

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
April 5, 2004 Session

SUSAN J. SMITH v. S-R OF TENNESSEE

**Direct Appeal from the Chancery Court for Lauderdale County
No. 12220 Martha B. Brasfield, Chancellor**

No. W2003-01733-WC-R3-CV - Mailed May 4, 2004; Filed June 9, 2004

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with Tennessee Code Annotated 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 argues that the trial court's award of benefits based on 55% permanent partial disability to the right upper extremity and 45% permanent partial disability to the left upper extremity is excessive and is not supported by a preponderance of the evidence. We conclude that the evidence fails to preponderate against the trial court's award, and therefore, we affirm the judgment of the trial court.

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

JANICE M. HOLDER, J., delivered the opinion of the court, in which ROBERT L. CHILDERS, SP.J., and WILLIAM B. ACREE, SP. J., joined.

William B. Walk, Jr., Memphis, Tennessee, for the appellant, S-R of Tennessee.

J. Thomas Caldwell, Ripley, Tennessee, for the appellee, Susan J. Smith.

MEMORANDUM OPINION

FACTUAL BACKGROUND

At the time of trial, the appellee, Susan J. Smith ("Employee"), was fifty-nine years old. She has a high school education. Employee has been a housewife and has performed secretarial work. She also has worked on a conveyor line, built furniture, and stocked and packed compact disks. In December 1999, Employee began working at S-R of Tennessee ("Employer") as an inspector on an inspection line.

In April 2000, Employee saw Dr. Salman Saeed with complaints of neck pain and pain in the hands. He performed a nerve conduction study, and the results were consistent with bilateral carpal tunnel syndrome.

In November 2000, Employee saw Dr. Michael Heck, a panel physician, complaining of bilateral wrist pain. Dr. Heck performed a carpal tunnel release on Employee's right wrist in November 2000, and in January 2001, he performed a carpal tunnel release on her left wrist. Dr. Heck found no permanent impairment as a result of bilateral carpal tunnel syndrome.

Employee was later diagnosed as having a separate injury to her right wrist (a tear of the triangular fibrocartilage complex ("TFCC")), and Dr. William L. Bourland performed surgery for this problem in August 2001. He assigned a 5% anatomical impairment rating for this injury.

Dr. Joseph Boals, III, who performed an independent medical evaluation of Employee, assigned an anatomical impairment rating to each upper extremity based upon bilateral carpal tunnel syndrome and assigned an additional impairment rating to the right upper extremity for the TFCC tear. He rated Employee's anatomical impairment at 19% to the right upper extremity and 10% to the left upper extremity. Dr. Boals explained that he assessed Employee's impairment using the most recent edition of the AMA Guides.

In February 2003, Dr. Saeed performed another nerve conduction study, and it showed that although Employee evidenced "mild improvement" from the earlier study in 2000, she continues to have symptoms of bilateral carpal tunnel syndrome. He opined that these injuries are permanent.

Employee returned to full-duty work for Employer. However, Employer later laid off a substantial number of people, including Employee. Employee testified that she continues to have pain, numbness and weakness in her right hand, despite the surgery. She said that she wears a brace on her hand while driving but that she still experiences pain when turning or twisting her arm. She stated that she has difficulty squeezing, cutting, grasping, using power tools and doing fine needlework. Employee also said that she cannot take the top off a soda bottle or a jar and cannot lift heavy plates. In addition, she explained that she is unable to cast a fishing rod or throw a Frisbee with her dog. She still hurts "all the time."

The trial court found that Employee sustained a vocational impairment of 55% permanent partial disability to the right upper extremity and a 45% permanent partial disability to the left upper extremity.¹

¹An injury to both arms is a scheduled injury. See Tenn. Code Ann. § 50-6-207(3)(A)(ii)(w) (1999). To conform to the statute, a trial court should average the disability rating to each upper extremity in order to make a single award for both arms. Scales v. City of Oak Ridge, 53 S.W.3d 649, 651 n.1 (Tenn. 2001); Drennon v. Gen. Elec. Co., 897 S.W.2d 243, 247 (Tenn. Workers' Comp. Panel 1994). We note, however, that properly calculated, the total number of weeks of benefits would remain the same.

ANALYSIS

Employer argues that the trial court's award is excessive because the facts and the medical proof do not support the court's award. Therefore, Employer requests that Employee's award be reduced.

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) (Supp. 2003). Extent of vocational disability is a question of fact. Story v. Legion Ins. Co., 3 S.W.3d 450, 456 (Tenn. Workers' Comp. Panel 1999).

Where medical testimony differs, 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. Hinson v. Wal-Mart Stores, Inc., 654 S.W.2d 675, 676-77 (Tenn. 1983). Where the medical testimony in a workers' compensation case is presented by deposition, as it is in this case, 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).

Employer maintains that Dr. Boals used the wrong section of the 5th edition of the AMA Guides for the assessment of Employee. The AMA Guides assist physicians in evaluating the extent of an injured worker's medical impairment. Dr. Boals thoroughly explained which sections of the AMA Guides he used to determine Employee's impairment rating. We conclude that the trial court did not err in accepting the opinion of Dr. Boals.

Even if the anatomic impairment rating given by Dr. Boals was flawed, medical testimony as to permanent physical impairment is but one of many factors for the trial court to consider in assessing vocational disability. See Worthington v. Modine Mfg. Co., 798 S.W.2d 232, 234 (Tenn. 1990). In addition to anatomic impairment, the trial court should consider the employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in the employee's disabled condition in assessing the degree of an employee's vocational disability. See Tenn. Code Ann. § 50-6-241(b) (1999); McCaleb v. Saturn Corp., 910 S.W.2d 412, 416 (Tenn. Workers' Comp. Panel 1995). Moreover, trial courts are not bound to accept physicians' opinions regarding the extent of an employee's disability but should consider all the evidence, both expert and lay testimony, in determining the extent of an employee's disability. Whirlpool Corp., 69 S.W.3d at 170. An injured employee is competent to testify as to her own assessment of her physical condition, and such testimony should be regarded in assessing vocational disability. McIlvain v. Russell Stover Candies, Inc., 996 S.W.2d 179, 183 (Tenn. 1999). The trial court considered all of the facts of the case, including Employee's testimony, her vocational background, and the medical evidence. We conclude that the evidence does not preponderate against the trial court's findings as to the extent of vocational disability.

CONCLUSION

From our independent review of the record and consideration of the relevant factors, we conclude that the evidence does not preponderate against the trial court's findings as to the extent of vocational disability. The judgment of the trial court is therefore affirmed. Costs are taxed to the appellant, S-R of Tennessee, and its surety, for which execution may issue if necessary.

JANICE M. HOLDER, JUSTICE

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
April 5, 2004 Session

SUSAN J. SMITH v. S-R OF TENNESSEE

**Chancery Court for Lauderdale County
No. 12220**

No. W2003-01733-WC-R3-CV - Filed June 9, 2004

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, S-R of Tennessee, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM

