

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

**Jimmy Darryl Ingle v. Nissan North America Inc., and Royal and
SunAlliance Insurance Co.**

Direct Appeal from the Circuit Court of Rutherford County
No. 44224, Hon. Robert E. Corlew III

No. M2003-01912-WC-R3-CV - Mailed - July 28, 2004
Filed - August 31, 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 of findings of fact and conclusions of law. Plaintiff contends the Chancellor erred in denying his benefits under the Workers' Compensation Act when the only medical evidence presented after his final work at Nissan demonstrated permanency of injury. The chancellor properly found that the plaintiff has not suffered a permanent anatomical injury and therefore no permanent partial impairment under the Tennessee Worker's Compensation Act. Therefore, the plaintiff is not entitled to any further benefits for vocational disability. We affirm the judgment of the trial court.

Tenn Code Ann. § 50-6-225(e)(3) Appeal as of Right; Judgment of the Circuit Court Affirmed.

John A. Turnbull, Sp. J., Delivered the opinion of the court, in which Frank F. Drowota, III, Chief Justice, and James L. Weatherford, Sr, Sp. J., joined.

D. Russell Thomas and Herbert M. Schaltegger, Murfreesboro, TN, for the appellant, Jimmy Darryl Ingle.

Van French and Larry G. Trail, Trail & Trail, Murfreesboro, TN, for the appellees Nissan North America Inc. and Royal and SunAlliance.

Memorandum Opinion

Darryl Ingle, a production employee for Nissan North America Inc. ("Nissan") for over 14 years, developed work related epicondylitis in January, 2000. His first complaints were left elbow pain. Ingle was first seen, diagnosed and treated by the authorized orthopedic surgeon, Dr. Tony Adamson, on January 11, 2000. After finding swelling and upon complaints of pain, Dr. Adams placed Ingle on light duty despite a lack of x-ray findings. Nissan placed Ingle on temporary disability since no jobs were available within his temporary restrictions. After a course of physical therapy, Ingle's symptoms improved, and on January 24, 2000, he was returned to regular duty.

In March, 2000, Ingle was moved to a new job on the door line. This job entailed mostly right-handed use of vibrating and high torque tools. Ingle returned to Dr. Adams May 4, 2000, with complaints of elbow pain, this time more severe on the right arm, but with recurring pain in the left elbow. Dr. Adams noted a full range of motion, but again placed Ingle on light duty. His temporary restrictions included limited out-stretched arm use, limited heavy gripping, and limited use of high torque tools. Again, Nissan was unable to accommodate this restrictions, and placed Ingle on temporary disability.

Nissan's policy, fully understood by Ingle, provided that failure to obtain advance written approval to work while on leave for temporary disability will be cause for termination. "Approval will only be granted for work that is rehabilitative and does not violate your restrictions or hinder your recovery." Ms. Kelly Craig, Ingle's workers compensation case manager nurse, discussed the policy with him since she was aware of the lawn care business which Ingle operated on the side. Ms. Craig specifically advised Ingle that operation of a weed eater would violate his restrictions. On May 6, 2000, a surveillance video was taken which showed Ingle operating a weed eater, leaf blower and commercial riding lawnmower. Ingle acknowledged use of the weed eater and other lawn equipment while on temporary disability leave.

Ingle's condition improved and he was returned to regular duty by Dr. Adams on June 1, 2000. His last visit with Dr. Adams was on May 31, 2000 at which time he was released with no permanent restrictions and

asked to return on an as needed basis. Dr. Adams found no permanent impairment under the AMA Guidelines to Permanent Impairment.

Ingles time working for Nissan was, however, short-lived. He was terminated on June 14, 2000, for performing work without written permission while on leave.

Mr. Ingle claimed his symptoms had gradually returned between June 1 and June 14 while working regular duty at Nissan. After his termination, Ingle continued and increased his lawn care business serving up to eight or nine yards per week. In addition, he performed work as a carpenter including framing his own home.

On July 19, 2000, Mr. Ingle had an independent medical examination with Dr. Lloyd Walwyn. This was the only evaluation performed after his alleged symptoms returned. Dr. Walwyn diagnosed Mr. Ingle with epicondylitis of the left elbow, stating that he retains a 5% permanent partial impairment of his left upper extremity. Dr. Walwyn partially based his opinion on Mr. Ingle's subjective complaint of pain in his left arm and on his statement that his symptoms interfered with his ability to perform any physical activity. Dr. Walwyn stated the most likely cause of Mr. Ingle's condition was his activity at Nissan as opposed to the time spent doing his lawn care business. Dr. Walwyn advised Mr. Ingle to avoid frequent use of his left arm, to avoid performing work with his arms outstretched, and to avoid using vibrating or rotating power tools. The doctor also advised Mr. Ingle not to lift more than 50 pounds maximally or 40 pounds frequently.

