

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT JACKSON  
(April 13, 1998, Session)

**FILED**

June 29, 1998

Cecil Crowson, Jr.  
Appellate Court Clerk

SAMMY MOORE,

Plaintiff/Appellee,

v.

A. O. SMITH,

Defendant/Appellant.

GIBSON COUNTY CHANCERY

NO. 02S01-9709-CH-00082

HON. GEORGE R. ELLIS,  
CHANCELLOR

**For the Appellee:**

Edward L. Martindale, Jr.  
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**For the Appellant:**

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P.O. Box 1147  
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**MEMORANDUM OPINION**

**MEMBERS OF PANEL:**

JUSTICE JANICE M. HOLDER  
SENIOR JUDGE JOHN K. BYERS  
SPECIAL JUDGE J. STEVEN STAFFORD

AFFIRMED, AS MODIFIED

STAFFORD, SPECIAL JUDGE

**OPINION**

This worker's 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) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

The only issue for the Panel's consideration is whether a preponderance of the evidence supports the trial court's award of 48% permanent partial disability to each upper extremity. We find that it does and affirm the trial court's judgment as modified.

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 worker's compensation case. *See Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988). However, considerable deference must be given to the trial judge, who has seen and heard witnesses especially where issues of credibility and weight of oral testimony are involved. *Jones v. Hartford Accident and Indemnity Company*, 811 S.W.2d 516 (Tenn. 1991).

## **FACTS**

The plaintiff is a 42 year old man. He completed the ninth grade and then quit school to begin working. He obtained his GED in 1984. He has no other formal vocational or educational training. His work history consists of employment as an automobile repairman, general maintenance worker, log scaler, factory worker, warehouse supervisor, construction worker, and welder.

## **MEDICAL EVIDENCE**

At the time of the injury, the plaintiff was employed by the defendant as a welder. He had experienced wrist pain for several years and was first seen by Dr. Joe Rowland. He continued to have problems and was seen by Dr. Michael Cobb on September 16, 1996. Dr. Cobb testified that the plaintiff complained of pain in both wrists with the right wrist being worse than the left. He recommended that the plaintiff be tested electro-diagnostically. This test was performed by Dr. Ron Bingham and revealed that the plaintiff was suffering from severe carpal tunnel syndrome.

On October 7, 1996, Dr. Cobb performed carpal tunnel surgery on both of the plaintiff's hands. Due to the surgery, the plaintiff was absent from work for two days. He was placed on light duty until November 18, 1996, when Dr. Cobb returned him to regular duty.

Subsequent to the surgery, the plaintiff complained of pain and continued problems with his hands. Dr. Cobb was unable to find any objective basis for the complaints and believed that the plaintiff had a poor attitude and was negative about his recovery. Due to the plaintiff's complaints, Dr. Cobb elected to have a post-operative nerve conduction study performed by Dr. Bingham on January 8, 1997. This test revealed that the plaintiff still maintained a moderate neuropathy with his hands. Dr. Bingham performed a third nerve conduction study on the plaintiff on April 9, 1997. This test also revealed that the plaintiff had moderate neuropathy in both wrists.

Dr. Cobb testified that based on the post-operative nerve conduction studies, the plaintiff had suffered permanent nerve damage in both wrists. He also stated that but for the positive nerve conduction studies, he would have given the plaintiff a zero impairment rating. Dr. Cobb opined that the plaintiff had suffered a 5% permanent partial impairment to each upper extremity based upon the American Medical Association guidelines. He based his assessment on his physical findings, continued complaints of pain, and the electro-diagnostic findings. He additionally based his opinion on an article appearing in an American Medical Association newsletter entitled "*Carpal Tunnel Syndrome: Challenges in Impairment Ratings.*" Dr. Cobb placed no restrictions on the plaintiff.

On January 27, 1997, Dr. Joseph Boals saw the plaintiff for an independent medical evaluation. Dr. Boals performed a physical examination on the plaintiff and reviewed the plaintiff's medical records including the nerve conduction studies performed by Dr. Bingham. Dr. Boals stated that the plaintiff's hands were tender and that he was experiencing pain. He testified that the plaintiff would have continuing difficulty if he wanted to continue to work at the job he was doing and that it was just a matter of time before he would be required to quit. He found the plaintiff to be very cooperative and honest in all his efforts. Dr. Boals opined that the plaintiff had experienced a 20% permanent partial impairment to each upper extremity. He recommended that the plaintiff be retrained to get out of using his hands for heavy gripping and repetitive work and to go to a more light to sedentary type of job wherein only intermittent lifting is required with no severe gripping. He stated that the plaintiff was a hand cripple waiting to happen.

The plaintiff testified that his hands continue to hurt him. He has now transferred from his welding job to a side rail job. He believed that this job would be easier for him to do but it has not been so. Additionally, he is earning less money at his new job than he was as a welder. He uses his hands in the same way on his new job as he did when he was a welder. He is required to grip and twist in his new job and he continues to have the same pain as he did when he was welding.

The plaintiff is unable to open fruit jars or Coke tops due to the problem with his hands. In order to relieve the pain, he is required to take *Alleve*, *Migranex*, or *Ibuprofen* when he works. The plaintiff believes that his hands are worse since the surgery. He testified that his hands hurt and throb even when he is not at work. The plaintiff has not missed any work because of the problem with his hands. He testified that he just bears the pain and goes on.

