

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

February 7, 2003 Session

**BOBBIE JEAN SATTERFIELD v. LIONS VOLUNTEER BLIND
INDUSTRIES**

**Direct Appeal from the Circuit Court for Hamblen County
No. 00-CV-139 Kendall Lawson, Circuit Judge**

April 21, 2003

No. E2002-00969-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 75 percent disability to each arm. The employer has appealed insisting the award is excessive. The judgment is affirmed.

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

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

David J. Silvus, of Knoxville, Tennessee, for Appellant, Lions Volunteer Blind Industries.

Danny M. Hryhorchuk, of Morristown, Tennessee, for Appellee, Bobbie Jean Satterfield.

MEMORANDUM OPINION

The employer, Lions Volunteer Blind Industries, has appealed from the trial court's awarding the employee, Bobbie Jean Satterfield, 75 percent permanent partial disability to each arm.

Facts

The facts of the case are not in dispute. At the trial the employee was sixty-eight years of age. She had completed the eleventh grade in school and later obtained a G.E.D. certificate. She had been working for this employer for about fifteen (15) years and was employed as a sewing machine operator. This work involved a lot of repetitive actions of the arms and hands and during September 1997, she developed severe problems with her hands and arms. She duly reported the

problems to her employer, saw several doctors and ultimately came under the care of Dr. Robert E. Ivy. After undergoing surgery on each arm, she continued to have problems when she worked even though her employer accommodated her inability to perform her work duties normally. She has continued to work because she said she liked the people she works with and is afraid of becoming depressed if she stops work. She testified that her hands still hurt and cramp and sometimes tingle and become numb. She said she was not able to perform in the open labor market.

Several company witnesses testified. One official stated she was an excellent employee and that her work load was lighter as they had attempted to accommodate her inability to perform normal functions of a sewing operator. Another company representative said she continued to work a normal schedule unless production was down.

Dr. Robert E. Ivy, an orthopedic surgeon specializing in hand disorders, testified by deposition. He stated he first saw her on October 22, 1997 when she was complaining of numbness and tingling in her hands; his diagnosis was bilateral carpal tunnel syndrome and he first tried treatment involving cortisone injections, writ splints and medication. This treatment did not help much and he performed surgery on the right arm on January 19, 1998 and on the left arm on October 28, 1998. The doctor was of the opinion she had a 5 percent medical impairment to each arm. He stated she should consider changing to a different type job and he did not specify any restrictions. He indicated he did not have any other treatment to offer her.

Dr. Foster T. Hampton III, also an orthopedic surgeon, did an independent medical examination on April 18, 2001 and testified by deposition. His testimony and/or written report indicated the employee (1) had recurrent carpal tunnel syndrome after surgery; (2) recurrent tendinitis flexor tendons of both wrists; (3) recurring problems with trigger thumbs bilaterally; and (4) some residual nerve loss. He gave a 5-10 percent medical impairment to each arm and also recommended she should find another type job which would avoid repetitive action of her arms.

Dr. Julian Nadolsky, a vocational disability consultant, testified before the trial court and stated he did not think the employee had any transferable job skills as she was an unskilled worker and that he was of the opinion her vocational disability was 95 percent. He stated she could perform as an usher, ticket taker, greeter, gate tender, etc.

Standard of Review

We are required to review the case *de novo* with a presumption that the findings of the trial court are correct unless we find the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-255(e)(2).

Analysis

The employer contends the 75 percent award to each arm is excessive. The extent of vocational disability is a question of fact to be determined from all of the evidence, including lay and

expert testimony. *Nelson v. Wal-Mart Stores, Inc.*, 8 S.W.3d 625, 629 (Tenn. 1999). Anatomical impairment is a separate and distinct finding from vocational disability and is but one factor to be considered in determining the extent of vocational disability. *George v. Building Materials Corp.*, 44 S.W.3d 481 (Tenn. 2001); *Wilkes v. Resource Authority of Sumner County*, 932 S.W.2d 458 (Tenn. 1996). When fixing disability to a scheduled member, the main question is to ascertain the loss of use of that member. *Duncan v. Boeing Tennessee, Inc.*, 825 S.W.2d 416 (Tenn. 1992). In this connection, the usual factors of the employee's age, education, training and skills as well as the opportunity for employment in the open labor market may also be considered. *Orman v. Williams-Sonoma, Inc.*, 803 S.W.2d 672, 678 (Tenn. 1991).

In the present case, the evidence is quite clear that the employee did not receive a great deal of relief from the surgical procedures and continues to have pain and other symptoms. Although she is still working with accommodations from her employer, it is questionable as to how long this can continue. In our independent review of the record, we cannot say that the evidence preponderates against the 75 percent award of disability fixed by the trial court.

During oral argument, the employee raised a question of failure to file an appeal bond. This was not assigned as error nor has any motion for dismissal been filed to correct such oversight. Thus, we hold the employee has waived any issue on this point.¹

Conclusion

The award of 75 percent permanent partial disability to each arm is affirmed in all respects. Costs of the appeal are taxed to the employer.

ROGER E. THAYER, SPECIAL JUDGE

¹ An appeal bond was filed on April 19, 2002 and appears on page 29 of technical record.

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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, Lions Volunteer Blind Industries, for which execution may issue if necessary.