Dr. Nicholas Sieveking, a psychologist and vocational expert, administered several screening tests which indicated Mr. Ingle was not exaggerating the magnitude or pain level. Dr. Sieveking's report using computer databases of occupational information indicated that Mr. Ingle's degree of vocational disability ranged from 0%-30% depending upon whether one chooses to credit the restrictions and impairment of Dr. Adams or those assigned by Dr. Walwyn. If Dr. Adams' view is accepted, then Mr. Ingle would have no vocational disability. However, if Dr. Walwyn's view is accepted, then Mr. Ingle would have a 30% vocational disability.

Prior to trial Dr. Gordon Doss, a certified rehabilitation counselor, performed two interviews with Mr. Ingle and reviewed the medical records

and the depositions of Drs. Adams and Walwyn. Based on this review, Dr. Doss testified that Mr. Ingle has a 20%-25% vocational disability.

At trial a video tape showed the types of activities that Mr. Ingle's work entailed at Nissan. The activities shown included lifting doors and using angle guns which were classified as high torque tools. Mr. Irving Miller, Mr. Ingle's supervisor, testified that Mr. Ingle never came to him complaining of any discomfort after returning to work with no restrictions.

The trial court ruled that the evidence on tape of using the weed eater and blower, and the evidence of the work Mr. Ingle performed at Nissan added support to Dr. Adams' opinion that Mr. Ingle suffered no anatomical impairment. The court then, deferring to Dr. Adams' opinion, accredited Dr. Sieveking's opinion that Mr. Ingle sustained no vocational disability.

Issue

Did the trial court err in denying Mr. Ingle benefits under the Workers' Compensation Act?

Analysis

On appeal, we are to review the record anew, with the presumption that the factual findings of the trial court are correct unless the preponderance of the evidence is otherwise. See Tenn. Code. Ann. § 50-6-225(e)(2); Mannery v. Wal-Mart Distribution Ctr., 69 S.W.3d 193, 196 (Tenn. 2002). A trial court's decision regarding the credibility of witnesses who testify live is entitled to considerable deference on appeal, Kellerman v. Food Lion, Inc., 929 S.W. 2d 333, 335 (Tenn. 1996), and should not be reversed absent an abuse of discretion. Elmore v. Travelers Ins. Co., 824 S.W.2d 541, 544 (Tenn. 1992). The trial court's holding was based on credibility determinations. Since the trial judge saw, heard, and observed the witnesses who testified live, great deference must be given to those findings. The trial court found Mr. Ingle's credibility was damaged. Contradictory statements by Mr. Ingle and his wife relating to the work he is now able to perform are evident from the record. In addition a video tape showing Mr. Ingle operating a weed eater and blower indicated that Mr. Ingle had no apparent difficulty in the vocational use of his arms contrary to

the history he related to Dr. Walwin and to the vocational experts.

With regard to the medical testimony, the trial judge has the discretion to determine which medical opinion contains the most probable explanation of actual injury. Hinson v. Wal-Mart Stores, Inc., 654 S.W.2d 675, 676-7 (Tenn. 1983). Here, the trial court sided with Dr. Adams, the treating physician. Both Dr. Walwyn and Dr. Doss relied on facts shown to be incorrect at trial. The court, viewing the medical testimony through the prism of the court's credibility findings, found that Dr. Adams was more attuned to all aspects of Mr. Ingle's care. After extensive dealings with Mr. Ingle, Dr. Adams did not feel surgery was required. On the last visit, Dr. Adams found no anatomical impairment and no need to place work restrictions on Mr. Ingle. The trial court concluded: "The evidence in the surveillance tape combined with the evidence of the duties which the plaintiff performed on the line add credibility to the opinion of Dr. Adams that the plaintiff suffered no anatomical impairment, and is entitled to no work restrictions." We find no evidence that preponderates against these findings.

Dr. Sieveking performed a separate vocational analysis using the conclusions of both Drs. Adams and Walwyn. He found Mr. Ingle's degree of vocational disability was 0% if one accepted Dr. Adams' opinion. Dr. Seiveking's analysis, the only one to take into consideration Dr. Adams' opinion, is fully supported by the greater weight on medical evidence. Dr. Seiveking found that Mr. Ingle had not suffered any occupational disability. The court held that Mr. Ingle had not sustained vocational disability, and on the record we cannot state that the evidence preponderates against such a finding.

We find no abuse of discretion by the trial judge in accepting the opinions of Drs. Adams and Sieveking as more persuasive. Taking into account the entire record, and the decision of the chancellor on permanency of injury, we must affirm the trial court's decision. Costs of the appeal are assessed to the appellant, Jimmy Darryl Ingle.

JOHN A. TURNBULL, SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
JUNE 10, 2004 Session

**JIMMY DARRYL INGLE v. NISSAN NORTH AMERICA, INC. And
ROYAL and SUNALLIANCE INSURANCE COMPANY**

**Circuit Court for Rutherford County
No. 44224**

No. M2003-01912-WC-R3-CV - Filed - August 31, 2004

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 appeals 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 will be paid by the appellant, Jimmy Darryl Ingle, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM