

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

FILED

January 26, 1998

**Cecil W. Crowson
Appellate Court Clerk**

ANNE CROSSETT,)
Plaintiff/Appellee) No. 01S01-9701-CV-00001
)
)
v.) CIRCUIT COURT, SUMNER COUNTY
)
BABCOCK INDUSTRIES, FAULTLESS) HON. THOMAS GOODALL, JUDGE
CASTER DIVISION)
and THE INSURANCE COMPANY OF)
THE STATE OF PENNSYLVANIA)
Defendants/Appellants)
_____)

FOR THE APPELLANTS:

FRANK THOMAS
CATHERYNE L. GRANT
LEITNER, WILLIAMS, DOOLEY
& NAPOLITAN
2300 First American Center
Nashville, Tennessee 37238

FOR THE APPELLEE:

WILLIAM L. UNDERHILL
509 Lentz Drive
Madison, Tennessee 37115

MEMORANDUM OPINION

MEMBERS OF PANEL

LYLE REID, ASSOCIATE JUSTICE, SUPREME COURT
JOSEPH C. LOSER, JR., RETIRED JUDGE
WILLIAM S. RUSSELL, RETIRED JUDGE

REMANDED

RUSSELL, SP. J.

This appeal in a workers' compensation case has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated Section 50-6-225 (e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

This case involves an employee, Anne Crossett, who was diagnosed with bilateral carpal tunnel syndrome. She commenced work for Faultless Caster Division of Babcock Industries on August 14, 1995 and reported numbness in both of her hands on August 26, 1995, while working on a hand riveter. The last date that she worked at Faultless was January 30, 1996.

Causation was a serious issue upon the trial, as was the extent of her impairment. She testified that she was unable to perform simple functions such as brushing her teeth or eating with her hands due to the carpal tunnel condition.

The trial judge entered judgment on November 4, 1996, awarding her compensation based upon 35% vocational disability to each arm. Notice of Appeal was filed on November 6, 1996. On December 30, 1996, the appellants filed a motion for an order of remand for consideration of a Rule 60.02 motion to alter the judgment for alleged perjury and fraud. Videotape surveillance of the appellee on December 6, 1996, purports to reflect her

performing activities dramatically in excess of what she testified that she could do. A per curiam order of this court entered on January 31, 1997, denied the motion; but expressly allowed the issue to be raised before this panel.

Our review of this record reflects that the credibility of Ms. Crossett is central to the disputed issues of causation and extent of disability. The trial court, in rendering its judgment, did not have the benefit of the evidence submitted with the motion to remand.

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This court, in the case of Spence v. Allstate Ins. Co., 883 S.W. 2d 586 (Tenn 1994), addressed the jurisdictional and procedural questions presented by this motion to remand. Initial jurisdiction is exclusively in this court. Our function at this point is to determine whether or not a remand is appropriate. The Spence court directed:

Therefore, we hold that a trial court has no jurisdiction to consider a Rule 60.02 motion during the pendency of an appeal. If a party wishes to seek relief from the judgment during the pendency of an appeal, he should apply to the appellate court for an order of remand. We stress that because the trial court will most likely be in a better position to quickly assess the merits of such a motion, leave should be freely granted by the appellate court if the motion is not frivolous on its face.

We have carefully reviewed the trial evidence, and the videotape which purports to show the post-trial activities of the injured employee. The motion is certainly not frivolous. Whether or not it is credible evidence of perjury and/or fraud is initially for the learned trial judge to determine.

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We remand the case for a hearing upon the Rule 60.02 motion.
Costs on this appeal are assessed to the appellants.

WILLIAM S. RUSSELL, SPECIAL JUDGE

CONCUR:

LYLE REID, ASSOCIATE JUSTICE

JOSEPH C. LOSER, JR., SPECIAL JUDGE

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|-------------------------------|---|--------------------------|
| ANNE CROSSETT, | } | SUMNER CIRCUIT |
| | } | No. 14852-C Below |
| Plaintiff/Appellee | } | |
| | } | Hon. Thomas Goodall, Jr. |
| vs. | } | Judge |
| | } | |
| BABCOCK INDUSTRIES, | } | |
| FAULTLESS CASTER DIVISION and | } | No. 01S01-9701-CV-00001 |
| THE INSURANCE COMPANY OF | } | |
| THE STATE OF PENNSYLVANIA, | } | |
| | } | |
| Defendants/Appellants | } | REMANDED. |

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 January 26, 1998.

PER CURIAM