

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT JACKSON  
August 16, 2002 Session

**MICHAEL LLOYD TODD v. BEKAERT STEEL WIRE CORPORATION,  
ET AL.**

**Direct Appeal from the Chancery Court for Dyer County  
No. 00C459 J. Steven Stafford, Chancellor**

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**No. W2001-03004-WC-R3-CV - Mailed October 30, 2002; Filed December 5, 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 employer insists the award of benefits based on 36 percent to the left arm is excessive. As discussed below, the panel has concluded the judgment should be affirmed.

**Tenn. Code Ann. § 50-6-225(e) (2001 Supp.) Appeal as of Right; Judgment of the Chancery Court Affirmed**

JOE C. LOSER, JR., SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and JOE H. WALKER, III, SP. J., joined.

Paul C. Peel, Memphis, Tennessee, for the appellants, Bekaert Steel Wire Corporation and Liberty Mutual Insurance Company

Jeffrey A. Garrety and Joseph R. Taggart, Jackson, Tennessee, for the appellee, Michael Lloyd Todd

**MEMORANDUM OPINION**

The employee or claimant, Todd, initiated this civil action to recover workers' compensation benefits for an alleged work related injury to his left arm and elbow. When mediation failed to resolve the disagreement between the parties as to the extent of the claimant's permanent disability, a trial was held on October 22, 2001. After weighing and evaluating disputed medical evidence, the trial court awarded permanent partial disability benefits based on 36 percent to the arm. The employer, Bekaert Steel Wire Corporation, and its insurer have appealed.

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) (2001 Supp.). The reviewing court is required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. Wingert v. Government of Sumner County, 908 S.W.2d 921, 922 (Tenn. 1995). The standard governing appellate review of findings of fact by a trial court requires the Special Workers' Compensation Appeals Panel to examine in depth a trial court's factual findings and conclusions. GAF Bldg. Materials v. George, 47 S.W.3d 430, 432 (Tenn. 2001). 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, because it is the trial court which 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, 177 (Tenn. 1999). The trial court's findings with respect to credibility and weight of the evidence may generally be inferred from the manner in which the court resolves conflicts in the testimony and decides the case. Tobitt v. Bridgestone/Firestone, Inc., 59 S.W.3d 57, 61 (Tenn. 2001). The extent of an injured worker's vocational disability is a question of fact. Seals v. England/Corsair Upholstery Mfg., 984 S.W.2d 912, 915 (Tenn. 1999). Where the medical testimony in a workers' compensation case is presented by deposition, the reviewing court may make an independent assessment of the medical proof to determine where the preponderance of the proof lies. Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 167 (Tenn. 2002).

The claimant is thirty-eight years old with a tenth grade education and experience as a laborer. He gradually developed left carpal tunnel syndrome and ulnar nerve transposition from repetitive use of his dominant left hand while working for the employer. There is a factual dispute as to the extent of the claimant's permanent medical impairment following corrective surgery. The operating surgeon, Dr. Carl Huff estimated his permanent medical impairment to be 5 percent to the left arm. Another physician, Dr. Joseph Boals, estimated his permanent impairment to be 10 percent to the left arm. Both opinions, according to the doctors' testimony, were based on tables provided by the AMA Guidelines. Both testified by deposition but neither was impeached.

The appellants contend the award is excessive because the employee has returned to work at the same or greater wage and because it exceeds two and one-half times either of the above impairment ratings, citing Tenn. Code Ann. §50-6-241(a)(1). For injuries arising after August 1, 1992, in cases where an injured worker is entitled to permanent partial disability benefits to the body as a whole and the pre-injury employer returns the employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of the injury, the maximum permanent partial disability award that the employee may receive is two and one-half times the medical impairment rating pursuant to the provisions of the American Medical Association Guides to the Evaluation of Permanent Impairment or the Manual for Orthopedic Surgeons in Evaluating Permanent Physical Impairment. Tenn. Code Ann. § 50-6-241(a)(1). Because the present award is to the arm, a scheduled member, rather than to the body as a whole, the section is inapplicable and the argument without merit.

The appellants further contend that the trial court erred in considering the testimony of Dr.

Boals because it was not consistent with the appellants' interpretation of the latest edition of the AMA Guides. The trial court found otherwise based on the unambiguous testimony of Dr. Boals. The trial court did not err in doing so. Moreover, it is undisputed in the proof that the claimant is permanently impaired to some extent. We have consistently held that a medical or anatomical impairment rating is not indispensable to an award of permanent disability benefits. Walker v. Saturn Corp., 986 S.W.2d 204, 207 (Tenn. 1998).

Once the causation and permanency of an injury have been established by expert testimony, the trial judge may consider many pertinent factors, including age, job skills, education, training, duration of disability, and job opportunities for the disabled, in addition to anatomic impairment, for the purpose of evaluating the extent of a claimant's permanent disability. McCaleb v. Saturn Corp., 910 S.W.2d 412, 416 (Tenn. 1995). The opinion of a qualified expert with respect to a claimant's clinical or physical impairment is a factor which the court will consider along with all other relevant facts and circumstances, but it is for the court to determine the percentage of the claimant's industrial disability. Moreover, trial courts are not bound to accept physicians' opinions regarding the extent of a claimant's disability, but should consider all the evidence, both expert and lay testimony, to decide the extent of an employee's disability. Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 170 (Tenn. 2002). From our consideration of the pertinent factors, to the extent they were established by the proof in this case, and giving due deference to the findings of the trial court, we cannot say the evidence preponderates against the trial court's award.

For the above reasons, the judgment of the trial court is affirmed. Costs are taxed to the appellants.

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JOE C. LOSER, JR.

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**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 on appeal are taxed to the Appellants, Bekaert Steel Wire Corporation and Liberty Mutual Insurance Company, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM

