

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

**FILED**

June 29, 1998

Cecil Crowson, Jr.  
Appellate Court Clerk

DORIS BARNES,	)	
	)	
Plaintiff/Appellee	)	CARROLL CIRCUIT
	)	
v.	)	NO. 02S01-9710-CV-00087
	)	
CIGNA INSURANCE COMPANY,	)	HON. JULIAN P. GUINN,
	)	JUDGE
Defendant/Appellant	)	

**For the Appellant:**

James Belew Webb  
Jason C. Scott  
1066 S. Main Street  
P.O. Box 679  
Milan, TN 38358

**For the Appellee:**

Ricky L. Boren  
Hill & Boren, P.C.  
1269 N. Highland Avenue  
P.O. Box 3539  
Jackson, TN 38303-3539

**MEMORANDUM OPINION**

**Members of Panel:**

Justice Janice Holder  
Senior Judge John K. Byers  
Special Judge J. Steven Stafford

AFFIRMED

BYERS, Senior Judge

## **OPINION**

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.

Review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2); *Stone v. City of McMinnville*, 896 S.W.2d 548, 550 (Tenn. 1995). The application of this standard requires this Court to weigh in more depth the factual findings and conclusions of the trial court in a workers' compensation case. See *Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988).

The trial court held the plaintiff had sustained a 40 percent permanent partial disability to the right arm<sup>1</sup> and a 30 percent permanent partial disability to the left arm as a result of a gradually occurring injury which arose in the course of and in the scope of her employment with Martin Marietta Ordnance Systems, Inc. ("Martin Marietta").

The defendant, Cigna Insurance Company, appeals and raises the following issue about the award to the left arm:

"1) Whether the trial court's award of 30% permanent partial disability to the left upper extremity was contrary to the weight of the evidence given the 6.35% anatomical impairment awarded by the evaluating physician and the zero percent (0%) anatomical impairment awarded by the treating physician?"

We find the award of 30 percent to the plaintiff's left arm was not contrary to the weight of the evidence and affirm the judgment of the trial court.

## **FACTS**

The plaintiff, age 65 at the time of trial, testified she had either a ninth or tenth grade education. Her work history includes farming and working in a sewing machine factory. She has never done any type of office work. In 1967, the plaintiff began working for Milan Arsenal, which later became Martin Marietta. With the exception of a two year lay off period, she worked there until she retired in 1997.

---

<sup>1</sup> The medical profession refers to an arm as an upper extremity. The statute refers to an arm as a scheduled member.

The plaintiff's job consisted of production work and machine operation in the x-ray department. In the x-ray department job which lasted for three years, she pushed buttons and turned a knob. By September 1995, the plaintiff had developed problems with both of her arms. She testified her arms would go to sleep at night and hurt during the day. She also testified her thumbs would hurt.

Beginning October 1995, the plaintiff saw a series of doctors for these problems and was diagnosed with mild bilateral carpal tunnel syndrome and arthritis. On April 23, 1996, she underwent a carpal tunnel release surgery on her right hand and a CMC joint replacement on her right thumb. She testified she elected not to have joint replacement on her left hand because the surgery on her right hand did not seem successful enough.

On July 8, 1996, the plaintiff returned to work "doing rejects," a job that required her to walk as much as it required her to use her hands. She said this job was much easier than the jobs she had performed in the past. On March 31, 1997, the plaintiff retired because of the trouble she was having with her hands. She testified she did not feel able to work but said she would have continued to work if her hands had not bothered her. The plaintiff testified she cannot unscrew jars, has difficulty getting tops off of child-proof medicine bottles, and cannot use a needle to sew. She testified she would not be able to return to any of her previous jobs because of the problems with her hands.

### **MEDICAL EVIDENCE**

\_\_\_\_\_ Dr. L. David Johnson, a board certified orthopedic surgeon, first saw the plaintiff on October 18, 1995. He observed she had pain with manipulation of the carpometacarpal ("CMC") joint of the thumbs, positive Tinel's signs, no thenar atrophy, and she was neurovascularly intact. Dr. Johnson's impression was that she had CMC arthritis and carpal tunnel syndrome, both bilaterally. He placed her in thumb wrist splints and referred her to Dr. Bingham and Dr. Bourland.

Dr. Ronald C. Bingham is board certified in physical medicine and rehabilitation, but he limits his practice to electromyography. On October 23, 1995, he conducted ELG nerve conduction studies on the plaintiff and they revealed mild median neuropathy in both wrists though the right wrist was worse. Dr. Bingham saw

the plaintiff on March 14, 1996 and found the medial neuropathy was present in both wrists with no significant change.

\_\_\_\_\_ Dr. William Bourland is an orthopedist with a subspecialty in hand surgery. On April 1, 1996, he diagnosed the plaintiff with mild bilateral carpal tunnel syndrome, bilateral osteoarthritis, and CMC joint of the thumbs bilaterally. On April 23, 1996, Dr. Bourland performed an endoscopic carpal tunnel release surgery and a CMC joint replacement on her right hand. On May 20, 1996, he found the plaintiff to have good early motion following surgery and allowed her to resume normal work activities. On September 23, 1996, he found her to have excellent flexion and extension of the fingers and determined she had reached maximum medical improvement.

In a letter dated April 23, 1997, Dr. Bourland opined the plaintiff did not retain any permanent impairment secondary to the right carpal tunnel syndrome but did retain a 13 percent permanent impairment to the right upper extremity secondary to the CMC joint replacement in accordance with the *AMA Guides*. Further, he opined she had no impairment to the left upper extremity with regard to carpal tunnel syndrome because she was not symptomatic and surgery was not required.

\_\_\_\_\_ Dr. Joseph C. Boals, a board certified orthopedic surgeon, saw the plaintiff on January 30, 1997 for an independent medical evaluation at the request of her counsel. He found her to have reduced grip strength in her right hand secondary to the carpal tunnel syndrome and residuals from the joint replacement of her right thumb. Dr. Boals opined she sustained a 22 percent impairment to the right upper extremity based on the joint replacement and carpal tunnel syndrome. Regarding the left hand, he found ongoing degenerative arthritis in the CMC joint of the left thumb and carpal tunnel syndrome in the left hand, which had improved and was not presently symptomatic. Dr. Boals opined she had a five percent anatomical impairment based on the CMC joint of the left thumb, which would equate to 1.35 percent impairment to the left upper extremity.

#### **ANALYSIS**

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).

Our review of the expert testimony reveals that Dr. Bourland found the plaintiff had no impairment to the left upper extremity while Dr. Boals found she had a five percent anatomical impairment to the CMC joint, which would equate to 1.35 percent impairment to the left upper extremity. We note the trial court has the discretion to accept the opinion of one medical expert over another medical expert. *Johnson v. Midwesco, Inc.*, 801 S.W.2d 804, 806 (Tenn. 1990).

Regarding the lay testimony, the plaintiff testified she has significant problems with both of her hands and thumbs, stating she retired because of the condition of her hands. In this case, as in all workers' compensation cases, the claimant's own assessment of her physical condition and resulting disabilities is competent testimony and cannot be disregarded. *Tom Still Transfer Co. v. Way*, 482 S.W.2d 775, 777 (Tenn. 1972).

In making determinations of vocational disability, the court shall consider all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's disabled condition. Tenn. Code Ann. § 50-6-241(a)(1); *Roberson v. Loretto Casket Co.*, 722 S.W.2d 380, 384 (Tenn. 1986). Our review of these relevant factors shows the plaintiff is 65 years old, has a limited education, and has only worked in jobs that require the use of her hands.

Finally, the trial judge noted the plaintiff "impresses the Court with her veracity and credibility." Where the trial judge has made a determination based upon the testimony of witnesses whom he has seen and heard, great deference must be given to that finding in determining whether the evidence preponderates against the trial judge's determination. *See Humphrey v. David Witherspoon, Inc.*, 734 S.W.2d 315 (Tenn. 1987).

We find the evidence does not preponderate against the finding of the trial court that the plaintiff is entitled to the award of 30 percent permanent partial disability to the left arm.

The judgment of the trial court is affirmed and the cost of this appeal is taxed to the defendant.

---

John K. Byers, Senior Judge

CONCUR:

---

Janice Holder, Justice

---

J. Steven Stafford, Special Judge

IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

DORIS BARNES,	)	CARROLL CIRCUIT
	)	NO. 3450
Plaintiff/Appellee,	)	
	)	Hon. Julian P. Guinn,
vs.	)	Judge
	)	
CIGNA INSURANCE COMPANY,	)	NO. 02S01-9710-CV-00087
	)	
Defendant/Appellant.	)	AFFIRMED.

<p><b>FILED</b></p> <p><b>June 29, 1998</b></p> <p><b>Cecil Crowson, Jr.</b> Appellate Court Clerk</p>
--

JUDGMENT ORDER

This case is before the Court upon 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 Memorandum Opinion of the Panel should be accepted and approved; 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 Appellant, and surety, for which execution may issue if necessary.

IT IS SO ORDERED this 29th day of June, 1998.

PER CURIAM

(Holder, J., not participating)

