

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

February 7, 2003 Session

LA-Z-BOY, INC., v. PATRICIA VAN WINKLE

**Direct Appeal from the Circuit Court for Rhea County
No. 21881 J. Curtis Smith, Judge**

Filed May 2, 2003

No. E2002-01423-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. In this case, the employer, La-Z-Boy, Inc., filed suit to resolve a workers' compensation dispute between La-Z-Boy, Inc., and Patricia Van Winkle, its employee. The trial court found the defendant sustained a one percent medical impairment to her left arm as a result of carpal tunnel syndrome and awarded her fifty percent disability to her left arm. The court found the defendant suffered no disability to the right arm as a result of carpal tunnel syndrome. The employer appealed the judgment and avers the trial court award is excessive based upon the medical evidence in this case. The employee asserts the trial court should have found her to be one hundred percent disabled based upon the evidence in the case. Further, the employee argues that the trial judge erroneously allowed an occupational therapist to give opinions on medical matters which were beyond his field of expertise. We reverse the judgment in this case and remand the case to the trial court for further proceedings.

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

JOHN K. BYERS, SR.J., delivered the opinion of the court, in which E. RILEY ANDERSON, J., and ROGER E. THAYER, SP.J., joined.

David C. Nagle, Chattanooga, Tennessee, for the appellant, La-Z-Boy, Inc.

Michael A. Wagner, Chattanooga, Tennessee, for the appellee, Patricia Van Winkle.

MEMORANDUM OPINION

There is no dispute concerning the fact that the employee developed carpal tunnel syndrome in each arm while employed by La-Z-Boy, Inc., and that carpal tunnel surgery was performed on each

arm - the left on January 19, 2001, and the right on February 2, 2001.

We do not believe it is necessary to go into great detail concerning the medical evidence in this case. Rather, we focus on the reasoning of the trial court in the acceptance of the evidence presented by La-Z-Boy, Inc. over the evidence presented by the employee.

The evidence of physicians was introduced by way of standard C-32 medical reports. These consisted of a report by a Dr. Walwyn, filed by the employee, and a report of a Dr. Boyd, filed by the employer.

According to the reports introduced at trial, Dr. Walwyn examined the employee on October 22, 2001. His report found the employee retained an eight percent impairment rating. The report noted he reviewed an EMG report but did not state the date upon which the test was performed. The report also included the results of an April 20, 2001 physical capacity evaluation, and his examination of the defendant.

Dr. Boyd spent one and one-half hours with the employee. She reviewed the operating physician's notes, physical therapy reports, and nerve conduction studies which were performed in November of 2001 and September of 2001. Dr. Boyd found the employee sustained a one percent impairment to her left arm and no impairment to the right arm.

La-Z-Boy, Inc. called Brian Laney, an occupational therapist, to testify. Mr. Laney has a bachelors degree in occupational therapy from the Medical College of Georgia. He testified he conducted a test on the employee to determine her ability to perform tasks but that the test was less than successful because of the employee not fully cooperating during the test.

Mr. Laney was asked about two functional capacity evaluations performed on the employee - one in April of 2001 and one in September of 2001. He said:

The first thing that caught my eye whenever I finished my FCE and later found out that Gail had performed a former FCE, her surgical procedures, I believe, were a week apart, carpal tunnel release on the right and carpal tunnel release on the left. The purpose for a carpal tunnel release is to relieve pressure on the nerve that's traveling through that carpal and comes down. I'm not sure what complaints she had that necessitated her having the surgery, but generally people have tingling and numbness, which is hopefully relieved with the release. I believe it's in the notes that she did say the numbness and tingling had decreased after the surgery. When someone has release done, you don't expect immediate relief.

Mr. Laney further testified:

A nerve regenerates or heals at approximately – in a distal extremity of about one inch per month, therefore, you're looking at about six months of healing time in

a six-inch, seven-inch hand for someone to have a good sensory return or relieve any tingling and numbness of that nerve distribution. Therefore, it was my opinion that the first FCE was ordered a little too early if you're including sensory evaluations on a nerve that hasn't had the opportunity to completely heal.

When counsel for the employee objected to Mr. Laney giving medical opinion, Mr. Laney responded: "I am an expert on the physiology of wound healing and nerve regeneration. I went to school for that."

The trial judge held the testimony was admissible.

In reaching a decision in the case, the trial judge remarked on the differences in the opinions of Drs. Boyd and Walwyn and he remarked upon the opinion given by the employee's vocational expert, who testified the employee was severely disabled. He remarked that when there were conflicts in testimony he was required to resolve the matter based upon the record.

The trial judge found that the employee's physician and vocational expert based their opinion upon the EMG Test done in April of 2001, which he found was invalid. This finding was based upon the testimony of Brian Laney, the occupational therapist who was allowed to testify as an expert on medical matters.

In *Bottom v. CNA Ins. Co.*, 821 S.W.2d 932 (Tenn. 1991), the Tennessee Supreme Court held that a physical therapist could give testimony concerning matters which lay within their licensure. Based upon this restriction, the Court held a physical therapist could not assess physical impairment or determine future physical restrictions upon a patient.

We have found no cases involving an occupational therapist's testimony being challenged on the basis that it exceeds the parameters of the restrictions on such practice. We conclude that the provisions of Tenn. Code Ann. § 63-13-103, which define the practice of the art, do not extend so far as to allow the testimony given by Laney in this case. Therefore, this testimony should not have been allowed.

Because the trial judge used this testimony to exclude the major portion of the employee's case, we conclude the judgment must be reversed and the case remanded to the trial court for a new trial.

The cost of this appeal is taxed to La-Z-Boy, Inc.

JOHN K. BYERS, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE, TENNESSEE

LA-Z- BOY, INC., V. PATRICIA VAN WINKLE
Rhea County Circuit Court
No. 21881

May 2, 2003

No. E2002- 01423-WC-R3-CV

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 appellant, La-Z-Boy, Inc., for which execution may issue if necessary.