

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
March 25, 2003 Session

**ROSIE MAE THOMAS v. MAGNA SEATING SYSTEMS OF AMERICA,
INC. a/k/a MILAN SEATING SYSTEMS**

**Direct Appeal from the Chancery Court for Gibson County
No. 15430 George R. Ellis, Chancellor**

No. W2002-02403-WC-R3-CV - Mailed July 7, 2003; Filed August 15, 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. Section 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. In this appeal employer contends that the trial court erred in admitting the testimony of Dr. Joseph C. Boals, III and that the evidence preponderates against the trial court's award of 25% permanent partial disability to the left arm. For reasons stated in this opinion, we affirm the judgment of the trial court.

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

ALLEN W. WALLACE, SR. J., delivered the opinion of the court, in which JANICE M. HOLDER, J. and D. J. ALISSANDRATOS, SP. J., joined.

P. Allen Phillips, Jackson, Tennessee, for appellant, Magna Seating Systems of America, Inc. d/b/a Milan Seating Systems.

Jeffery A. Garrety, Jackson, Tennessee, for appellee, Rosie Mae Thomas.

MEMORANDUM OPINION

Rosie Mae Thomas ("claimant") was born May 15, 1960. She completed the eleventh (11th) grade in education, she does not have a GED. She has worked at various jobs involving assembly line work. These include sewing positions at W. S. Wormser, assembling tractor seats at Roger Cushion, drilling holes in metal tubes at Ulseth, and putting on gas tanks at MTD Products, Inc. She also worked a short time with Dairy Queen. While working for employer as a sewing machine operator she developed pain and numbness in her elbow, and specifically avers that the pulling

motion required in the scope of her employment irritated her elbow. She reported her injury and was referred by her employer to Dr. Ronald Twilla who referred her to Dr. Lowell Stonecipher.

Claimant was treated by Dr. Stonecipher with medication and injections on three occasions. She was released by Dr. Stonecipher in April, 2000, without restrictions. Her complaints continued in subsequent jobs, and she continued to see Dr. Stonecipher with the same symptoms throughout the course of her treatment. Injection treatments given by Dr. Stonecipher did not seem to give any relief. Dr. Stonecipher finally concluded that her condition was difficult to evaluate and that he could not ascertain her specific problem, and he recommended she seek a second opinion.

Claimant was then referred to Dr. Joseph C. Boals, III for an independent medical evaluation. His diagnoses was "overuse syndrome, left upper extremity, with chronic medical epicondylitis." He further opined the injury was work related.

The main issue in this appeal is the resolution of the differences in opinion of two (2) expert witnesses, Dr. Boals and Dr. Stonecipher. The trial court heard arguments regarding the admission of the testimony of Dr. Boals and admitted his testimony. Where issues involve expert medical testimony which is contained in the record by deposition, as in this case, all impressions of weight and credibility must be drawn from the contents of the deposition, and the reviewing court may draw its own impression as to weight and credibility from the contents of the deposition. *Overman v. Williams Sonoma, Inc.* 803 S.W.2d 672,676-77 (Tenn. 1991).

Dr. Boals' qualifications include board certification in the use of the AMA Guidelines. He testified as follows:

Historically we must look at the history of the Guides. In the third and fourth editions, which were used over the last twenty-five years, there was a general suggestion that when there was an unlisted impairment that the physician examiner should use his experience in arriving at impairment rating. Now, in the fifth edition of the Guides new language has been inserted that's never been there before. In chapter one, page eleven, the authors are very - - - make a very strong statement that if there is an unlisted impairment it can be compared to conditions in the same area that have the same functional results.

In this case Dr. Stonecipher's testimony is essentially negative in that he was unable to ascertain her specific problem, whereas Dr. Boals' testimony is more positive in that he identified her problem and was of the opinion her impairment based on AMA Guidelines was 10% to the left upper extremity, and was work related.

Where there is a conflict between medical experts, a trial court has the discretion to accept the opinion of one medical expert over that of another unless evidence preponderates against that medical opinion. *Kellerman v. Ford Lion, Inc.*, 920 S.W.2d 333, 335 (Tenn. 1996). *Johnson v.*

Midwesco, 801 S.W.2d 804, 806 (Tenn. 1990). The trial court was well within its discretion in accepting the testimony of Dr. Boals in this case.

Employer further questions the trial court's award of 25% permanent partial disability to the left arm. In assessing vocational disability, the trial court is required to consider many pertinent factors such as the age, education, skills and training, local job opportunities and capacity to work at types of employment available in the worker's disabled condition. Tenn. Code Ann. § 50-6-241(a)(1); *Worthington v. Modine*, 798 S.W.2d 232, 234 (Tenn. 1990); *Roberson v. Loretta Casket Co.*, 722 S.W.2d 380-384 (Tenn. 1986).

The scope of review of issues of fact is *de novo* upon the record of the trial court, accompanied by a presumption of correctness of the findings, unless the preponderance of evidence is otherwise. Tenn. Code. Ann. § 50-6-225(e)(2). *Lollar v. Wal-Mart Stores, Inc.*, 767 S.W.2d 143 (Tenn. 1989). When a trial court has seen and heard witnesses, especially where issues of credibility and weight of oral testimony are involved, considerable deference must be accorded the trial court's factual findings. *Humphrey v. David Witherspoon, Inc.*, 734 S.W.2d 315 (Tenn. 1987).

After considering all relevant factors in this case, we find the evidence in this case does not preponderate against the trial judge's award of 25% permanent partial disability to the left arm.

CONCLUSION

The judgment of the trial court is affirmed. The costs of this appeal are taxed to employer, Magna Seating Systems of America, Inc., also known as Milan Seating Systems.

ALLEN W. WALLACE, SENIOR JUDGE

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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 Appellant, Magna Seating Systems of America, Inc., a/k/a Milan Seating Systems, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM

