IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
February 28, 2002 Session

# JUDITH S. COOLEY v. MURRAY OUTDOOR PRODUCTS, INC.

**Direct Appeal from the Circuit Court for Henry County**
**No. 1666 C. Creed McGinley, Judge**

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**No. W2001-01747-WC-R3-CV - Mailed March 27, 2002; Filed May 16, 2002**

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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. In this appeal, the Defendant/Appellant asserts that the evidence preponderates against the trial court's award of seventy-five percent (75%) to the leg as Plaintiff has minimal vocational disability. As discussed below, the panel concludes that the judgment should be affirmed.

**Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Circuit Court is Affirmed.**

L. TERRY LAFFERTY, SR. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and JOE C. LOSER, JR., SP. J., joined.

J. Arthur Crews, II and B. Duane Willis, Jackson, Tennessee, for the Defendant/Appellant, Murray Outdoor Products, Inc.

Charles L. Hicks, Camden, Tennessee, for the Plaintiff/Appellee, Judith S. Cooley.

## MEMORANDUM OPINION

The Plaintiff, Judith S. Cooley, age 50, 11th grade education, no vocational training, a veteran factory worker, has been working production work for the employer, Murray Outdoor Products, since 1994. On April 3, 2000, Plaintiff was on the assembly line placing decals on mowers when she fell from a platform adjacent to the assembly line, twisting and injuring her right knee. The knee popped and an immediate onset of pain commenced. Plaintiff told at least three to four persons about her injury, but no paperwork was commenced. Within a week, Plaintiff's knee began swelling. Plaintiff saw her own doctor, Dr. Amanda Reiter, who gave her some water pills. Plaintiff worked

until June 6, 2000, when the knee worsened and she could hardly work. After x-rays indicated a possible torn cartilage, Dr. Merrick sent Plaintiff to Dr. Christian, an orthopedic surgeon. On June 30, 2000, Dr. Christian performed surgery on Plaintiff's knee for a torn cartilage. Although Plaintiff was cleared for return to work on July 3, she did not return until July 17. Plaintiff's restrictions were she was to sit at work four hours and stand four hours. However, the employer would not permit this on the assembly line, and Plaintiff's knee would swell and be painful. Plaintiff described her knee as having spasms, locking and while walking the knee popped. She has difficulty walking for long distances. Due to her painful knee, Plaintiff has been unable to perform her house chores. Plaintiff is currently working the cell line, making handles for mowers because she cannot work the fast line. Although a doctor did not prescribe a cane, Plaintiff uses a cane to assist in walking from her car to the plant and in her non-employment activities.

Co-employees, Becky Riggs and Francis Allen confirmed that Plaintiff injured her knee when falling from a platform. Plaintiff informed her supervisors, and walks with a limp.

On behalf of employer, Don Bray, Plaintiff's supervisor, testified that Plaintiff is building handles for mowers, which is her regular job. Bray describes Plaintiff as a very good worker, and her duties require her to stand most of the day. Plaintiff has not complained to Bray about any physical problems, but she does walk with a limp and uses a cane. Bray was under the impression Plaintiff had a hip problem.

## MEDICAL EVIDENCE

Dr. Claiborne Christian, an orthopedic surgeon, saw Plaintiff on June 15, 2000, as the result of a referral. Plaintiff complained that she injured her knee at work on April 3, 2000. An MRI revealed a small tear of the posterior horn of the medial meniscus. On June 30, 2000, Dr. Christian performed surgery to repair this torn cartilage and permitted Plaintiff to return to work July 3, sitting only. He believed Plaintiff could do light duty beginning July 10. As of July 24, Plaintiff was better, but not at 100%, she had good range of motion. Plaintiff was permitted to work at regular procedure for four hours and light duty for four hours. On August 7, 2000, Plaintiff still complained of knee pain, but Dr. Christian believed she had reached maximum medical improvement. Dr. Christian opined that Plaintiff sustained a two percent (2%) permanent impairment to the lower extremity, due to the tear and subsequent meniscectomy, utilizing Table 64, page 85, AMA Guidelines. Plaintiff should have no long-term restrictions.

Dr. Joseph C. Boals, III, an orthopedic surgeon, completed a C-32 Form regarding his evaluation of Plaintiff's knee injury. Dr. Boals saw Plaintiff on November 6, 2000, at the request of counsel in regards to a job-related injury to her right knee. Plaintiff's medical history indicated that she had surgery for repair of a tear to the posterior horn of the medial meniscus. Dr. Boals opined that Plaintiff sustained residuals from flap tear medial meniscus (right knee) and degenerative arthritis (right knee). Dr. Boals believes the knee injury aggravated the pre-existing arthritic knee. Dr. Boals opined that Plaintiff sustained a permanent impairment of two percent (2%) for the flap excision and seven percent (7%) for the aggravation to the arthritis, which combined equals a nine

percent (9%) impairment to the lower extremity. Table 64, page 85 and page 322, AMA Guidelines. Plaintiff should avoid squatting, deep knee bending, climbing, repetitive walking and standing.

Based upon the summarized evidence, the trial court found that Plaintiff was entitled to a seventy-five percent (75%) vocational disability to the right leg.

## ANALYSIS

Appellate review of findings of fact is *de novo* upon the record of the trial court accompanied by a presumption of correctness of the findings, unless the preponderance of the evidence lies otherwise. Tenn. Code Ann. § 50-6-225(e)(2).

This panel is not bound by the trial court's findings but instead conducts an independent examination of the record to determine where the preponderance lies. *Galloway v. Memphis Drum Serv.*, 822 S.W.2d 584, 586 (Tenn. 1991). Where the trial court has seen and heard witnesses, especially if issues of credibility and weight to be given oral testimony are involved, considerable deference must be accorded those circumstances on review, because it is the trial court that had the opportunity to observe the witnesses' demeanor and to hear the in-court testimony. *Long v. Tri-Con Ind. Ltd.*, 996 S.W.2d 173, 178 (Tenn. 1999). This panel, however, is as well situated to gauge the weight, worth and significance of documentary evidence as the trial court. *Walker v. Saturn Corp.*, 986 S.W.2d 204 (Tenn. 1998). The extent of an injured employee's vocational disability is a question of fact. *Story v. Legion Ins. Co.*, 3 S.W.3d 450, 456 (Tenn. Sp. Workers Comp. 1999).

Both Drs. Christian and Boals, determined that Plaintiff had sustained a permanent partial impairment to the lower right extremity, to wit: the right knee. However, they differ as to the extent of anatomical impairment. Dr. Christian, the treating physician, finds an anatomical rating of two percent (2%) is applicable, while Dr. Boals finds that the surgery and aggravation of pre-existing arthritis entitles Plaintiff to a rating of nine percent (9%). Likewise, both doctors disagree on Plaintiff's ability to work with or without restrictions. A 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, 806 (Tenn. 1990). From its ruling, the trial court found Dr. Boals' opinion had more value. From our review of the medical evidence, we cannot find fault with the trial court's decision.

In making determinations of vocational disability, the trial court shall consider all pertinent factors, including lay and expert testimony, the employee's age, education, skills and training, local job opportunities and capacity to work at types of employment available in the Plaintiff's disabled condition. Tenn. Code Ann. § 50-6-241(a)(1); *Roberson v. Loretta Casket Co.*, 722 S.W.2d 380, 384 (Tenn. 1986).

In assessing the lay testimony, Plaintiff explained how her injury occurred and the ongoing attempts to relieve her condition. Plaintiff's knee continues to cause her problems at home and at work. She must use a cane to assist her in walking. Co-employees corroborate Plaintiff's injury to the extent she still walks with a limp and uses a cane. The fact that a medical expert did not

prescribe the use of a cane would not affect our analysis. In this case, as in all workers' compensation cases, the Plaintiff's own assessment of her physical condition and resulting disabilities is competent evidence and cannot be disregarded. *Tom Still Transfer Co., Inc. v. Way*, 482 S.W.2d 775, 777 (Tenn. 1972). As to whether the evidence preponderates against a trial court's determination of vocational disability, we are aware that great deference must be given the trial court's finding.

From our review of the entire record, we find that the evidence does not preponderate against the trial court's finding that the Plaintiff sustained a seventy-five percent (75%) vocational disability to the right leg.

In conclusion, the judgment of the trial court is affirmed and the cost of this appeal is taxed to the Defendant.

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L. TERRY LAFFERTY, SENIOR JUDGE

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## JUDGMENT

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 on appeal are taxed to the Defendant/Appellant, Murray Outdoor Products, Inc., for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM