

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT NASHVILLE  
July 31, 2003 Session

**HAMEED ALFARAJ v. S-3 PERSPECTIVES, INC., D/B/A EXPRESS  
PERSONNEL SERVICES**

**Direct Appeal from the Circuit Court for Rutherford County  
No. 44759 Robert E. Corlew, Judge**

---

**No. M2003-00455-WC-R3-CV - Mailed - December 5, 2003  
Filed - February 27, 2004**

---

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel 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 employer appeals the judgment of the trial court finding that the employee sustained a work-related injury resulting in a 5% anatomical impairment and a 95% vocational disability to his right upper extremity. The employer contends that the evidence preponderates against a finding that the employee suffered from carpal tunnel syndrome; and that the trial court erred in relying on the testimony of the employee's medical expert. The panel has concluded that the judgment of the trial court should be affirmed.

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

JAMES L. WEATHERFORD, SR.J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and JOE C. LOSER, JR., Sp.J., joined.

Stanley A. Davis, Nashville, Tennessee, for the appellee Hameed Alfaraj.

Dale A. Tipps, Nashville, Tennessee, for the appellant, S-3 Perspectives, Inc., d/b/a/ Express Personnel Services.

**MEMORANDUM OPINION**

Mr. Hameed Alfaraj was 36 years old at the time of trial. He is an Iraqi who left his country after taking part in the uprising against Saddam Hussein during the Gulf War. He immigrated to the United States in 1996. He had 6 years of elementary education but is very weak in reading or writing Arabic. He cannot speak English. All of his jobs in the past have involved some type of manual

labor and he has no job skills.

On September 15, 2000, Mr. Alfaraj injured his right hand while working for Express Personnel Services (Express). Mr. Alfaraj was lifting boxes weighing approximately 50 pounds each when he heard a loud pop and immediately felt pain in the wrist and palm of his right hand. He also saw a ball-like mass appear on his hand. He reported the injury to his employer and picked Dr. Barry Callahan from a panel of three physicians.

On October 12, 2000, Dr. Callahan, a board-certified orthopedic surgeon, diagnosed a ganglion cyst and recommended excision. Mr. Alfaraj also had a positive Tinel's sign and Phalen's maneuver. According to Dr. Callahan's records, Mr. Alfaraj reported that he sometimes had "some paresthesias when he had prolonged gripping or lifting. This has been present for 3-4 months and likely predates the onset of this mass." Dr. Callahan noted that "[h]e may have some carpal tunnel symptoms" and that releasing the carpal canal "would hopefully prevent future problems." He recommended a carpal tunnel release through the same incision for the excision of the ganglion cyst "and informed [Mr. Alfaraj through an interpreter] I would not get an EMG simply because the addition of release of the transverse carpal ligament through the FCR tunnel would not add any morbidity to the ganglion excision."

On October 23, 2000, Dr. Callahan performed the ganglion excision and a carpal tunnel release. In his operative report, Dr. Callahan noted Mr. Alfaraj "also reported some minor numbness and tingling in the median nerve distribution of his fingers and in addition to his mass had all the findings of carpal tunnel syndrome."

In his deposition, Dr. Callahan stated he never made a diagnosis of carpal tunnel syndrome due to lack of symptoms. He compared doing the carpal tunnel release to "doing bowel surgery and taking out an appendix. You're probably going to head something off at the pass." He pointed out that you release half of the ligament taking out the cyst so it would be "absurd" not to release the rest of it. He characterized Mr. Alfaraj's carpal tunnel symptoms as equivocal or inconclusive because he did not have a positive median nerve compression test. However, Dr. Callahan did not order such a test prior to surgery.

On December 5, 2000, Dr. Callahan found that Mr. Alfaraj had regained full wrist mobility, assessed Mr. Alfaraj's wrist as having no objective loss and gave him a 0% impairment rating. Dr. Callahan later released Mr. Alfaraj from his care with no restrictions. On February 22, 2001, he returned to Dr. Callahan complaining of pain in his wrist and hand while trying to sleep. Dr. Callahan provided him with a splint but still felt he had no objective loss. An EMG returned normal results.

On January 14, 2002, Mr. Alfaraj sought additional treatment from Dr. Choudhury Salekin, the Chief of Neurology at Veterans Administration Medical Center in Murfreesboro who has a part-

time private practice in occupational medicine and disability.<sup>1</sup> Mr. Alfaraj reported pain in the right wrist and hand and numbness and weakness in the right hand since September 2000. After a clinical exam, Dr. Salekin diagnosed Mr. Alfaraj as having “residual symptoms from right carpal tunnel syndrome caused by repetitive motion injury at work.” As a result, Dr. Salekin gave Mr. Alfaraj a 24% impairment rating of the right upper extremity according to the AMA Guides, Fifth Edition, based on sensory and motor deprivation due to carpal tunnel syndrome. Dr. Salekin assigned permanent restrictions which included avoiding repetitive motion, exposure to vibration, and frequent lifting, pushing, or pulling with the right hand.

On May 15, 2002, at the request of the employer Dr. Callahan examined Mr. Alfaraj. According to Dr. Callahan’s records Mr. Alfaraj, through his interpreter, reported elbow and forearm pain and weakness when he tried to grasp or lift due to arm pain. Dr. Callahan stated that he did not report numbness or tingling or any other findings related to carpal tunnel syndrome.<sup>2</sup> At that appointment, Dr. Callahan diagnosed Mr. Alfaraj with right lateral epicondylitis not related to the cyst removal or employment: “In short his impairment rating remains 0% regarding his volar carpal ganglion cyst and carpal tunnel disease which have been successfully cured.”

Mr. Alfaraj has not worked since the injury, other than driving a pick-up truck for a friend’s business for a short time. He receives public assistance. He is right handed and never had any problems with his right hand prior to his injury. He has pain in his thumb, palm and through his arm especially in cold weather. He describes his right hand as “useless”. He can do light work with his left hand. Prior to his injury he worked as a butcher, busboy, dishwasher and factory worker.

Mr. Abraham Alsadi, who has known Mr. Alfaraj since 1996, has been his interpreter, helped him fill out job applications and make phone calls regarding employment. He has observed Mr. Alfaraj in pain from his hand and stated that before the accident he was very active and worked regularly.

The trial court concluded that Mr. Alfaraj sustained a 5% anatomical impairment to his right upper extremity<sup>3</sup> and awarded 95% vocational disability.

## ANALYSIS

Review of the findings of fact made by the trial court is *de novo* upon the record of the

---

<sup>1</sup>Dr. Salekin did his residency and fellowship in occupational medicine at Harvard University.

<sup>2</sup>Mr. Alfaraj maintained he did not have an interpreter at this appointment. He had not reported arm or elbow pain to Dr. Salekin during his 1/14/02 examination. Dr. Callahan had noted difficulty in communicating with Mr. Alfaraj during earlier examinations.

<sup>3</sup>*Tennessee Code Annotated* §50-6-207(3)(A)(ii)(m) lists the appropriate amount of an award for the loss of an “arm,” not an “upper extremity.” However, for the purposes of our analysis, we assume that the trial court properly used the impairment rating for the loss of an “upper extremity” to compensate the employee for the loss of an “arm.”

trial court, accompanied by a presumption of correctness of the findings, unless the preponderance of the evidence is otherwise. *Tenn. Code Ann.* §50-6-225(e)(2).

The application of this standard requires this Court to weigh in more depth the factual findings and conclusions of the trial courts in workers' compensation cases. *See Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988).

Where the 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. *Hill v. Eagle Bend Mfg., Inc.*, 942 S.W.2d 483, 487 (Tenn. 1997).

When the medical testimony is presented by deposition, as it was in this case, this court is able to make its own independent assessment "about the weight and credibility to be given to the medical testimony." *Carter v. First Source Furniture Group*, 92 S.W.3d 367, 368 (Tenn. 2002)

We will address both issues raised by defendant together. The defendant contends the evidence preponderates against a finding that Mr. Alfaraj suffered from carpal tunnel syndrome related to employment and that Dr. Salekin's testimony should have been disregarded because his methodology was badly flawed and based on untrustworthy underlying facts.

In order to be eligible for workers' compensation benefits, an employee must suffer "an injury by accident arising out of and in the course of employment which causes either disablement or death." *Tenn. Code Ann.* § 50-6-102(12). The phrase "arising out of" refers to causation. The causation requirement is satisfied if the injury has a rational, causal connection to the work. *Reeser v. Yellow Freight Sys., Inc.*, 938 S.W.2d 690, 692 (Tenn. 1997).

Although causation cannot be based upon merely speculative or conjectural proof, absolute certainty is not required. Any reasonable doubt in this regard is to be construed in favor of the employee. We have thus consistently held that an award may properly be based upon medical testimony to the effect that a given incident "could be" the cause of the employee's injury, when there is also lay testimony from which it reasonably may be inferred that the incident was in fact the cause of the injury. *Id.* Except where permanent disability is obvious to a layman, a finding of permanency must be based on competent medical evidence that there is a medical probability of permanency or that permanency is reasonably certain to be permanent. *Kellerman v. Food Lion, Inc.*, 929 S.W.2d 333, 335-36 (Tenn. 1996).

Dr. Salekin diagnosed residual symptoms of right carpal tunnel syndrome related to employment. The defendant argues Dr. Salekin's 24% impairment rating for carpal tunnel syndrome and causation testimony should be disregarded because he failed to use severity grades or other procedures contained in the Guides in assigning his impairment rating; and had incomplete medical records or at times did not accurately recall patient history.

In Dr. Callahan's opinion, Mr. Alfaraj's symptoms were caused by lateral epicondylitis

unrelated to employment. Dr. Callahan testified he never made the diagnosis of carpal tunnel syndrome, even though his medical records contain several references to carpal tunnel syndrome or disease as quoted above. At one point in his testimony, Dr. Callahan characterizes the carpal tunnel symptoms as equivocal because there was not a positive EMG, when an EMG was not ordered prior to surgery. He also acknowledged that it was difficult to communicate with this patient due to the language barrier.

When medical testimony differs, the trial court has the discretion to determine which medical testimony to accept. *Kellerman v. Food Lion, Inc.*, 929 S.W.2d at 335. In doing so, a court should consider, among other things, “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).

The trial court specifically found both physicians to be credible but took into consideration the issues raised about them in weighing their testimony. The trial court considered both physicians’ testimonies in determining that Mr. Alfaraj had sustained a 5% impairment rating. The findings of the trial court regarding causation and permanency are supported by competent medical proof and the evidence does not preponderate against these findings.

The trial court found that despite the lack of objective findings that Mr. Alfaraj presented credible evidence as to his pain and lack of residual strength. The trial court also found that he had no job skills, that all his previous jobs involved labor-intensive work, and he now relies on public assistance for support. The trial court was in the best position to judge the credibility of the witnesses.

After careful review of the record, we find that the evidence does not preponderate against the finding of the trial court that Mr. Alfaraj sustained a 95% vocational disability for his work-related injury to his right arm.

### **CONCLUSION**

The judgment of the trial court is affirmed. Costs of appeal are taxed to the appellant, S-3 Perspectives, Inc., d/b/a Express Personnel Services.

---

**JAMES L. WEATHERFORD, SR.J.**

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

**HAMEED ALFARAJ v. S-3 PERSPECTIVES, INC., d/b/a EXPRESS  
PERSONNEL SERVICES**

**Circuit Court for Rutherford County  
No. 44759**

---

**No. M2003-00455-SC-WCM-CV - Filed - February 27, 2004**

---

**ORDER**

This case is before the Court upon the motion for review filed by S-3 Perspectives, Inc., d/b/a Express Personnel Services 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 S-3 Perspectives, Inc., d/b/a Express Personnel Services, for which execution may issue if necessary.

PER CURIAM

