

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

November 28, 2016 Session

**KELCEY WILLIAMS v. AJAX TURNER COMPANY**

**Appeal from the Chancery Court for Rutherford County  
No. 13-CV-1517    Howard W. Wilson, Chancellor**

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**No. M2016-00638-SC-R3-WC – Mailed February 14, 2017  
April 12, 2017**

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On August 2, 2012, an employee sustained a compensable injury when a co-worker ran over the back of his left foot with a forklift. The employee received temporary disability benefits and medical benefits from his employer. The employee's treating physician assigned a 20% permanent anatomical impairment to his left leg as a result of the injury. The employer sought a second opinion, and after performing a medical records review, the employer's physician opined that employee had sustained only 5% permanent impairment to his left leg due to the injury. Based on this second opinion, the employer requested an evaluation through the medical impairment registry ("MIR") program. After examining the employee and reviewing his medical records, the MIR physician also opined that the employee had sustained 5% permanent impairment to his left leg. However, the trial court found the employee had rebutted by clear and convincing evidence the presumption of correctness statutorily attached to the MIR physician's rating, applied a multiplier of four, and awarded the employee 80% permanent partial disability ("PPD") to the left leg. The employer has appealed, contending the trial court erred in finding that the employee had rebutted the MIR physician's impairment rating by clear and convincing evidence and in applying a multiplier of four. The employee, in contrast, contends that the trial court erred in considering the MIR physician's opinion at all. This appeal has been referred to the Special Workers' Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law pursuant to Tennessee Supreme Court Rule 51. We reverse and modify the trial court's judgment and remand to the trial court for entry of an order consistent with this decision.

**Tenn. Code Ann. § 50-6-225(e)(1) (2014) Appeal as of Right; Judgment of the  
Chancery Court Reversed, Modified, and Remanded**

DON R. ASH, SR. J., delivered the opinion of the court, in which CORNELIA A. CLARK, J., and ROBERT E. LEE DAVIES, SR. J., joined.

Jeffery G. Foster and Benjamin J. Conley, Jackson, Tennessee, for the appellant, Ajax Turner Company, Inc.

Jeffrey P. Boyd, Jackson, Tennessee, for the appellee, Kelcey Williams.

## OPINION

### Factual and Procedural Background

In November 2012, thirty-three-year-old Kelcey Williams (“Employee”) was working at Ajax Turner Company (“Employer”) when a co-worker drove a forklift truck over his foot. Employee was taken immediately to the emergency department of a nearby hospital where Dr. William Mayfield, an orthopaedic surgeon, treated him. Dr. Mayfield described Employee’s injury as a severe laceration, extending from the point where his Achilles tendon attached to his heel and around both sides of the heel. The skin and fat pad on Employee’s left heel had pulled away from the heel bone. According to Dr. Mayfield the “degloving injury”<sup>1</sup> posed the risk of several complications, including nerve damage, bone infection, and failure of the skin to heal.

Dr. Mayfield surgically repaired the injury by cleaning the laceration and reattaching the skin and fat pad to the heel. Thereafter, Employee experienced some wound healing problems, which required additional treatment. Dr. Mayfield explained the injury location on the foot, which has less blood supply, slowed healing. Employee experienced pain, swelling, and stiffness throughout his treatment and had difficulty walking or standing with his left foot flat, resulting in Dr. Mayfield prescribing an orthotic shoe to aid in walking.

Dr. Mayfield last examined Employee on June 11, 2013. He agreed that Employee’s “range of motion is improving but remains somewhat decreased.” Dr. Mayfield testified that Employee had sustained injury to the sural and saphenous nerves in the foot. Applying Table 16-12, titled Peripheral Nerve Impairments in the AMA Guides, Sixth Edition (“Guides”), he assigned 3% impairment to the left leg for each nerve injury. Due to residual stiffness in Employee’s foot and a fifteen degree flexion

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<sup>1</sup> Dr. Mayfield later stated the terms “degloving incident,” “severe laceration,” and “crush injury” could be used to describe Employee’s injury, noting “[i]t was a very complex injury [that] doesn’t fit into an easy definition.”

contracture, Dr. Mayfield assigned an additional 15% impairment to the leg.<sup>2</sup> Using the range-of-motion method, Dr. Mayfield assigned Employee 21%<sup>3</sup> impairment to his left leg due to his injury. Dr. Mayfield testified that Employee was capable of moderate lifting and carrying, but only limited standing and walking. He referred Employee to a pain management provider for additional treatment.

Results Physiotherapy Centers performed a Functional Capacity Evaluation (“FCE”) on June 18, 2013. The FCE revealed that Employee remained capable of work in the medium exertion category, except for pushing, where he was capable of heavy work.

Dissatisfied with Dr. Mayfield’s impairment rating, Employer sought a second opinion. At Employer’s request, Dr. David Gaw, an orthopaedic surgeon, conducted a medical records review. Dr. Gaw testified that he has presented many seminars regarding the Guides to both doctors and attorneys, has participated in the MIR program since its inception in Tennessee, and has been board certified by the American Academy of Disability Evaluating Physicians for more than twenty years. For the ten years prior to his deposition, Dr. Gaw’s practice had consisted primarily of conducting IMEs and medical records reviews. On June 28, 2013, Dr. Gaw reviewed Employee’s medical records and issued a written report.

Dr. Gaw testified that the Guides direct physicians to use the diagnosis-based method when calculating impairment ratings for lower extremity injuries. Dr. Gaw acknowledged the Guides indicate “in certain conditions such as tendon injuries, burns, and severe scarring, or crush injuries to the joint that it would be appropriate . . . to use [the] range[-]of[-] motion [method].” However, because Dr. Gaw concluded that Employee’s injury was not one that justified use of the range-of-motion method, he applied the diagnosis-based method to calculate Employee’s impairment—specifically, he used the “soft tissue injury due to a contusion or crush injury” diagnosis. Dr. Gaw determined that Employee had a “plus one” modifier, resulting in 2% impairment of the lower extremity. He assigned an additional 3% impairment for the documented injury to Employee’s sural nerve. Dr. Gaw declined to assign additional impairment for injury to Employee’s saphenous nerve because Dr. Mayfield had not mentioned such an injury in his notes until his final evaluation on June 11, 2013.<sup>4</sup> Dr. Gaw also pointed out that Dr.

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<sup>2</sup> Dr. Mayfield used Table 16-22, “ankle motion impairments,” located at page 549 of the Guides.

<sup>3</sup> The trial court found Dr. Mayfield incorrectly applied the combined values chart of the Sixth Edition of the AMA Guides to the Evaluation of Permanent (“Guides”), and the correct impairment was 20% to the left leg.

<sup>4</sup> The MIR physician also did not find a saphenous nerve injury and, therefore, also did not provide an impairment rating for such an injury.

Mayfield's range-of-motion measurements conflicted with the measurements taken by Employee's treating physical therapists.

During cross-examination, Dr. Gaw confirmed that he had not examined Employee. He disagreed that Employee's "entire heel had been knocked off by the forklift incident," pointing to a photograph in the medical records and Dr. Mayfield's operative note indicating that "the soft tissue was loose, but it certainly still covered the heel." Consistent with Dr. Mayfield's testimony, Dr. Gaw stated that Employee's injury was not in the ankle joint, but behind it. Dr. Gaw did not believe the surgical scar at the back of Employee's foot was causing limited dorsiflexion. However, Dr. Gaw agreed that, *if* the range-of-motion method were applicable to Employee's injury, Dr. Mayfield had correctly applied it. However, Dr. Gaw reiterated his opinion that the range-of-motion method was not applicable or appropriate for assigning impairment in this case because the Guides permit use of the range-of-motion method only for a direct crush injury to the ankle joint, which was not present here.

Due to the conflicting opinions offered by Drs. Gaw and Mayfield, Employer sought an MIR evaluation.<sup>5</sup> Dr. Suneetha Nuthalapaty, who operates an active practice treating various types of musculoskeletal injuries, acted as MIR physician, and examined Employee and reviewed his medical records on December 18, 2013. Her examination revealed a healed scar on the left foot, tenderness at the scar site, a healthy-appearing heel pad, and no muscular atrophy. Employee's ranges of motion were fifty degrees of flexion and fifteen degrees of dorsiflexion. Dr. Nuthalapaty found Employee had mild weakness of the dorsiflexor, which she graded as 4/5. Employee demonstrated a sensory deficit in the sural nerve distribution, but no other sensory or motor deficits.

Dr. Nuthalapaty diagnosed Employee with a left heel crush injury. She assigned a 2% impairment rating for the crush injury and a 3% impairment rating for the sural nerve injury, for a total impairment of 5% to the left lower extremity.<sup>6</sup> Dr. Nuthalapaty assigned a 2% whole person impairment rating.

During cross-examination, Dr. Nuthalapaty acknowledged that she had examined Employee on a single occasion and had not provided medical treatment. She further acknowledged that she had no surgical certification and would have been unable to treat Employee's injury immediately after it occurred. Dr. Nuthalapaty agreed that she had

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<sup>5</sup> Employee filed a motion in limine objecting to admission of the MIR evaluation into evidence. Employee argued that there was no "dispute as to the degree of medical impairment" when Dr. Mayfield rendered his opinion. According to Employee, the dispute was created when Employer, acting in contravention of the purposes of the Workers' Compensation Law, sought a second opinion. The trial court denied Employee's motion.

<sup>6</sup> Like Drs. Mayfield and Gaw, Dr. Nuthalapaty used Table 16-2 to calculate peripheral nerve impairment.

never provided acute treatment for the type of injury Employee sustained, but she had treated such injuries in a chronic pain setting.

Dr. Nuthalapaty testified that, although the Guides contain a range-of-motion method for assigning impairment, the diagnosis-based method of assigning impairment is the preferred method. Like Dr. Gaw, she concluded that Employee had not sustained an injury to which the Guides suggest application of the range-of-motion method. She emphasized that Employee had sustained a crush injury to his heel not to his ankle joint. Although Dr. Mayfield had assigned impairment for a saphenous nerve injury, Dr. Nuthalapaty's examination of Employee revealed no dysfunction of the nerve, so she did not assign an impairment rating for this injury. Dr. Gaw reviewed Dr. Nuthalapaty's report and opined that she had correctly followed the protocols of the Guides.

Nevertheless, Dr. Mayfield disagreed with the impairment ratings Drs. Gaw and Nuthalapaty assigned. Dr. Mayfield stated that Dr. Nuthalapaty's rating "was based on a single nerve injury and a diagnosis-based estimate from the [AMA] Guide of a foot contusion." However, he testified that Employee's "injury was much more significant than a simple foot contusion." Similarly, Dr. Mayfield opined that Dr. Gaw's impairment rating underestimated the severity of Employee's injury, and he stated that the diagnosis-based method does not provide an impairment rating for degloving injuries to the heel. Dr. Mayfield believed that as the doctor "there from the beginning"<sup>7</sup> of Employee's injury, he was best able to assess Employee's permanent impairment rating.

During cross-examination, Dr. Mayfield acknowledged that he has no specific training or certification in using or evaluating the Guides, nor is he a member of the Department of Labor's Medical Impairment Rating Registry. He further acknowledged that the diagnosis-based method is the preferred method for assessing impairment under the Guides. Dr. Mayfield agreed that Employee's range of motion improved at each appointment, and he conceded that the range-of-motion measurements could have continued to improve after he released Employee. When asked to explain how he measured Employee's range of motion, Dr. Mayfield stated, "You could use a protractor," but Dr. Mayfield could not recall whether he had used a goniometer in this instance, although he uses it "[s]ometimes when [the measurement] is doubtful."

It is undisputed Employee never returned to work for Employer after his release from Dr. Mayfield. Employee testified that he receives social security disability benefits based on his work injury and various pre-existing conditions stemming from numerous injuries he sustained while playing college football, to his shoulders, neck, back, and right knee. Employee remained able to do some cooking, laundry, mopping, vacuuming, and yard work, and could also drive a car and go shopping, although he could no longer

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<sup>7</sup> Dr. Nuthalapaty examined Employee on December 18, 2013. Dr. Gaw conducted a medical records review, but did not examine patient.

work on his car. At the time of trial, Employee possessed prescriptions for oxycodone (from an unidentified nurse practitioner), and Celebrex and Neurontin through workers' compensation.

After receiving the evidence, the trial court took the case under advisement and later issued findings and conclusions in a written memorandum and order. The trial court found that Employee had successfully rebutted Dr. Nuthalapaty's opinion by clear and convincing evidence; it adopted Dr. Mayfield's impairment rating of 20% to the left leg, applied a multiplier of four, and awarded 80% permanent partial disability to the left leg.

Employer has appealed, contending the trial court erred in finding that Employee rebutted the MIR physician's impairment rating by clear and convincing evidence. Employer further argues that the trial court erred by applying a multiplier of four and that the award of permanent disability benefits is excessive. For his part, Employee asserts that the trial court erred in considering the opinion of the MIR physician.

### **Analysis**

This appeal presents three issues: (1) whether the trial court erred in admitting the report and testimony of MIR physician Dr. Nathalapaty; (2) whether the trial court erred in finding that the presumption of correctness attached to Dr. Nuthalapaty's opinion was rebutted by clear and convincing evidence; and (3) whether the trial court erred in using a multiplier of four and awarding benefits of 80% to the left leg.

"The interpretation and application of our workers' compensation statutes are questions of law," which are reviewed de novo with no presumption of correctness on appeal. Mitchell v. Fayetteville Pub. Util., 368 S.W.3d 442, 448 (Tenn. 2012) (citing Seiber v. Reeves Logging, 284 S.W.3d 294, 298 (Tenn. 2009); Layman v. Vanguard Contractors, Inc., 183 S.W.3d 310, 314 (Tenn. 2006)). Similarly, "whether the facts establish clear and convincing evidence to overcome the statutory presumption of accuracy of an MIR report is a question of law that we must review de novo with no presumption of correctness." Mansell v. Bridgestone Firestone N. Am. Tire, LLC, 417 S.W.3d 393, 410 (Tenn. 2013).

We first address Employee's argument regarding admission of the MIR physician's report and testimony. Tennessee's Workers' Compensation Law allows review by an independent medical examiner when an impairment dispute exists. See Tenn. Code Ann. § 50-6-204. Essentially, Employee contends Employer created a "dispute" by hiring Dr. Gaw. He argues an *employee* who disagrees with the authorized treating physician's impairment rating may seek a second opinion but an *employer* in the same position may not; allowing such, he maintains, is contrary to the spirit and the letter of the workers' compensation law. We disagree.

Tennessee Code Annotated section 50-6-204(d)(5) states, in pertinent part, that “[w]hen a dispute as to the degree of medical impairment exists, *either party* may request an independent medical examiner from the [workers’ compensation] administrator’s registry.” (Emphasis added.) Section 204(d)(5) then establishes a method for selecting an MIR physician and states the MIR physician’s “opinion as to the permanent impairment rating given by the independent medical examiner pursuant to this subdivision (d)(5) shall be presumed to be the accurate impairment rating; provided, however, that this presumption may be rebutted by clear and convincing evidence to the contrary.” *Id.* Citing section 50-6-204(d)(5), our Supreme Court has held that “when a dispute as to the degree of medical impairment arises, . . . *either the employee or the employer* may seek the opinion of an MIR physician.” Mansell, 417 S.W.3d at 401 (emphasis added). Further, the current rules of the Bureau of Workers’ Compensation define “[d]ispute of degree of medical impairment” to include “[a]t least two different physicians have issued differing permanent medical impairment ratings in compliance with the Act and the parties disagree as to those permanent impairment ratings.” Tenn. Comp. R. & Regs. 0800-02-20-.01(7).

We find no support for Employee’s position in the statute, the rules, or any judicial decisions. Therefore, we conclude the trial court did not err in denying Employee’s motion in limine to exclude the report and testimony of MIR physician Dr. Nuthalapaty.

Next, we consider whether the trial court erred in finding that Employee rebutted Dr. Nuthalapaty’s opinion by clear and convincing evidence. In Mansell, our Supreme Court explained that “clear and convincing evidence” exists if

“there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence.” Hodges v. S.C. Toof & Co., 833 S.W.2d 896, 901 n.3 (Tenn. 1992). In the specific context of [section 50-6-205(d)(5)], the clear and convincing evidence standard has been interpreted to mean that “if no evidence has been admitted which raises a ‘serious and substantial doubt’ about the evaluation’s correctness, the MIR evaluation is the accurate impairment rating.” Beeler [v. Lennox Hearth Prod., Inc., No. W2007-02441-SC-WCM-WC,] 2009 WL 396121, at \*4 [(Tenn. Workers’ Comp. Panel Feb. 18, 2009)].

Mansell, 417 S.W.3d at 411.

In determining whether the presumption has been rebutted, “the focus is on the evidence offered to rebut that physician’s rating.” *Id.* (emphasis omitted) (citing Beeler, 2009 WL 396121 at \*5). For instance, the presumption “may be rebutted by affirmative evidence that an MIR physician ‘used an incorrect method or an inappropriate interpretation’ of the [Guides].” Smith v. Elec. Research & Mfg. Coop., Inc., No. W2012-00656-WC-R3-WC, 2013 WL 683192, at \*3 (Tenn. Workers’ Comp. Panel

Feb. 22, 2013) (citing Tuten v. Johnson Controls, Inc., No. W2009–1426–SC–WCM–WC, 2010 WL 3363609, at \*4 (Tenn. Workers’ Comp. Panel Aug. 25, 2010)). On the other hand, “[a] disagreement between medical expert witnesses as to the proper diagnosis of an employee’s condition may not, in and of itself, constitute the clear and convincing evidence needed to overcome the statutory presumption of accuracy afforded an MIR physician’s impairment rating.” Id. at \*4.

Employee maintains that the trial court correctly found Dr. Nuthalapaty’s opinion was successfully rebutted by Dr. Mayfield’s testimony. During his deposition, Dr. Mayfield opined why he, as opposed to Dr. Nuthalapaty, correctly rated Employee’s impairment. He explained:

It was my understanding that she had the medical chart to review but didn’t actually get a chance to evaluate Mr. Williams. And it looked like her impairment rating was based on a single nerve injury and a diagnosis-based estimate from the Guides of a foot contusion.

In my opinion, his injury was much more significant than a simple foot contusion[,] which is why I chose to use the range[-]of[-]motion estimate. There is not a diagnosis-based guide for a degloving of the heel, it’s just not one in the book. In addition to that, I felt that there were two nerves injured rather than just the one.

First, Dr. Mayfield’s assertion that Dr. Nuthalapaty did not examine Employee is incorrect. Second, Dr. Mayfield’s testimony fails to create “serious or substantial doubt” regarding Dr. Nuthalapaty’s evaluation of the saphenous nerve. As explained above, Dr. Mayfield based his impairment rating on dysfunction of both the sural and saphenous nerves. Dr. Nuthalapaty, however, assigned no impairment for dysfunction of the saphenous nerve, finding none. Dr. Mayfield conceded, because nerve injuries can regenerate and improve over time, that Employee’s saphenous nerve function could have improved in the six months between his last visit with Employee and Dr. Nuthalapaty’s examination. At best, the evidence presents a “disagreement between medical expert witnesses as to the proper diagnosis of an employee’s condition,” which does not “constitute the clear and convincing evidence needed to overcome the statutory presumption of accuracy afforded an MIR physician’s impairment rating.” Smith, 2023 WL 683192, at \*4.

Finally, Dr. Mayfield’s testimony does not demonstrate that Dr. Nuthalapaty used an incorrect method in assigning her impairment rating. Dr. Mayfield acknowledged the Guides’ stated preference for the diagnosis-based method. However, Dr. Mayfield declined to use the diagnosis-based method because he believed it did not address Employee’s conditions or properly reflect the seriousness of his injury. In contrast, Drs. Nuthalapaty and Gaw testified that Employee’s crush injury fell within the conditions for

which the diagnosis-based method is appropriate and none of the exceptions for which the range-of-motion method is preferred apply here.

Essentially, Dr. Mayfield used the range-of-motion method because he was dissatisfied with the result generated by the diagnosis-based method. While his disagreement with the Guides may be sincere, it does not affirmatively show Dr. Nuthalapaty erred in utilizing the diagnosis-based method. Ultimately, Dr. Mayfield's testimony fails to raise "serious or substantial" doubt about the accuracy of Dr. Nuthalapaty's evaluation, which is necessary to overcome the statutory presumption of correctness attached thereto. See Beeler, 2009 WL 396121, at \*4. Thus, we adopt Dr. Nuthalapaty's 5% lower left extremity impairment rating.

Finally, we examine the trial court's use of a multiplier of four. In determining the employee's vocational disability, the trial court considers the "employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in [her] disabled condition." Tenn. Code Ann. § 50-6-241(d)(1)(A) (Supp. 2012); see also Worthington v. Modine Mfg. Co., 798 S.W.2d 232, 234 (Tenn. 1990); Roberson v. Loretto Casket Co., 722 S.W.2d 380, 384 (Tenn. 1986). The extent of disability is a question of fact, Jaske v. Murray Ohio Mfg. Co., Inc., 750 S.W.2d 150, 151 (Tenn. 1988) (citing Roberson, 722 S.W.2d at 384), which this Panel reviews de novo, with a presumption of correctness afforded the trial court's determination, unless the evidence preponderates otherwise, see Wilhelm v. Krogers, 235 S.W.3d 122, 126 (Tenn. 2007) (citing Tenn. Code Ann. § 50-6-225(e)(2) (Supp. 2006)).

In assigning Employee an award four times the medical impairment rating, the trial court made detailed findings of fact regarding Employee's condition as follows:

First, as noted above,<sup>8</sup> [Employee's] physical disabilities severely hamper his ability to engage in tasks that would allow him to earn an income. In

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<sup>8</sup> The trial court found:

The extent of [Employee's] injuries severely hampers his ability to earn an income. As noted above, his testimony at trial indicates that [Employee] is now unable to do any of the same jobs he was once employed to do. [T]he previous positions with [Employer], Comcast, Vison, Bass Production, and Aeroteck all required physical abilities that [Employee] simply no longer possesses. He testified that he is unable to sit or stand for any significant period of time. This highly credible testimony obviates the facts that the physically demanding jobs of [Employee's] past are no longer an option for him.

Even "desk duty-type" jobs are largely unavailable to [Employee]. His constant pain necessitates the elevation of his foot and his ongoing search for a comfortable position. Tingling and sensitivity make [Employee's] disability nothing less than a relentless irritation to his daily life that leaves him unemployable in the largest sense.

sum, he is relegated to a condition that renders useless the vast majority of skills he has developed in the workplace. Second, although he has completed three years of college, and would otherwise be deemed employable due to his relatively high level of education, [Employee's] testimony regarding his abilities and previous experience in attempting physical activity obviates the fact that even a sedentary job would be problematic. His educational concentration in Health and Sports Science has no bearing on the skills and knowledge he has developed through his work experience. Further, any career opportunities that [Employee] might otherwise enjoy in the Health/Sports Medicine field are now severely hampered because of his own inability to engage in physical activity.

A [FCE] ordered by Dr. Mayfield in 2013 revealed that [Employee] had the ability to work in a medium demand level job, with the exception of pushing, where he was qualified for hard exertion. Of course, laborious activities such as lifting and pulling heavy objects make up the bulk of [Employee's] previous employment experiences. Consequently, without substantial, potentially burdensome accommodation in the workplace for his disabilities, [Employee's] employment prospects, and therefore his ability to earn a living, are substantially limited.

Under the applicable standard of review, we afford considerable deference to the trial court's factual findings based on live witness testimony, and we are "not at liberty to substitute our own judgment for that of the trial court merely because we might have chosen another alternative." Knight v. Publix Supermarkets, Inc., No. M2014-00126-SC-R3-WC, 2015 WL 1539139, at \*9 (Tenn. Workers' Comp. Panel March 31, 2015). Considering Employee's educational field, skills, and training in "stand up" jobs, and his current inability to perform most types of work, we find the evidence does not preponderate against the trial court's use of the multiplier of four. Thus, given our conclusion that Employee failed to present clear and convincing proof to overcome the presumption of accuracy statutorily afforded the MIR physician's 5% lower extremity impairment rating, we modify the trial court's award to 20% permanent partial disability to Employee's left leg.

## Conclusion

We find that the MIR physician's impairment rating was not rebutted by clear and convincing evidence but the trial court did not err by applying a multiplier of four. Accordingly, the award of permanent disability benefits is modified to 20% to the left leg. The case is remanded to the trial court for entry of an order consistent with this opinion. Costs are taxed to Kelcey Williams, and his surety, for which execution may issue if necessary.

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DON R. ASH, Senior Judge

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

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**No. M2016-00638-SC-R3-WC – Filed April 12, 2017**

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**JUDGMENT ORDER**

This case is before the Court upon the motion for review filed by Ajax Turner Company pursuant to Tennessee Code Annotated section 50-6-225(e)(5)(A)(ii), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Opinion setting forth its findings of fact and conclusions of law.

It appears to the Court that the motion for review is not well taken and is, therefore, denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to Kelcey Williams and his surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

CORNELIA A. CLARK, J., not participating