

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
April 21, 2003 Session

BETTY FRAZIER v. SATURN CORPORATION

**Direct Appeal from the Circuit Court for Maury County
No. 6786 Robert L. Holloway, Judge**

**No. M2002-01564-WC-R3-CV - Mailed - October 17, 2003
Filed - December 19, 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 employee insists the trial court erred in determining the date of her injury for the purpose of determining her average weekly wage and that the evidence preponderates against the trial court's findings as to the extent of her permanent disability. As discussed below, the panel has concluded the judgment should be modified with respect to the worker's compensation rate.

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

JOE C. LOSER, JR., SP. J., delivered the opinion of the court, in which ADOLPHO A. BIRCH, JR., J., and ALLEN W. WALLACE, SR. J., joined.

J. Anthony Arena, Arena & McElhaney, Nashville, Tennessee, for the appellant, Betty Frazier

Thomas H. Peebles, IV, and Terrence O. Reed, Nashville, Tennessee, for the appellee, Saturn Corporation

MEMORANDUM OPINION

The employee or claimant, Ms. Frazier, initiated this civil action to recover workers' compensation benefits for an allegedly work related injury. The employer, Saturn, denied liability. After a trial on the merits, the trial court found her weekly compensation rate to be \$294.00 and awarded, among other things, permanent partial disability benefits based on 12 percent to the body as a whole. The claimant has 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). 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). Issues of statutory construction are solely questions of law. Bryant v. Genco Stamping & Mfg. Co., 33 S.W.3d 761, 765 (Tenn. 2000).

The claimant gradually developed carpal tunnel syndrome and chronic shoulder strain from repetitive use of the hands while working for the employer. She first gave notice of her injury in 1991, but continued working until January 3, 1996, when she became disabled to work and had corrective surgery. She was also unable to work, because of pain from her injury, from February 20, 1994 until March 24, 1995. The trial court found the date of injury to be late 1991. The claimant contends the trial court should have invoked the "last day worked" rule. The date of injury for a gradually occurring injury is the date on which the claimant is forced to quit work because of the injury. Lawson v. Lear Seating Corp., 944 S.W.2d 340, 343 (Tenn. 1997). We therefore modify the judgment to reflect February 20, 1994 as the date of injury. On remand, the trial court will determine the claimant's compensation rate based on that date.

The claimant further contends the award of permanent disability benefits based on 12 percent to the body as a whole is inadequate. The extent of an injured worker's vocational disability is a question of fact. Story v. Legion Ins. Co., 3 S.W.3d 450, 456 (Tenn. 1999). 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 claimant is approximately fifty-two years old and has a GED. She has seen a number of physicians and is presently on disability status with Saturn. From the claimant's own testimony, which the trial court weighed and evaluated, as well as varied and conflicting medical evidence, the trial court found her permanent disability to be 12 percent to the body as a whole. There is

conflicting medical evidence as to whether the claimant exaggerated her symptoms. 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). It appears from the record that the trial court properly exercised its discretion in the present case. From a consideration of the relevant 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 finding as to the extent of the claimant's permanent disability.

As modified, the judgment of the trial court is affirmed and the cause remanded to the Circuit Court for Maury County. Costs are taxed to the parties, one-half each.

JOE C. LOSER, JR.

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No. 6786

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JUDGMENT

This case is before the Court upon the motion for review filed by Saturn Corporation pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), 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.

It appears to the Court that the motion for review is not well-taken and is therefore denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to the parties, one-half each, for which execution may issue if necessary.

BIRCH, J., NOT PARTICIPATING