAWRENCE CIRCUIT
)	
Plaintiff/Appellee)	NO. 01S01-9511--CV-00207
)	
v.)	HON. JAMES L. WEATHERFORD
)	JUDGE
MURRAY, INC.,)	
)	
Defendant/Appellant)	

For the Appellant:

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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 Roger E. Thayer

**AFFIRMED 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.

Plaintiff injured his neck at work in October of 1991 and subsequently underwent anterior cervical disc removal, dissection and fusion after which he did not recover. The trial judge found the plaintiff to be 80 percent vocationally impaired as a result of his work injury.

We affirm the judgment of the trial court.

Plaintiff had worked for Murray, Inc. for 35 years when, on October 21, 1991, he injured his neck on the job while working overhead repairing lawn mowers. The company sent him to see Dr. Norman Henderson, who then referred him to Dr. Rex Arendall, neurosurgeon, on April 1, 1992.

Dr. Arendall diagnosed cervico-thoracic radiculopathy and prescribed physical therapy and pain medications, but plaintiff did not improve. On April 23, 1992, Dr. Arendall performed anterior cervical discectomy, anterior cervical fusion and microscopic dissection at C4-5 and C5-6. Post-operatively, plaintiff continued to have increasing pain and weakness in his right arm and shoulder. He also developed loss of balance. Dr. Arendall re-admitted plaintiff for investigation of the continuing symptoms, and MRI of the brain then revealed small areas of infarction. Dr. Arendall referred plaintiff to his medical practice partner and neurologist, Dr. Mary Clinton, for a second opinion, and then to another neurologist, a Dr. Rubinowicz. Neither examiner could find a neurological basis for plaintiff's problems except for the brain infarctions.

Dr. Arendall stated that after the second hospitalization, plaintiff "seemed to go progressively downhill." His right arm and hand atrophied. Dr. Arendall thought that plaintiff might be exhibiting early onset symptoms of amyotrophic lateral sclerosis or multiple sclerosis, but there were no objective findings to indicate either disease. On October 21, 1992, Dr. Arendall saw the patient and opined that he was totally and permanently disabled as a result of his medical problems. He opined that 15 percent of the disability was "purely for his work-related findings."

Plaintiff testified that for many years prior to his accident, he had worked without missing a day and that he had no prior medical problems that required him to

see a doctor. He stated that twelve or fifteen years ago, he was treated for “high sugar,” and that he had taken medication for high blood pressure about fifteen years ago. Prior to this injury he baled hay and worked his garden with his three tractors. He also cut and hauled wood as a member of the volunteer fire department in addition to his manual labor job. He never had any physical problems until this accident.

Plaintiff further testified that since the accident, he has problems dressing and feeding himself. He cannot use his right arm or hand at all. He can mow his yard with a riding mower but has trouble getting on the mower. He has pain up and down his neck and he cannot turn his neck in any direction. He cannot drive. He wakes up three or four times every night and has trouble going back to sleep. He has lost control of his bowel and urinary functions.

Plaintiff is 57 years old with eight years of formal education. He states he cannot read and write well and his wife does the writing for the family. His work experience consists of 35 years with this employer, at various manual labor factory jobs. Without regard to his medically unexplained post-surgical loss of balance and muscle atrophy, which has totally disabled him, he would still be medically limited by the job-related neck injury to no repetitive bending, stooping, lifting, pushing or pulling over 25 pounds.

The trial judge found that the plaintiff was totally disabled and that 80 percent of that vocational disability was due to his work injury. While expert evidence is required to establish permanency in most cases, the extent of vocational disability is a question of fact for the trial court to determine from all of the evidence including lay and expert testimony; the medical expert’s rating of anatomical disability is merely one of a number of relevant factors used to make this determination. *Forest Products v. Collins*, 534 S.W.2d 306, 3098 (Tenn. 1976). The assessment of permanent disability is based upon numerous factors, including the employee’s skills and training, education, age, local job opportunities, and his capacity to work at the kinds of employment available in his disabled condition. *Robertson v. Loretto Casket Co.*, 722 S.W.2d 380, 384 (Tenn. 1986.) Considering plaintiff’s age, education, work experience and medical limitations, we find that the trial court did not err in assessing 80 percent permanent partial vocational disability related to his job injury.

We affirm the judgment of the trial court. Costs are assessed to the defendant and the case is remanded.

John K. Byers, Senior Judge

CONCUR:

Frank F. Drowota, III, Justice

Roger E. Thayer, Special Judge