

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

February 18, 2004 Session

TIFFANY LEWIS DENYER v. PENINSULA HOSPITAL

**Direct Appeal from the Circuit Court for Blount County
No. L-13379 D. Kelly Thomas, Jr., Judge**

Filed May 25, 2004

No. E2003-01541-WC-R3-CV - Mailed April 12, 2004

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 employer contends the trial court's award of 50 percent permanent partial disability to the arm was excessive. We disagree and affirm.

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

H. DAVID CATE, SP. J., delivered the opinion of the court, in which WILLIAM M. BARKER, J., and ROGER E. THAYER, SP. J., joined.

R. Kim Burnette and John A. Willis, Knoxville, Tennessee, attorneys for appellant, Peninsula Hospital.

Garry Ferraris, Knoxville, Tennessee, attorney for appellee, Tiffany Lewis Denyer.

MEMORANDUM OPINION

I. Factual Background

The employee, Tiffany Lewis Denyer, has a bachelor of science degree in nursing from St. Louis University. She was twenty-eight (28) years old at the time of trial.

On February 2, 1997, she became employed as a psychiatric nurse with the employer, Peninsula Hospital. She has continued to work for the employer except for two periods of leave. The leave periods consisted of a three month period in the summer of 1998, when she worked at a summer camp for disabled youth, and for about six months in 2000, when she worked as an

occupational health nurse for Blount Memorial Hospital. After each leave she returned to work for the employer on a “PRN” or as needed basis, which provided that she would submit the hours she wanted to work and the employer would schedule her for work, if available. She continued to work in that capacity.

When she returned to work for the employer after her second leave, she began to experience pain, cramping, numbness, tingling, decreased grip strength and fine motor skills in her right arm, which is her dominant arm. She also received a sprain from a restraint, which she reported to the employer.

The employer provided her with a panel of three doctors, from which she chose Dr. C. Sanford Carlson, who she saw on May 9, 2000. He treated her without success with steroid injections, splinting, anti-inflammatories and heat. On October 27, 2000, Dr. Carlson performed right carpal tunnel surgery, releasing the median nerve which was plastered to the underside of the transverse carpal ligament.

The employee returned to work on December 4, 2000, and began to experience pain and swelling. She returned to Dr. Carlson on December 6, 2000, and was taken off from work for a week and was assigned writing restrictions. Dr. Carlson concluded she reached maximum medical improvement on April 25, 2001, and assigned her a permanent impairment of 5 percent to the right upper extremity based on the AMA Guidelines. Even though she continued to experience pain and cramping, Dr. Carlson placed her on no restrictions after the next two or three months, because carpal tunnel is a self-limited condition when released. He said his “usual admonition would be to do the best you can to get by, rest the hand, stretch the hand, modify technique.”

Dr. Carlson saw her the last time on August 13, 2002, when he recommended she continue to work and decrease her writing requirements for the next four to five weeks. At this time he suggested she obtain a second opinion from another doctor.

She went to Dr. E. B. Burns on February 21, and March 11, 2003. Dr. Burns was in agreement with Dr. Carlson’s treatment and recommended that she should tolerate the symptoms or change jobs.

She has continued to work for the employer, although she continues to have problems writing on the patients’ charts, and performing such nursing duties as drawing blood. She has requested and been assigned to the medicine room because it required less writing. The medicine room is a position which is not sought after by other nurses. She has purchased a typewriter, which she can use at times, to reduce the writing requirements. Since the hospital is a psychiatric locked facility she has had to learn to open the doors with her left arm and hand and to open the medicine bottles with a different technique.

The employee describes her current symptoms relating to her arm, wrist, and hand, as follows:

I have a near constant state of pain. Sometimes it's very little, but sometimes it's to the point that I can't even close my hand or lift a piece of paper with it. It varies to the level of usage for that particular day. I have occasional numbness and tingling, also directly corresponding with what activity I'm engaged in that day. Definite decrease in grip strength, my ability to handle objects, carry objects, open object, turn objects like doorknobs, keys, steering wheels, that sort of thing, a slight decrease in range of motion as far as how far back and forward my wrist will bend.

She also wears a wrist splint every day for pain management and support which was prescribed by Dr. Carlson.

Regarding activities outside work, she indicates driving is painful; stirring, cooking or moving pots from point to point in the kitchen is difficult; she constantly drops items; cannot iron or mow grass because of the vibrations of the lawn mower. She has given up water and snow skiing because of the torque on her wrist. And the cramping and numbness interfere with her sleep some nights.

II. Standard of Review

The existence and extent of a permanent vocational disability are questions of fact for determination by the trial court and are reviewed *de novo*, accompanied by a presumption of correctness, unless the preponderance of the evidence is otherwise. *Walker v. Saturn Corp.*, 986 S.W.2d 204, 207 (Tenn. 1998); *Whirlpool Corp. v. Nakhoneinh*, 69 S.W.3d 164, 170 (Tenn. 2002); Tenn. Code Ann. § 50-6-225(e)(2) (Supp. 2003).

III. Discussion

In the case of *Duncan v. Boeing Tennessee, Inc.*, 825 S.W.2d 416, 417 (Tenn. 1992), the Court dealing with a scheduled member said:

Under T.C.A. § 50-6-207(3) one suffering such a work-related disability is entitled to compensation for the partial loss of the use of the scheduled member of his body without regard to this loss of earning power or wage.

In assessing the degree of an employee's vocational disability, the court shall consider all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's disabled condition. Tenn. Code Ann. § 50-6-241(b); *Walker v. Saturn Corp.*, 986 S.W.2d 204, 208 (Tenn. 1998); *Whirlpool Corp. v. Nakhoneinh*, 69 S.W.3d 164, 170 (Tenn. 2002).

With the foregoing principles in mind, the employee has suffered an injury to her dominant arm, which has caused a significant decrease in her ability to perform her job duties. For example, she can no longer perform her charting responsibilities as efficiently. She has had to purchase a typewriter, which she can use occasionally. She has frequently requested to work in the medicine room, a position the other nurses shun, because there is less writing. She has had to learn to open the locked doors in the employer's psychiatric hospital with her left hand and arm, as well as change her technique in opening medicine bottles. She has to get help drawing blood from her patients.

She has problems holding heavy objects, driving, cooking, doing laundry and mowing the lawn. She no longer participates in water and snow skiing.

She stated that the pain was sometimes "to the point that I can't even close my hand or lift a piece of paper with it." She has felt a decrease in grip strength and range of motion. She daily wears a wrist splint.

The doctor opined that she had a 5 percent permanent impairment to her right upper extremity based upon the AMA Guidelines. While he did not assign any permanent restrictions, he indicated the carpal tunnel problem was self-limiting.

Based on the entire record in this cause we conclude that the preponderance of the evidence supports an award of 50 percent to the right arm.

IV. Conclusion

We affirm the trial court's judgment of 50 percent permanent partial disability to the employee's right arm and remand to the trial court for such further proceedings as may be necessary. Costs of the appeal are taxed to the employer, Peninsula Hospital, with execution awarded, if necessary.

H. DAVID CATE, SPECIAL JUDGE

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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 appellant, Peninsula Hospital, for which execution may issue if necessary.