



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 was working at Bruce Hardwood Floors when she injured her right shoulder in October of 1991 while lifting pieces of wood from a conveyor belt. In May of 1992, she complained to her treating physician of pain in her hands and wrists. She alleged work-related permanent disability as a result of these conditions. The trial court awarded plaintiff 33 percent permanent partial disability to each arm.

We find the plaintiff has failed to meet her burden of proving permanent partial disability and therefore reverse the decision of the trial court and dismiss the complaint.

Plaintiff testified that she was removing thin or short wood from a conveyor belt and lifting 40 to 50 pounds frequently when her right shoulder started bothering her, sometime in October or before October. The employer referred her to Convenient Care Clinic, then referred her to Dr. Alan Pechacek, board-certified orthopedic surgeon, at Jackson Clinic.

Dr. Pechacek's examination and x-ray on November 11, 1991 gave him the impression that plaintiff's right shoulder pain was due to some irritation or inflammation of the rotator cuff tendons. He prescribed physical therapy, exercises, pain medication and work restrictions, which improved plaintiff's condition.

In January of 1992, Dr. Pechacek told plaintiff she could return to full work with no restrictions. He continued to see her for renewal of prescriptions but felt she was "basically functional, as far as being able to do her job."

In May of 1992, plaintiff returned to Dr. Pechacek complaining of shoulder pain and also bilateral wrist and hand pain and numbness. She said this bothered her both at work and at home at night. At her June, 1992 office visit, Dr. Pechacek stated that plaintiff's symptoms were "mild and vague," and he gave her splints to wear on her wrists. She was no longer working because of some dispute with her employer, and he thought she could control her hand activity at home.

In July 1992, she returned still complaining of discomfort, so Dr. Pechacek ordered nerve conduction studies, which showed mild changes in the median nerve

of the right wrist and minimal changes in the median nerve of the left wrist.

Plaintiff went to work in August 1992 as a cashier, and worked for various employers including Krystal, Wendy's Popeye's, Fuel Mart and Savings Oil while continuing to be treated by Dr. Pechacek.

In January 1993, plaintiff underwent bilateral carpal tunnel release surgery, after which she had almost no complaints of numbness or tingling, no real residual problems as a result of the surgery, no need for further active treatment and no restrictions. Dr. Pechacek opined she had no residual permanent impairment under the AMA Guidelines as a result of her shoulder injury or her wrist condition and surgery. He testified that he was very familiar with the requirements of the AMA Guidelines, having used them for many years in his work. He opined that a grip strength test is not definitive in carpal tunnel cases because there could be many causes for loss of grip strength that are unrelated to carpal tunnel syndrome. Plaintiff pointed out to Dr. Pechacek that an example in the AMA Guidelines seems very similar to plaintiff's condition and assessed 10% permanent partial disability to the arm. Dr. Pechacek, unpersuaded, opined that the example does not limit his evaluation of this particular patient, who did not have the demonstrated 60% loss of grip strength in one hand, as was the case in the example.

Plaintiff returned to work at Popeye's, then later worked at Pony Express and at NOMA as a picker filling orders. Dr. Pechacek testified that her condition did not seem to worsen with work, but work seemed to aggravate her symptoms according to the patient.

Dr. Joseph C. Boals, board-certified orthopedic surgeon, evaluated plaintiff at the request of her counsel on September 14, 1994. His examination showed some tenderness over the rotator cuffs but full range of motion. Both hands showed healed surgical incisions and no numbness in either hand. Tinel and Phalen tests were negative. Jamar dynamometer grip strength test showed 35 pounds of grip strength bilaterally. He diagnosed residuals from bilateral carpal tunnel release and chronic tendinitis of both shoulders. He opined she had no permanent disability as to her shoulders but did have chronic tendinitis and could need some kind of surgical procedure if this proceeded to get worse, but at the present her motion was full and there was no disability to be rated. As to her wrists, he opined they were markedly

weak on both sides and assessed 20 percent permanent physical impairment of both upper extremities. He advised her to avoid repetitive work or jobs requiring heavy lifting.

Our review is *de novo* on the record accompanied with a presumption of the correctness of findings of fact of the trial judge unless the preponderance of the evidence is otherwise. TENN. CODE ANN. §50-6-225(e)(2). In assessing the extent of permanent impairment, the permanency of a work-related injury must first be established by competent medical evidence. *Corcoran v. Foster Auto GMS, Inc.*, 746 S.W.2d 452, 458 (Tenn. 1988). The trial judge may, when there is a difference in opinion between the experts, accept the opinion of one or more over the opinion of another or others. *Johnson v. Midwesco, Inc.*, 801 S.W.2d 804 (Tenn. 1990). Where medical testimony is documentary or by deposition, the reviewing tribunal is as able to pass on the weight and value of the evidence as the trial judge. *Humphrey v. David Witherspoon, Inc.*, 734 S.W.2d 315, 316 (Tenn. 1987).

Our review of the medical evidence by Drs. Pechacek and Boals persuades us that the opinion of Dr. Pechacek as to the permanency of plaintiff's conditions should be given more weight than that of Dr. Boals. Dr. Pechacek was the attending physician and in that capacity, saw and treated the plaintiff for a number of years for these complaints. He was very well-versed as to AMA Guidelines, and, although orthopedic surgeons may of course differ, our review of the Guidelines supports his practice of not using grip strength testing as exclusively definitive in assessing permanent disability.

We find the plaintiff has failed to meet her burden of proving permanent disability as a result of work-related injury. We need not determine whether the last injurious injury rule should apply.

The plaintiff's complaint is dismissed with costs assessed to the plaintiff.

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John K. Byers, Senior Judge

CONCUR:

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Lyle Reid, Justice

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Joe C. Loser, Special Judge