

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

September 30, 2004 Session

**JEFFREY ALLEN NEWMAN v. MARVIN WINDOWS OF TENNESSEE,
INC.**

**Direct Appeal from the Chancery Court for Lauderdale County
No. 12,420 Martha B. Brasfield, Chancellor**

No. W2004-03038-WC-R3-CV - Mailed December 2, 2004; Filed January 24, 2005

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 employer insists the trial court's award of disability benefits based on a percentage of disability to the hand is excessive because there was no evidence of any unusual or extraordinary effect on the hand. As discussed below, the panel has concluded the evidence fails to preponderate against the findings of the trial court.

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

JOE C. LOSER, JR. SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and JOHN A. TURNBULL, SP. J., joined.

J. Arthur Crews, II, Waldrop & Hall, Jackson, Tennessee, for the appellant, Marvin Windows of Tennessee, Inc.

Jay E. DeGroot, Law Office of Jeffrey A. Garrety, Jackson, Tennessee, for the appellee, Jeffrey Allen Newman

MEMORANDUM OPINION

The employee or claimant, Mr. Newman, initiated this civil action to recover workers' compensation benefits for a work related injury in which his left ring finger was accidentally amputated. The employer denied liability. The only issue submitted to the trial court, however, was the extent of the claimant's permanent partial disability. After considering the evidence, the trial court awarded benefits based on 28 percent permanent partial disability to the hand. The employer

has appealed, contending the award is excessive.

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). 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). Conclusions of law are subject to de novo review on appeal without any presumption of correctness. Hill v. Wilson Sporting Goods Co., 104 S.W.3d 844, 846 (Tenn. Workers' Comp Panel 2002). Issues of statutory construction are solely questions of law. Id. Where the trial judge has seen and heard the witnesses, especially if issues of credibility and weight to be given oral testimony are involved, considerable deference must be accorded those circumstances on review, McCaleb v. Saturn Corp., 910 S.W.2d 412, 414 (Tenn. 1995), because it is the trial court which had the opportunity to observe the witnesses' demeanor and to hear the in-court testimony. Long v. Tri-Con Ind., Ltd., 996 S.W.2d 173, 178 (Tenn. 1999). 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). The appellate tribunal, however, is as well situated to gauge the weight, worth and significance of deposition testimony as the trial judge. Walker v. Saturn Corp., 986 S.W.2d 204, 207 (Tenn. 1998). Extent of vocational disability is a question of fact. Story v. Legion Ins. Co., 3 S.W.3d 450, 456 (Tenn. 1999). 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. Bridges v. Liberty Mutual Ins. Co. of Hartford, 101 S.W.3d 67 (Tenn. Workers Comp Panel 2000).

The claimant is approximately thirty-two years old with an eleventh grade education and some vocational training in industrial maintenance. He completed the requirements to become an industrial electrician and has a varied work history. He has worked for the employer since January 1995.

On June 14, 2002, the claimant accidentally amputated his left ring finger while cleaning out a rotary valve. He received immediate medical care and, after a brief period of recuperation, returned to work at the same job. He has received a promotion and an increase in pay, but testified that he has lost grip strength in his left hand and tends to drop things, including tools. He has no control over the small stump that remains.

Initially, the claimant was treated in the emergency room by Dr. Edward Pratt. Dr. Pratt closed the wound and, after an overnight stay in the hospital, the claimant was discharged in excellent condition, except for the lost finger. Dr. Pratt continued to see and treat the claimant. The doctor testified by deposition that, although he assigned impairment ratings to the whole body and upper extremity, the only impaired part was the ring finger, to which he assigned a permanent impairment rating of 80 percent and that, typically, a person with an amputated finger has an incomplete cup and tends, therefore, to have difficulty picking things up. The doctor conceded there

was an anatomic change in the hand and that loss of grip strength should be considered in estimating the claimant's permanent impairment, which he estimated to be 8 percent to the arm if the claimant continued to have lost grip strength one year after the injury. Dr. Pratt did not testify that the loss was usual or ordinary.

