

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

November 27, 2002 Session

JOYCE MULLINS v. CROTTY CORP., ET AL.

**Direct Appeal from the Circuit Court for Jackson County
No. 1294-0-245 John D. Wooten, Jr., Judge**

**No. M2002-00159-WC-R3-CV - Mailed - December 30, 2002
Filed - January 31, 2003**

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 questions the trial court's findings as to causation, permanency, extent of vocational disability and mileage reimbursement. As discussed below, the panel has concluded the evidence fails to preponderate against the findings of the trial court.

Tenn. Code Ann. § 50-6-225(e) (2002 Supp.) Appeal as of Right; Judgment of the Circuit Court Affirmed

JOE C. LOSER, JR., SP. J., delivered the opinion of the court, in which FRANK F. DROWOTA, III, C. J., and JOHN K. BYERS, SP. J., joined.

Kirk L. Clements, Nashville, Tennessee, for the appellants, Crotty Corp. and Employee Benefit Insurance Company

Edwin Sadler and James D. Madewell, Cookeville, Tennessee, for the appellee, Joyce Mullins

MEMORANDUM OPINION

The employee or claimant, Ms. Mullins, initiated this civil action to recover workers' compensation for an alleged work related injury by accident. After a hearing on all issues raised by the pleadings, the trial court awarded permanent partial disability benefits based on 75 percent to the left arm and reimbursement of \$2,313.30 for mileage incurred to receive authorized medical treatment. The employer, Crotty Corp., 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) (2002 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). 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). Conclusions of law are subject to de novo review on appeal without any presumption of correctness. Nutt v. Champion Intern. Corp., 980 S.W.2d 365, 367 (Tenn. 1998).

The record in this appeal consists of the trial court's findings and documentary medical proof.

As stated in the trial court's findings, the claimant is thirty-one years old with a high school education and training as a certified nursing assistant. Her work for the employer involved repetitive use of the hands. On June 19, 1997, she experienced a sharp pain in her left wrist. As a result of her injury, she is no longer able to perform her duties and cannot find any job she can perform closer than 40 to 60 minutes away from her home. Her husband corroborated her testimony. Both the claimant and her husband gave credible evidence. The treating physician, Dr. John Lamb, estimated her permanent medical impairment to be 20 percent to the left arm.

The appellants contend the claimant failed to carry the burden of proof of causation and permanency. As noted above, the standard before this tribunal is not whether the plaintiff has carried the burden of proof, but whether the evidence preponderates against the trial court's findings of causation and permanency. The trial court was faced with conflicting expert medical evidence. Dr. Douglas Weikert testified the claimant's pain was temporally related to her work, but was equivocal as to permanency. Dr. Lamb, on the other hand testified unequivocally in favor of the claimant on both issues. When the medical testimony differs, the trial court must choose which view to believe. In doing so, the court is allowed, among other things, to consider the qualifications of the experts, the circumstances of their examination, the information available to them, and the evaluation of the importance of that information by other experts. Orman v. Williams Sonoma, Inc., 803 S.W.2d 672, 676 (Tenn. 1991). Moreover, it is within the discretion of the trial court to conclude that the opinion of certain experts should be accepted over that of other experts and that it contains the more probable explanation. Hinson v. Wal-Mart Stores, Inc., 654 S.W.2d 675, 676-7 (Tenn. 1983). Any reasonable doubt concerning the cause of the injury should be resolved in favor of the employee. Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 168 (Tenn. 2002). From our independent examination of the record, we are not persuaded the trial court abused its discretion by accepting the opinion of Dr. Lamb or that the evidence preponderates against the trial court's findings as to permanency and

causation. The issue is resolved in favor of the claimant.

The appellants further contend the award of permanent disability benefits based on 75 percent to the arm is excessive because, it argues, Dr. Lamb's opinion as to the extent of the claimant's permanent impairment is not supported by the American Medical Association's Guides to the Evaluation of Permanent Impairment. Dr. Lamb's testimony was unequivocally otherwise. Additionally, a medical or anatomic impairment rating is not always indispensable to a trial court's finding of a permanent vocational disability. Walker v. Saturn Corp., 986 S.W.2d 204, 207 (Tenn. 1998). 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. See Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d at 170. The issue is resolved in favor of the injured employee.

The appellants finally contend the award of mileage reimbursement for medical care was excessive and that some of the visits were not authorized by the employer or its insurer. The findings of the trial court are the only evidence before us on the subject. Tenn. Code Ann. § 50-6-204(a) provides in pertinent part as follows:

(6) (A) When an injured worker is required by the worker's employer to travel to an authorized medical provider or facility located outside a radius of fifteen (15) miles from such insured worker's residence or workplace, then, upon request, such employee shall be reimbursed for reasonable travel expenses. The injured employee's travel reimbursement shall be calculated based on a per mile reimbursement rate, as defined in subdivision (a)(6)(B), times the total round trip mileage as measured from the employee's residence or workplace to the location of the medical provider's facility.

(B) The per mile reimbursement rate for the injured employee shall be not less than the mileage allowance authorized for state employees who have been authorized to use personally owned vehicles in the performance of their duties. This minimum per mile reimbursement rate shall be based on the last published comprehensive travel regulations promulgated by the department of finance and administration.

In the absence of a transcript or other record containing countervailing evidence, as is the case here, the trial court's findings as to the issue are conclusive. The issue is therefore resolved in favor of the appellee.

The judgment is affirmed. Costs are taxed to the appellants.

JOE C. LOSER, JR.

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

JOYCE MULLINS v. CROTTY CORP., ET AL.

**Circuit Court for Jackson County
No. 1294-0-245**

No. M2002-00159-WC-R3-CV - Filed - January 31, 2003

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 will be paid by the appellants, Crotty Corp. and Employee Benefit Insurance Company, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM