

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

November 29, 2005 Session

**ROYAL & SUNALLIANCE v. RICHARD L. LOYD**

**Direct Appeal from the Chancery Court for Rutherford County  
No. 03-6280WC Royce Taylor, Judge**

---

**No. M2005-00126-WC-R3-CV - Mailed - March 15, 2006  
Filed - April 19, 2006**

---

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Tennessee Supreme Court 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. The Employee suffered a carpal tunnel injury to both hands. Surgery was performed on both hands with good results. The same medical impairment was awarded for each arm, but the trial court awarded 8 percent vocational disability to the left arm, and 32 percent to the right arm. The Employer appeals arguing that there is no factual basis for the 400 percent difference. We affirm.

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

WILLIAM H. INMAN, SR. J., delivered the opinion of the court, in which CORNELIA A. CLARK, J., and DONALD P. HARRIS, SR. J., joined.

Van French, Murfreesboro, Tennessee, for Appellant, Royal & Sunalliance.

Robert P. Gritton, Murfreesboro, Tennessee, for Appellee, Richard L. Loyd.

**MEMORANDUM OPINION**

Three counter-complaints seeking workers' compensation benefits<sup>1</sup> were filed against Nissan's insurer which were consolidated for trial. The first counter-complaint alleged bilateral arm injuries occurring in March 2002, the second counter-complaint alleged a left shoulder injury, and the third counter-complaint alleged a low back strain occurring on November 14, 2003.

---

<sup>1</sup> Nissan's carrier filed a declaratory judgment suit for each of the three claimed injuries.

The left shoulder injury was settled. The bilateral arm and low back injuries were tried, and judgment was entered for the Employee for 10 percent to his whole body for the low back injury, 32 percent for vocational disability to his right arm, and 8 percent vocational disability to the left arm for carpal tunnel syndrome. The multiplier provided in Tennessee Code Annotated section 50-6-241(a)(1) does not apply in cases involving injuries to scheduled members. *Atchley v. Life Care Ctr.*, 906 S.W.2d 428, 431 (Tenn. 1995).

The sole issue on appeal questions the amount of vocational disability to the right arm. Our review is de novo on the record, accompanied by a presumption of the correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e); *Landers v. Fireman's Fund Ins. Co.*, 775 S.W.2d 355, 356 (Tenn. 1989). The essential thrust of Nissan's argument may be simply stated. Mr. Loyd suffered the same injury (carpal tunnel) to both hands. He had the same surgery performed on each hand by the same surgeon, Dr. David Schmidt, an orthopedist who specializes in hands. Dr. Schmidt opined that Mr. Loyd had a 2 percent permanent impairment to each arm in accordance with the *AMA Guides*, and consequently, that no discernible reason exists to justify an award of benefits for the right hand that is four times greater than the award to the left hand. Dr. Schmidt returned the Employee to full work with no restrictions, and no anticipation of further treatment. Mr. Loyd has continued to work at Nissan for more than three years since surgery, and conceded that he knew of no reason why he could not continue working at his job.

Dr. David Gaw was employed as an independent medical examiner. He opined that Mr. Loyd had a positive Phalen's test, which was indicative of a continuing irritation of the median nerve root, and was consistent with his complaint of tingling. Dr. Gaw testified that he had a permanent impairment of 5 percent to each arm, and would continue to have problems relative to gripping strength of his right hand.

Mr. Loyd testified that he is forty-four years old, "single or divorced," that he has skills as a plumber which he utilizes in his spare time, and that he has worked at Nissan for thirteen years. He testified that his right hand "still goes to sleep," that he has difficulty in trying to "hold stuff," much the same way as before the surgery. He believes his right hand is "getting worse," because it aches constantly, which interferes with his sleep.

Countering the testimony of Mr. Loyd was the testimony of his manager, Wilbur R. Campbell, who has actively supervised Mr. Loyd. He testified that Mr. Loyd has never complained of difficulties or problems, and never exhibited any cause to believe he was impaired.

### Discussion

When a 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. *Collins v. Howmet Corp.*, 970 S.W.2d 941, 943 (Tenn. 1998); *Hill v. Eagle Bend Mfg. Inc.*, 942 S.W.2d 483, 487 (Tenn. 1997); *Humphrey v. David Witherspoon, Inc.*, 734 S.W.2d

315, 315 (Tenn. 1987).

The extent of vocational disability is a question of fact to be determined from all of the evidence, including lay and expert testimony. *Henson v. Lawrenceburg*, 851 S.W.2d 809, 812 (Tenn. 1993); *Cox v. Martin Marietta Energy Systems*, 832 S.W.2d 534, 536 (Tenn. 1992). In making an award of permanent impairment, the trial court considers both the anatomical impairment considered by the experts and also lay testimony. *Collins*, 970 S.W.2d at 943. The Employee's assessment of his physical condition and resulting disability is competent testimony that should be considered as well. *Orman v. Williams Sonoma, Inc.*, 803 S.W.2d 672, 678 (Tenn. 1991).

The medical evidence established that Mr. Loyd's carpal tunnel injuries to his right arm were not fully resolved by surgery and that he continues to suffer from the carpal tunnel injuries, likely owing to the fact that he suffered nerve damage as a result of the injury. The EMG studies showed evidence of recurrent median neuropathy at the wrist on the right arm, which led to the conclusion that the motor latency in the right arm had worsened. The positive Phalen's test noted during the independent medical exam performed by Dr. Gaw demonstrated that Mr. Loyd was experiencing continuing irritation of the median nerve root which was consistent with his complaint of tingling. The grip strength test ordered by Dr. Schmidt confirmed decreased grip strength in the right arm.

While the award of 32 percent to the right arm, as contrasted to an award of 8 percent to the left arm, appears to be generous, we cannot find that the evidence preponderates against the judgment, which would be tantamount to impermissibly substituting our judgment for that of the trial judge.

The judgment is affirmed at the cost of the Appellant.

---

WILLIAM H. INMAN, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
NOVEMBER 29, 2005 SESSION

**ROYAL & SUNALLIANCE v. RICHARD L. LOYD**

Chancery Court for Rutherford County  
No. 03-6280WC

---

No. M2005-00126-WC-R3-CV - Filed - April 19, 2006

---

**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, Royal & Sunalliance, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM