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

FILED

May 8, 1998

Cecil W. Crowson
Appellate Court Clerk

SHERRY MAXWELL,	)	
	)	
Plaintiff/Appellee	)	RUTHERFORD CHANCERY
	)	
v.	)	NO. 01S01-9711-CH-00241
	)	
NISSAN MOTOR MFG. CORPORATION and ROYAL INSURANCE COMPANY	)	HON. DON R. ASH, CHANCELLOR
	)	
	)	
Defendants/Appellants	)	

For the Appellant:

Larry G. Trail
107 N. Maple Street
Murfreesboro, TN 37130

For the Appellee:

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Terry A. Fann
WALDRON & FANN
202 West Main Street
Murfreesboro, TN 37130

M E M O R A N D U M O P I N I O N

Members of Panel:

Justice Janice M. Holder
Senior Judge William H. Inman
Special Judge William S. Russell

AFFIRMED

INMAN, 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.

This is a bilateral carpal tunnel syndrome case involving a 34-year-old woman whose impairment to each arm was judicially found to be 33 percent. Her condition gradually evolved, and she was initially treated by Dr. Thomas Tompkins, an orthopedic specialist, on August 21, 1995. Six weeks later he performed the usual surgical releases, which were successful. Dr. Tompkins last saw the plaintiff on January 12, 1996 when he released her to resume employment but without repetitive forceful gripping. Basing his assessment on the *Guidelines,* Dr. Tompkins testified that she had five percent impairment to each arm. In February 1996, Dr. David Gaw, an orthopedist, was employed by the plaintiff's counsel to perform an IME. He testified that the plaintiff had a ten percent impairment to each arm.

Because the plaintiff returned to work in January 1996 and from that day forward "has not missed work," "has not complained to anyone about your job," "has not complained to the doctors or anyone at Nissan about your hands," "has gotten good work reviews since then," the employer complains that the assessment of a 33 percent impairment to each arm is excessive, arguing that if this finding is correct the plaintiff is *ipso facto* unable to perform her job, i.e., that the anomaly is apparent.

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 finding, 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 inferred thrust of the appellant's argument respecting our

duty to conduct an in depth review of the judgment, *see: Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988), would essentially require that we substitute our judgment for that of the trial judge, which is inappropriate under the review standard. The award is obviously generous, in light of the testimony of the plaintiff, but the fact of anatomical impairment is not disputed, and we cannot find that the assessment of the trial judge is contrary to the preponderance of the evidence.

The judgment is affirmed at the costs of the appellant.

_____
William H. Inman, Senior Judge

CONCUR:

_____
Janice M. Holder, Justice

_____
William S. Russell, Special Judge

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SHERRY MAXWELL,	*}*	*RUTHERFORD CHANCERY*
	}	*No. 96WC-689 Below*
Plaintiff/Appellee	*}*	
	}	*Hon. Don R. Ash,*
vs.	*}*	*Judge*
	}	
NISSAN MOTOR MFG. CORP. and	*}*	
ROYAL INSURANCE COMPANY,	*}*	*No. 01S01-9711-CH-00241*
	}	
Defendants/Appellants	*}*	*AFFIRMED.*

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 Defendants/Appellants and Surety, for which execution may issue if necessary.

IT IS SO ORDERED on May 8, 1998.

PER CURIAM