

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

January 10, 2002 Session

MELISSA SUZANNE DEW v. PRO-TEMP

**Direct Appeal from the Circuit Court for Anderson County
No. 98LA0253 Robert M. Summit, Circuit Judge**

Filed April 8, 2002

No. E2001-01165-WC-R3-CV

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 trial court awarded the employee 20 percent permanent partial disability to her right hand. The employee appeals insisting the court had used the multiplier statute in computing the award and that the statute does not apply to scheduled member injuries. The judgment is modified to award the employee 40 percent to the right hand.

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

THAYER, SP. J., delivered the opinion of the court, in which ANDERSON, J., and BYERS, SR. J., joined.

Roger E. Ridenour, of Clinton, Tennessee, for Appellant, Melissa Suzanne Dew.

B. Chadwell Rickman, of Knoxville, Tennessee, for Appellee, Pro-Temp.

MEMORANDUM OPINION

The trial court awarded the employee, Melissa Suzanne Dew, 20 percent permanent partial disability to her right hand. The employee has appealed insisting the court had restricted her recovery to two and one-half times the 8 percent medical impairment and that the multiplier statute does not apply to scheduled member cases.

Facts

The employee is a high school graduate and was 26 years of age at the time of the trial. After

high school, she had some vocational training in office technology and data processing. She was employed by defendant, Pro-Temp, and was working on the assembly-line at Eagle Bend Manufacturing Company, Inc., on February 5, 1998, when she was injured. The work in progress involved the manufacture of automobile trunk hinges. She testified that the machine had jammed and while working with it, the machine “pinched her.” At the time she was wearing gloves but her right index finger was cut and later began to swell. She went to the emergency room and was released to see a regular physician who eventually referred her to an orthopedic surgeon.

Dr. John M. Ambrosia, an orthopedic surgeon, testified by deposition and stated he prescribed therapy treatments initially but then recommended surgery since she had not made a lot of progress. Surgery was performed on June 12, 1998, and resulted in freeing up the scar tissue around the extensor tendon and the joint of the finger. After surgery, therapy was resumed and he released her to return to work without any restrictions. The doctor stated she would have a 42 percent impairment to her right finger.

The employee was also seen and examined by Dr. Geron Brown, an orthopedic surgeon, for an independent medical examination. He testified by deposition and said she had sustained a crushing injury with laceration and that the fracture of her finger had healed; that she was right hand dominant and the medical impairment would be 42 percent to the finger and 8 percent to the hand. When he was asked about returning to work with restrictions, he replied that because of the limited motion of the hand, there would be activities that she would either have difficulty with or simply could not do. He did not place permanent restrictions because when he saw her she was working at another job although the functional capacity evaluation recommended she should work at a level less than medium work.

In describing the present condition of her injury, the employee testified she could not straighten out her finger; that it stayed cold most of the time; that she had problems in gripping things with her hand and that when she used her hand a lot, she would have pain down the center of the palm of her hand. She testified the strength of her hand was not near what it used to be. With regard to the pain down the center of the palm of her hand, she said she had been told this was because of the tendon on the front side of her finger.

In rendering a decision, the trial judge originally awarded the employee 42 percent disability to the right hand. Upon defense counsel inquiring if he had made a mistake in the 42 percent award since this exact percent was given to the finger only, the court retracted the award and asked if the multiplier statute applied. When advised it had no application to a scheduled member injury, the court announced the award would be fixed at 20 percent to the right hand.

After entry of the judgment, the employee filed a motion for new trial insisting the recovery had been reached by using the multiplier of two and one-half times the 8 percent medical impairment. The court stated his decision was not reached by that computation and that he had considered the usual factors in assessing the evidence and fixing the 20 percent disability to the hand.

Standard of Review

Our review of the case is *de novo* accompanied by a presumption that the findings of the trial court are correct unless we find the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2).

Analysis

The employee insists the court determined the award by using the multiplier of two and one-half times the medical impairment. The employer denies this and contends the court considered all of the appropriate factors in fixing disability and also argues that the award should be restricted to the finger only.

On the finger vs. hand issue, we concur with the trial court that the award should be fixed to the right hand. Where an injury to a scheduled member produces an unusual and extraordinary condition affecting other members of the body, then compensation is not necessarily limited to the loss of the injured member. *Carney v. Safeco Insurance Co.*, 745 S.W.2d 868 (Tenn. 1988); *Eaton Corporation v. Quillen*, 527 S.W.2d 74 (Tenn. 1975).

In regard to the issue concerning the extent of disability to the hand, we find no evidence to show the court computed the award by multiplying 8 percent impairment times two and one-half. On hearing the motion for a new trial, the court expressly stated the award was not reached in that manner.

Independent of this issue, a question remains as to whether the evidence preponderates against the award of 20 percent disability to the hand. We think the greater weight of the evidence establishes the injury in question has affected the employee's gripping ability and the strength of her hand. The evidence also shows she has pain radiating down the center of the right palm when she uses the hand a lot. In our judgment, we find the award should be increased and we award 40 percent permanent partial disability to the right hand.

Conclusion

The judgment is modified to award 40 percent permanent partial disability to the right hand. Costs of the appeal are taxed to the employer.

ROGER E. THAYER, SPECIAL 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 facts and conclusions of law are adopted and affirmed and the decision of the Panel is made the Judgment of the Court.

The costs on appeal are taxed to the employer for which execution may issue if necessary.