### ANALYSIS

The defendant asserts that the trial court erred in determining the plaintiff's permanent partial disability. Apparently, the thrust of the defendant's argument is that the trial court should have given greater weight to the testimony of Dr. Cobb rather than the testimony of Dr. Boals. The basis for this assertion is that Dr. Cobb was the treating physician and that he utilized an article entitled "*Carpal Tunnel Syndrome: Challenges in Impairment Ratings*" appearing in an American Medical Association newsletter in forming his opinion. Dr. Boals did not utilize this article in forming his opinion.

When determining an employee's medical impairment, a physician is required to use either the *American Medical Association Guides to the Evaluation of Permanent Impairment*, the *Manual for Orthopaedic Surgeons in Evaluating Permanent Physical Impairment* or in cases not covered by either of these, an impairment rating by any appropriate method used and accepted by the medical community. See T.C.A. § 50-6-241. In this case, both physicians testified that the medical impairment ratings they gave the plaintiff were based on the *American Medical Association Guides to the Evaluation of Permanent Impairment*. The defendant has cited us to no authority that would require a physician to consider anything but the above cited guidelines when determining medical impairment. Therefore, the defendant's contention that Dr. Boals' opinion on medical impairment should be given less weight than the opinion of Dr. Cobb because he did not utilize the newsletter article in forming his opinion is without merit.

Both Dr. Cobb and Dr. Boals testified that their ratings were based on the *American Medical Association Guides to the Evaluation of Permanent Impairment*. Dr. Cobb testified that the plaintiff suffered a 5% permanent partial impairment to each upper extremity. Dr. Boals testified that the plaintiff suffered a 20% permanent partial impairment to each upper extremity.

"When medical testimony differs, it is within the discretion of the trial judge to determine which expert testimony to accept." *Kellerman v. Food Lion, Inc.*, 929 S.W.2d 333,335 (Tenn. 1996).

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 (Tenn. 1990).

In this case, there is a conflict of medical testimony as to the degree of permanent impairment assessed by the treating physician and the evaluating physician.

“While a treating physician’s testimony is entitled to considerable weight, no rule of law requires the trial court to accept the testimony of the treating physician over any other conflicting medical testimony.” *Ring v. CKR Industries, Inc.*, 23 TAM 4-1, No. 01301-9702-CV-00031 (Tenn. 1997).

In *Worthington v. Modine Mfg. Co.*, 798 S.W.2d 233, 234 (Tenn. 1990), Chief Justice Anderson writing for the Supreme Court stated that:

“The extent of vocational disability "does not definitively depend on the medical proof regarding a percentage of anatomical disability." Instead, "the extent of a vocational disability is a question of fact for the trial court to determine from all the evidence, including lay and expert testimony . . . . There is no requirement that the trial court fix permanent partial disability solely with reference to expert testimony. Further, the trial court must determine the extent of unscheduled vocational disability by considering many factors, including job skills, education, age, training, duration of disabilities, anatomical disabilities established by medical experts, and local job opportunities for the disabled.” (Citations omitted.)

In making his ruling, the trial judge discussed the medical testimony given by both Dr. Cobb and Dr. Boals. It is obvious that he considered the testimony of both physicians as well as the plaintiff’s testimony in determining the plaintiff’s permanent partial disability. After a thorough review of the record, we are unable to say that the evidence preponderates against the trial court’s award of 48% permanent partial disability to each upper extremity.

Both Dr. Cobb and Dr. Boals testified that the plaintiff suffered a medical impairment to the upper extremities. The trial judge found that the plaintiff had suffered a permanent partial disability to both the left and right upper extremities. This finding is reflected in the final judgment entered by the trial court. In *Continental Ins. Companies v. Pruitt*, 541 S.W.2d 594, 597 (Tenn. 1976), the Supreme Court stated that:

“. . . the fact remains that an "upper extremity" is not a scheduled member. This extremity necessarily includes the fingers, the thumb, the hand, and the arm - all scheduled members, irrespective of their being included in the term "extremity" or "upper extremity.”

After reviewing the medical testimony and the plaintiff’s testimony, the Panel finds that the trial judge intended the award to be to both arms as opposed to both upper extremities. See T.C.A. § 50-6-207(3)(w).

The judgment of the trial court is modified to show the award of benefits to the right and left arms as opposed to the right and left upper extremities. In all other respects, the judgment of the trial court is affirmed. The appeal is dismissed at the defendant's cost.

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**J. STEVEN STAFFORD, SPECIAL JUDGE**

**CONCUR:**

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**JANICE M. HOLDER, JUSTICE**

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**JOHN K. BYERS, SENIOR JUDGE**

IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

|                      |   |                         |
|----------------------|---|-------------------------|
| SAMMY MOORE,         | ) | GIBSON CHANCERY         |
|                      | ) | NO. 12954               |
| Plaintiff/Appellee,  | ) |                         |
|                      | ) | Hon. George R. Ellis,   |
| vs.                  | ) | Chancellor              |
|                      | ) |                         |
| A. O. SMITH,         | ) | NO. 02S01-9709-CH-00082 |
|                      | ) |                         |
| Defendant/Appellant. | ) | AFFIRMED, AS MODIFIED   |

**FILED**  
**June 29, 1998**  
**Cecil Crowson, Jr.**  
**Appellate Court Clerk**

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)

ENDFIELD