

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

**FILED**  
**November 25, 1996**  
**Cecil W. Crowson**  
**Appellate Court Clerk**

AMY FERRELL, ) GRUNDY COUNTY  
Plaintiff-Appellee )  
)  
)  
v. ) HON. JEFFREY F. STEWART,  
) Chancellor  
)  
ROBINSON MANUFACTURING COMPANY )  
and ARGONAUT INSURANCE COMPANY, ) NO. 01S01-9512-CH-00224  
Defendants/Appellants ) (NO. 4480 below)  
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FOR APPELLANTS:

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FOR APPELLEE:

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P. O. Box 176  
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MEMORANDUM OPINION

MEMBERS OF PANEL:

ADOLPHO A. BIRCH, JR., CHIEF JUSTICE, SUPREME COURT  
JOHN K. BYERS, SENIOR JUDGE  
WILLIAM S. RUSSELL, RETIRED JUDGE

AFFIRMED

RUSSELL, RETIRED JUDGE

This appeal from the judgment of the trial court in a workers' compensation case has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated Section 50-6-225 (e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

THE CASE

Amy Ferrell suffered a back injury at work on April 29, 1994, when the chair upon which she was sitting collapsed and she went down hard upon the concrete floor.

The company approved physician, Dr. Bill Hollins, D.O., diagnosed a lumbar myositis. Her back was tender to palpation and restricted in range of motion. He noted spasm in the paravertebral muscles bilaterally.

Dr. Hollins continued to treat her for approximately a year. At one time he referred her to Dr. J.R. Nunley, D.O., who has a pain clinic in Tullahoma; and Dr. Nunley and Dr. Hollins referred her to Dr. Robert Uskavitch, M.D., a neurologist. Dr. Hollins could find no neurological deficit, but wanted to rule that out. Dr. Hollins testified that during the course of his treatment she continued to complain of low back pain and inhibited range of

motion of her back. At her request she was referred to a second neurologist, Dr. Richard Lisella, M.D. Neither of the specialists found a neurological deficit.

Dr. Hollins testified that he advised her not to lift in excess of five pounds, nor do anything that hurt her. She walked with a cane and had difficulty getting onto her physician's examination table.

Dr. Hollins opined that she retained a 24% permanent anatomical impairment, 15% attributed to her back injury and 9% to neck pain which developed seven months post-accident.

The trial judge found that the neck pain was not shown to be a proximate result of this industrial accident; but he judged that her back injury caused a 40% permanent industrial disability to the body as a whole and rendered judgment accordingly.

Ms. Ferrell never returned to work and testified that she was unable to resume her prior employment. The employer contended that her job was available to her.

#### ISSUES PRESENTED

1. Whether or not there was evidence to support the award of permanent impairment.

2. Whether or not the industrial disability award exceeded the two and one-half times the medical anatomical impairment proof in light of the fact that the employee's job remained available.

3. Whether or not the 40% industrial disability award is excessive.

#### APPLICABLE LAW

Our review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings below, unless the preponderance of the evidence is otherwise, T.C.A. Sec. 50-6-225 (e)(2) (1991). This standard of review requires this court to weigh in depth the factual findings and conclusions of the trial court. Humphrey v. David Witherspoons, Inc., 734 S.W. 2d 315 (Tenn. 1987).

The extent of vocational disability is a question of fact to be determined from all of the evidence, including lay and expert testimony. Worthington v. Modine Mfg. Co., 798 S.W. 2d 232, 234 (Tenn. 1990).

#### ANALYSIS AND CONCLUSIONS

The treating physician set the anatomical impairment at 15% to the body as a whole, and testified that he did not think that the employee was able to return to factory work. The neurologists' testimony negated nerve damage, but did not dispute the fact of injury. The employee's testimony regarding her current disability is credible. We affirm the assessment of 40% whole body disability adjudged by the trial judge.

The cap set by T.C.A. Sec. 50-6-241 (a)(1) does not apply. The employee never returned to work; and did not unreasonably refuse to do so, as there was ample evidence that she was physically unable to do so.

We affirm the judgment of the trial court, and assess costs on appeal to the appellants. The case is remanded to the trial court for calculation of interest, if any, due upon the judgment; and for enforcement of the judgment.

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WILLIAM S. RUSSELL, RETIRED JUDGE

CONCUR:

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ADOLPHO A. BIRCH, JR.  
CHIEF JUSTICE, SUPREME COURT

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JOHN K. BYERS, SENIOR JUDGE

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 ) No. 4480  
Plaintiff/Appellee, )  
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VS. ) Hon. Jeffrey F. Stewart,  
 ) Chancellor  
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ROBINSON MANUFACTURING ) No. 01-S-01-9512-CH-00224  
COMPANY and ARGONAUT )  
INSURANCE COMPANY, )  
 )  
 )  
Defendants/Appellants. ) Affirmed.

JUDGMENT ORDER

This case is before the Court upon a motion for review pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the motion for review is not well-taken and should be denied; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by the defendants/appellants and their sureties, for which execution may issue if necessary.

IT IS SO ORDERED this 25th day of November, 1996.

PER CURIAM

Birch, C.J., Not Participating