An examination by Dr. Boals revealed sensitivity to touch at the injured area, which he described as typical. Dr. Boals also testified by deposition that there was no involvement or injury to any part of the claimant's hand other than the left ring finger, but that the "flexor tendons retracted up into the hand, which is not unusual". On further examination, however, the doctor testified that the flexor tendon was usually retained in an amputation of this sort. With regard to impairment or anatomic alteration, he testified: "Actually, it implies an impairment to the upper extremity because the muscle that controls that tendon is in the lower forearm ... usually the flexor tendon is retained so you can actually bend the stump downward. This man does not have that control now and his tendon is reflected up into the hand, so not only is the retracted tendon in his hand as a lump, he also has withering of that unit that begins up in the forearm, so, to me, this should go to the upper extremity as far as impairment goes." On cross-examination, Dr. Boals further testified: "He has this tendon cut and now it's retracted into his palm. It will no longer be functional; so it will become atrophic and it will wither in the palm. It will never be used again. It won't be glistening and white and sliding back and forth. It will just be lying there in the palm ... in the lower forearm. The muscle that supplies that tendon, or has the tendon connected to it will no longer contract, so it will become atrophic with time and will be muscle atrophy in the future." Dr. Boals estimated the claimant's permanent impairment to be 90 percent to the finger, or 10 percent to the upper extremity because of lost grip strength.

Compensable disabilities are divided into four separate classifications: (1) temporary total disability, (2) temporary partial disability, (3) permanent partial disability and (4) permanent total disability. Tenn. Code Ann. § 50-6-207. Each class of disability is separate and distinct and separately compensated for by different methods. When an injured employee's partial disability is adjudged to be permanent, the employee is entitled to benefits based on a percentage of disability. Corcoran v. Foster Auto GMC, Inc., 746 S.W.2d 452, 457 (Tenn. 1988). In such cases, benefits are payable for the number of weeks established by a statutory schedule of various members of the body. Tenn. Code Ann. § 50-6-207. The ring finger is a scheduled member. See Tenn. Code Ann. § 50-6-207 (3)(e)(A)(d). Where a worker's only injury is to a scheduled member, he may receive only the amount of compensation provided by the schedule for his permanent disability. Such injuries are exclusively controlled by the statutory schedule. McIlvain v. Russell Stover Candies, Inc., 996 S.W.2d 179, 185 (Tenn. 1999).

The appellee correctly argues, however, that where an injury to a scheduled member produces an unusual and extraordinary condition affecting other members of the body, then compensation would not necessarily be limited to the loss of the injured member. See Jeffrey Mfg. Co. of Tenn. v. Underwood, 426 S.W.2d 189, 191 (Tenn. 1998) In assessing the extent of the claimant's permanent partial disability, the trial court noted the claimant's flexor tendon has retracted into his hand causing a lump. The trial court further noted that the retraction would later cause the muscles in the hand to

wither. According to the trial court, this medical evidence is supported by the claimant's testimony that he has experienced sensitivity and pain below the stump of his finger in his hand where the tendon has retracted. As a result of its findings, the trial court concluded the claimant had a permanent injury to his hand. Thus, the trial court considered the above medical proof, accredited the testimony of the claimant and made an award to the hand. It did not abuse its discretion in doing so.

Giving due deference to the finding of the trial court, we cannot say the preponderance of the evidence is otherwise. The judgment is affirmed. Costs are taxed to the appellant.

JOE C. LOSER, JR., SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
September 30, 2004 Session

**JEFFREY ALLEN NEWMAN v. MARVIN WINDOWS OF TENNESSEE,
INC.**

**Chancery Court for Lauderdale County
No. 12,420**

No. W2004-03038-WC-R3-CV - Filed January 24, 2005

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, Marvin Windows of Tennessee, Inc., for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM

