

IN THE SUPREME OF TENNESSEE

AT NASHVILLE

<i>RITA L. ENGLAND</i>	}	<i>DAVIDSON CHANCERY</i>
	}	<i>No. Below 97-838-I</i>
<i>Plaintiff/Appellant</i>	}	September 3, 1999
	}	<i>Hon. Irvin H. Kilcrease</i>
<i>vs.</i>	}	Cecil Crowson, Jr.
	}	Appellate Court Clerk
	}	<i>No. 01S01-9804-CH-00082</i>
<i>CIGNA INSURANCE COMPANY</i>	}	
	}	
<i>Defendant/Appellee</i>	}	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 plaintiff/appellant, for which execution may issue if necessary.

IT IS SO ORDERED on September 3, 1999.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE
(March 31, 1999 Session)

FILED
September 3, 1999
Cecil Crowson, Jr.
Appellate Court Clerk

RITA L. ENGLAND,)	DAVIDSON CHANCERY
)	
Plaintiff-Appellant,)	Hon. Irvin H. Kilcrease,
)	Chancellor.
v.)	
)	No. 01S01-9804-CH-00082
CIGNA INSURANCE COMPANY,)	
)	
Defendant-Appellee.)	

For Appellant:

Andrew J. Blackwell, III
William L. Underhill
Madison, Tennessee

For Appellee:

Kitty Boyte
Gracey, Ruth, Howard, Tate &
Sowell
Nashville, Tennessee

MEMORANDUM OPINION

Members of Panel:

Frank F. Drowota, III, Associate Justice
Thomas W. Brothers, Special Judge
Joe C. Loser, Jr., Special Judge

AFFIRMED

Loser, Judge

MEMORANDUM OPINION

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. In this appeal, the employee insists the award of permanent partial disability benefits is inadequate and that she is permanently and totally disabled. As discussed below, the panel has concluded the judgment should be affirmed.

The employee or claimant, Rita L. England, sued her employer's insurer for workers' compensation benefits. After a trial of all issues raised by the pleadings, the trial court awarded, *inter alia*, permanent partial disability benefits based on thirty percent to the left arm. Appellate review is *de novo* upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2).

The claimant is fifty years old with a high school education. She worked in production for OMC Fishing Boat Group for approximately thirteen years. In 1995, she began experiencing numbness in her hands and arms from repetitive use at work. Carpal tunnel releases were done on both arms by Dr. Milek, who released her in December of 1995 to return to work, but restricted her from lifting more than fifteen pounds and from other than light repetitive work. The doctor estimated her permanent impairment at five percent to the left arm and ten percent to the right arm. Her workers' compensation claim was settled and she returned to work for OMC.

She again developed pain and returned to Dr. Milek, who, in May of 1997, performed a left cubital tunnel release and assigned ten percent permanent impairment to both arms and restricted her from doing any repetitive work. He testified that the additional work performed after the first surgery did not aggravate or worsen the preexisting condition. She was finally terminated by the employer because they had no work for her within her medical restrictions. A vocational expert estimated her disability at one hundred percent, but conceded she could work at some jobs and that her ability to work is largely controlled by her willingness to exert effort. She was not working at the time of the trial.

In determining the extent of an injured worker's disability, trial courts are to consider all pertinent factors, including lay and expert testimony, the employee's age, education, skills and training, local job opportunities for the disabled, and capacity to work at types of employment available in the claimant's disabled condition. Tenn. Code Ann. § 50-6-241(a)(1). The extent of vocational disability is a question of fact. Seals v. England/Corsair Upholstery Mfg. Co., Inc., 984 S.W.2d 912, 915 (Tenn. 1999). Where the trial judge has seen and heard the witnesses, especially if issues of credibility and weight to be given oral testimony are involved, considerable deference must be accorded those circumstances on review. Collins v. Howmet Corp., 970 S.W.2d 941 (Tenn. 1998).

For those reasons, we cannot say the evidence preponderates against the

findings of the chancellor. The judgment of the trial court is affirmed. Costs on appeal are taxed to the plaintiff-appellant.

Joe C. Loser, Jr., Special Judge

CONCUR:

Frank F. Drowota, III, Associate Justice

Thomas W. Brothers, Special Judge