

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

(June 29, 1998 Session)

**FILED**

**October 26, 1998**

**Cecil W. Crowson  
Appellate Court Clerk**

<p>LINDA BUTLER,</p> <p style="padding-left: 40px;">Plaintiff/Appellee</p> <p>v.</p> <p>LUMBERMEN'S MUTUAL CASUALTY INSURANCE CO.,</p> <p style="padding-left: 40px;">Defendant/Appellant</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>FRANKLIN CHANCERY</p> <p>NO. 01S01-9709-CH-00192</p> <p>HON. JEFFREY F. STEWART, CHANCELLOR</p>
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**For the Appellant:**

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**For the Appellee:**

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**MEMORANDUM OPINION**

**Members of Panel:**

Justice Frank F. Drowota, III  
Senior Judge William H. Inman  
Special Judge Joe C. Loser, Jr.

AFFIRMED

INMAN, Senior Judge

## MEMORANDUM 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.

The Chancellor found that the plaintiff sustained an injury to her left foot which resulted in a 30 percent vocational impairment. This finding is challenged on appeal. 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 plaintiff is 59 years old. She finished the 11th grade and has extensive industrial training. She was employed by Lanier Clothes, a textile manufacturer in Franklin County, for 22 years. Her duties required a substantial amount of walking. In April 1995, she developed a problem with her left foot, caused by a calcaneal spur. Her attending physician, Dr. Richard Bagby, prescribed custom molded inserts for her shoes, with anti-inflammatory medication. The footwear was modified from time to time.

She never missed work at Lanier, which closed its factory in October, 1995. About ten weeks later, the plaintiff was employed by Wal-Mart, where she functions satisfactorily so long as she utilizes the orthotic inserts.

Dr. Bagby assessed her impairment at five percent to her left foot. He imposed no restrictions but thought she could experience some difficulty if she stood on hard surfaces all day.

The employer argues that the plaintiff is employed full-time, that she performs her work satisfactorily, and has no complaints so long as she wears the orthotic inserts. For these reasons the employer says there is no justification for a finding of 30 percent vocational impairment to her foot.

The Chancellor took into account the plaintiff's education, background and work history, finding that without the orthotic inserts she could not work without pain, or perhaps could not work at all. We cannot find that the evidence preponderates against these findings. *See, Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452 (Tenn. 1988). The judgment is affirmed at the cost of the appellant and the case is remanded.

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William H. Inman, Senior Judge

CONCUR:

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Frank F. Drowota, III, Justice

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Joe C. Loser, Jr., Special Judge

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LINDA BUTLER	}	FRANKLIN COUNTY
	}	No. Below 17,815
Plaintiff/Appellee	}	
	}	Hon. JEFFREY F. STEWART
vs.	}	Chancellor
	}	
	}	No. 01S01-9709-CH-00192
LUMBERMEN'S MUTUAL	}	
CASUALTY INSURANCE CO.	}	
	}	
Defendant/Appellant	}	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 Defendant/Appellant and Surety, for which execution may issue if necessary.*

*IT IS SO ORDERED on October 26, 1998.*

PER CURIAM