IN THE SUPREME OF TENNESSEE

AT NASHVILLE

CLEOPHUS DAVIS	}	*MAURY CHANCERY*
	}	*No. Below 96-189*
Plaintiff/Appellee	}	
	}	*Hon. Robert L. Holloway*
vs.	}	
	}	
	}	*No. M1998-00862-WC-R3-CV*
SATURN CORPORATION	}	
	}	
Defendant/Appellant	}	*AFFIRMED*

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 will be paid by the defendant, for which execution may issue if necessary.

IT IS SO ORDERED on March 30, 2000.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
(September 23, 1999 Session)

CLEOPHUS DAVIS,	)	
	)	
Plaintiff/Appellee,	)	**MAURY COUNTY CHANCERY**
	)	
v.	)	**M1998-00862-WC-R3-CV**
	)	
SATURN CORPORATION,	)	**HON. ROBERT L. HOLLOWAY**
	)	
Defendant/Appellant.	)	
	)	
	)	
	)	

FOR THE APPELLEE:

LARRY R. WILLIAMS, PC
329 Union Street
P.O. Box 190632
Nashville, Tennessee 37219-0632

FOR THE APPELLANT:

THOMAS H. PEEBLES, IV
MARK W. PETERS
Waller, Lansden, Dortch & Davis
809 South Main Street - Suite 300
P.O. Box 1035
Columbia, Tennessee 38401

M E M O R A N D U M O P I N I O N

Members of Panel:

Justice Adolpho A. Birch, Jr.
Senior Judge F. Lloyd Tatum
Special Judge Carol L. McCoy

AFFIRMED

F. LLOYD TATUM, SENIOR JUDGE

OPINION

This workers' compensation appeal was referred to the Special Workers' Compensation Appeals Panel of the Supreme Court pursuant to Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

This case involves carpal tunnel syndrome and damage to the ulnar nerve that developed in a diabetic employee of Saturn Corporation. The trial court heard the evidence on September 21, 1998, and awarded the plaintiff, Cleophus Davis, benefits for a 75 percent permanent partial disability to his left arm. The court also found that the plaintiff timely filed his lawsuit on March 27, 1996. The defendant, Saturn Corporation, appeals this judgment, raising the following issues: (1) whether the trial court erred in determining that Mr. Davis timely filed his claim for workers' compensation benefits on March 27, 1996; (2) whether the trial court erred in determining that Mr. Davis' injuries arose out of and in the course of his employment; and (3) whether the trial court erred in determining that Mr. Davis sustained a permanent partial disability of 75 percent to his left arm.

The standard of review of factual issues in workers' compensation cases is de novo upon the record of the trial court with a presumption of correctness, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (1991 & Supp. 1998); Henson v. City of Lawrenceburg, 851 S.W.2d 809, 812 (Tenn. 1993). Under this standard, we are required to conduct an in-depth examination of the trial court's findings of fact and conclusions of law to determine where the preponderance of the evidence lies. See Thomas v. Aetna Life & Cas. Co., 812 S.W.2d 278, 282 (Tenn. 1991). In making such a determination, this Court must give considerable deference to the trial judge's findings regarding the weight and credibility of any oral testimony received. Townsend v. State, 826 S.W.2d 434, 437 (Tenn. 1992); Thomas, 812 S.W.2d at 283. However, the determination of factual issues in the present case involves medical testimony derived solely from depositions, so all impressions regarding weight and credibility must be drawn from the contents of the documents, rather than an evaluation of live witnesses. Thomas, 812 S.W.2d at 283. Therefore, this Court may draw its own

conclusions about the weight, credibility, and significance of such testimony. Seiber v. Greenbrier Indus., Inc., 906 S.W.2d 444, 446 (Tenn. 1995).

Cleophus Davis, the plaintiff, was a fifty-nine (59) year old Arkansas resident at the time of trial. He testified that he has a high school diploma and has taken classes in arc welding. The plaintiff is a diabetic, and began taking insulin in 1985. He denied having any problems related to his diabetes prior to his claimed injury. He worked in General Motors related facilities for thirty (30) years and retired from defendant, Saturn Corporation, on July 31, 1996. The plaintiff began working for Saturn in 1990 as a wheelhouse liner installer. The plaintiff's job duties required him to pick up a liner, position it on the wheel housing by applying pressure with the left palm, and install it by applying pressure to six (6) big push pins and six (6) little push pins with his hands and thumbs. He explained that some of the liners were too thick in places, requiring him to exert added pressure on the push pins by placing one hand or thumb over the other thumb to add more force. This design flaw was later corrected by the company. The plaintiff worked six (6) days at a time, ten (10) hours per day, with several days off in between. Cars came through the assembly line at the rate of sixty-eight (68) to seventy-two (72) cars per hour or more than one per minute. The plaintiff stated that he had no trouble performing the job when he began.

By April of 1993, the plaintiff was having problems with his left hand and filed his first notice of injury. The plaintiff was given work restrictions against using the push pins during April, but the problem did not improve. The pain the plaintiff experienced when he applied pressure to the push pins with his thumb radiated into his left arm up to the elbow. Because of a team concept existing at Saturn during that time, other team members sometimes took over the most difficult part of the job for the plaintiff, and he was able to continue working as a wheelhouse liner installer. He filed a second notice of injury in September of 1994, indicating that his problems resumed in June of 1994. The company restricted him from performing the push pin job from September to October 6, and then again on October 11 to October 12, 1994. Other restrictions on heavy gripping and pinching with the left arm were imposed from November 16 to December 7, 1994, and from January 17 through March, 1995. During periods when the restrictions were not imposed, the plaintiff testified that he would go back to performing the push pin procedure

with his left hand. He left the wheelhouse liner position sometime in June of 1995, although he admitted in cross-examination that he did not perform any job duties that caused him problems with his left hand and arm after June, 1994.[1] The plaintiff admitted that he did not miss any days of work due to the injury.

The plaintiff was treated for his condition by Dr. Michael Ferrell and Dr. Michael Milek. He picked the Bone and Joint Clinic from a list provided by Saturn and was seen by Dr. Ferrell in November, 1994, through June, 1995. Dr. Ferrell told the plaintiff that his condition was diabetes-related rather than work-related. The plaintiff requested a second opinion from a hand specialist, but the company would not provide him with a doctor's name. He self-referred through his own physician to Dr. Milek at Vanderbilt. Dr. Milek first saw the plaintiff in August, 1995, and determined that the plaintiff's problems were related to an injury to his ulnar nerve rather than to his diabetes. This was the first time that the plaintiff was advised by a doctor that his injury was work-related. According to the plaintiff's testimony, he did not know that Saturn was not going to pay Dr. Ferrell's bills under its workers' compensation plan. After Dr. Ferrell told him in June of 1995 that there was no reason for him to return for treatment, the plaintiff tried unsuccessfully to contact Ms. Debra Finn, Saturn's workers' compensation administrator.

The plaintiff testified that, as a result of his injury, he can no longer do activities that require gripping or squeezing with his left hand. During his retirement, the plaintiff stated that he is able to maintain the fences on his farm with the help of a large man. He cuts and bales hay with the help of a tractor. At the time of his deposition on March 23, 1998, the plaintiff could operate a chain saw, but he testified at trial that he had to give up using the chain saw before the deposition, because he cut his leg with it. He had planned to trim trees, as he had previously done in 1990, for extra income to travel with his wife but is now unable to do so. He testified that he is only able to use his right hand to do any kind of work because of the pain in his left hand.

Debra Finn, the senior workers' compensation administrator at Saturn, testified that

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[1]The plaintiff explained this discrepancy in redirect by his attorney by stating that he would do the push pin job with his left hand off and on between the restricted periods. During the restricted periods, he would work on the left side of the car installing wheelhouse liners with both hands, but his right hand, rather than the injured left hand, was the one he used primarily doing installations on the left side of the car.

the company was aware of the plaintiff's diabetic condition at the time he began his employment. At the time of his pre-employment physical in 1990, the plaintiff's left grip strength was measured 95, 85, and 85, while his right grip strength measured 85, 100, and 100. She confirmed that the plaintiff reported problems with his left wrist for the first time in April of 1993 related to putting pressure on his hand to install the push pins. She confirmed that the plaintiff complained of pain across the left hand when pushing in the pins again on June 6, 1994, and filled out another notice form. Ms. Finn testified that Saturn treated these injuries as work-related and put restrictions on the plaintiff. She identified several restriction authorization forms issued in April of 1993, on which company medical personnel had indicated that the plaintiff's injury was work-related. The 1994 forms similarly indicated a work-related condition,[2] and, on the September 17, 1994, work-related medical record form, it was noted that the plaintiff could not straighten out his ring finger and little finger of his left hand, and his hand was swelling. The form also had a notation stating "[p]onder inflammation 2nd to 'push pin.'" The injury was noted as being work-related as well on the form dated January 19, 1995, that extended the restrictions through March 19, 1995. Ms. Finn admitted that the plaintiff was getting the restriction authorization forms stating that his injury was work-related during this time. She stated that the plaintiff was on restrictions from using the push pins from September, 1994, until he moved from the wheelhouse liner job to a job in power train in March of 1995.

Ms. Finn stated that the company made the original appointment with Dr. Ferrell for the plaintiff from the list of doctors for workers' compensation claims. On December 8, 1994, Ms. Finn made the determination that the plaintiff's condition was not work-related, based on Dr. Ferrell's notation in his November 9, 1994, office records that most of the plaintiff's symptoms were due to his diabetes. She testified concerning a letter dated January 13, 1995, from her office to Dr. Ferrell's office stating that an office visit on December 7, 1994, was not payable under workers' compensation and should be filed through the plaintiff's group health plan. Other such denial letters were sent to Dr. Ferrell on February 15, April 11, and on July 27, 1995. The claim forms sent from Dr. Ferrell's

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[2]There were three Saturn Restrictions forms covering September 17 through October 6, 1994, October 11 through October 12, 1994, and November 16 through December 7, 1994. All were marked "work related." (Collective Ex. 5.)

office covering visits that were rejected by Saturn's workers' compensation office had been checked by the doctor's office as work-related treatments. Ms. Finn explained that company procedure was to send a copy of a denial letter to the employee, but she could not verify that any of these letters had actually been sent to the plaintiff. Saturn made the last payment on the plaintiff's workers' compensation claim on February 6, 1995, for travel expenses incurred in November, 1994.[3] All payments under the workers' compensation coverage were denied after that time.

Ms. Finn testified to a note in the plaintiff's file signed by a nurse at the medical facility inside the Saturn plant and dated June 13, 1995, that indicated that the plaintiff requested a second opinion about his left hand problem. The nurse called Ms. Finn and stated that the plaintiff was told within the few weeks prior to June 13 that the injury would not be covered as a work-related injury and that he could see any doctor he chose through his health insurance carrier.

Ms. Finn confirmed that a grip strength test in 1995 showed the plaintiff's left grip was one-half of the right, which company physician, Dr. Roy Harmon, attributed to diabetic neuropathy of the left hand.[4] She admitted that, after the employees complained of difficulty in inserting the push pins in the liner holes, Saturn made ergonomic changes by enlarging the holes in August, 1994, and changing the push pin material in December, 1994.

Evon Heath, testified that she worked on the same wheelhouse liner team as the plaintiff for several years starting April 1, 1993. She was aware of the plaintiff's problems with his left hand, because she had the same problem from installing the liners with the push pins. She is not diabetic. Her left palm and thumbs would swell and hurt. Ms. Heath's testimony included a description of the force that it took the workers using the thumbs and palms of the hands to do the job. It was necessary for the plaintiff to hammer the pins in at times with the palm of his hand. She explained that the push pins were soaked in Joy dishwashing soap at one time to get them to slide into the holes more easily. Because several of the employees, including the plaintiff, had trouble with pain in their

[3]The last payment for medical services was to the Bone and Joint Clinic on January 4, 1995.

[4]The trial transcript says "right" hand, but Exhibit 11 signed by Dr. Harmon says "diabetic neuropathy left hand." At trial, the witness obviously misspoke.

hands as a result, the members of the team would rotate the wheel they were working on to change hands and thumbs. Ms. Heath confirmed that Saturn engineers had eliminated the top push pin in August, 1994. She testified that the team rotated around the plaintiff or let him do another job so he could keep working.

STATUTE OF LIMITATIONS

The trial court found that the plaintiff's lawsuit was timely filed on March 27, 1996, within one year of the date that the plaintiff last saw Dr. Ferrell on June 13, 1995. After a thorough review of the record, we find that we must affirm the trial court's findings.

The pertinent portion of Tennessee Code Annotated § 50-6-203 states as follows:

> (a) The right to compensation under the Workers' Compensation Law shall be forever barred, unless, within one (1) year after the accident resulting in injury or death occurred, the notice required by § 50-6-202 is given the employer and a claim for compensation under the provisions of this chapter is filed with the tribunal having jurisdiction to hear and determine the matter; provided, that if within the one-year period voluntary payments of the compensation are paid to the injured person or the injured person's dependents, an action to recover any unpaid portion of the compensation, payable under this chapter, may be instituted within one (1) year from the latter of the date of the last authorized treatment or the time the employer shall cease making such payments, except in those cases provided for by § 50-6-230.
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> * * *
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> (b) For purposes of this section, the issuing date of the last voluntary payment of compensation by the employer, not the date of its receipt, shall constitute the time the employer ceased making payments and an employer or its insurer shall provide such date on request.

It is well-established that the statute of limitations is suspended until "'by reasonable care and diligence it is discoverable and apparent that an injury compensable under the workmen's compensation law has been sustained.'" Ogden v. Matrix Vision of Willamson County, Inc., 838 S.W.2d 528, 530 (Tenn. 1992) (quoting Norton Co. v. Coffin, 553 S.W.2d 751, 752 (Tenn. 1977)); see also Imperial Shirt Corp. v. Jenkins, 217 Tenn. 602, 399 S.W.2d 757 (1966). Another caveat that our courts have recognized is that "voluntary payments of compensation" that toll the statute of limitations may consist of services furnished by doctors employed by the employer or its insurer, and the statute will not begin to run until the date the last such medical service is provided, rather than the date of payment for such services. Norton Co. v. Coffin, 553 S.W.2d 751, 752-53 (Tenn. 1977); Fields v. Lowe Furniture Corp., 220 Tenn. 212, 415 S.W.2d 340 (1967). Our Supreme Court's language in Blocker v. Regional Medical Center at Memphis, 722 S.W.2d 660

(Tenn. 1987), is particularly instructive:

> Not only must an employee know or have reason to know the nature and extent of the injury to be able to make a claim for benefits under the Worker's Compensation Act, but the employee must also know or have reason to know whether the employer or insurer is refusing to make any voluntary provision of compensation to be able to protect his rights under the act. Until the employee knows or has reason to know these things, the statute of limitations does not begin to run on the claim. Otherwise, an employer or insurer could surreptitiously start the statute of limitations running, first by making some voluntary payments of compensation, and then, subsequently, without informing the employee of its decision, either withhold further compensation payments or change the source of payments, all the while allowing the employee to continue to see an employer designated physician for treatment and lulling the employee into sleeping on his rights until too late. Such a result would defeat the remedial purposes of this statutory scheme.

Id. at 663. It is incumbent on the employer, then, to make it clear to the employee *in no uncertain terms* that any services provided or payments made are not worker's compensation benefits, or the statute of limitations will not begin to run against the employee. See Lusk v. Consolidated Aluminum Co., 655 S.W.2d 917, 919-20 (Tenn. 1983).

Saturn relies on Ogden v. Matrix Vision in support of its contention that the plaintiff's claim is time-barred. In Ogden, a female cable television installer injured her neck and back on the job on January 11, 1986, when she stopped a rolling truck. There was never a question that the injury was work-related. The plaintiff was diagnosed with a soft tissue injury of the right neck and shoulder and released by the company-referred doctor a little over a month later, although he thought she had no permanent impairment. She returned to this doctor (after the statute of limitations had expired) eighteen (18) months later with the same complaints. Over the next four years, she received the same diagnosis from all of her doctors. She filed her lawsuit three years and three months after the date of her accident. Our Supreme Court found that the plaintiff's case was barred by the statute of limitations, because the plaintiff's knowledge that she had a work-related injury that needed treatment essentially did not change from the date of her accident until she filed her lawsuit over three years later. Id. At 531.

Ogden is clearly distinguishable from the present case, in that the plaintiff was told by the company-referred physician, Dr. Ferrell, that his condition was not work-related within a couple of months of reporting his June 6, 1994, accident to Saturn. The first doctor that told him that his condition was related to his job was a hand specialist, Dr.

Milek, who treated the plaintiff almost a year later in August, 1995, after Dr. Ferrell had released him in June, 1995. This case is further complicated by the fact that, although the plaintiff had been told by Dr. Ferrell that his hand problems were not work-related, the record shows that restriction authorization forms that the plaintiff received at work, as well as medical personnel on site, still treated his condition as work-related. The information the plaintiff received was contradictory and confusing. Dr. Ferrell, the company-referred workers' compensation physician, continued to treat the plaintiff for six months after Saturn's workers' compensation administrator, Ms. Finn, determined that the plaintiff's injury was not work-related. At trial, Ms. Finn was unable to verify that the plaintiff ever received notice that Dr. Ferrell's bills for services after December 8, 1994, were to be filed under the plaintiff's group health insurance plan rather than under the workers' compensation insurance plan. Her testimony at trial revealed that the plaintiff did not know that Saturn was going to terminate his treatments and coverage under the workers' compensation plan until June of 1995. The plaintiff acted reasonably at that point in attempting to contact the workers' compensation administrator, requesting a second opinion, and then self-referring to a hand specialist when the company refused his request.

Even though the plaintiff believed that his injury was work-related in spite of Dr. Ferrell's diagnosis in November, 1994, Saturn voluntarily made payments covering the doctor's medical services and continued to provide treatment by Dr. Ferrell until June, 1995. Because Saturn never made it clear to the plaintiff that these services, which had previously been paid under workers' compensation, were no longer being paid as such, we find that the employer voluntarily provided services to the plaintiff until June 13, 1995, the date of the last service by Dr. Ferrell. The statute of limitations was tolled until that date and did not expire until June 13, 1996. Therefore, the plaintiff's lawsuit was timely filed within one year of that date on March 27, 1996. We are also persuaded by the potential danger in a situation such as this, as pointed out by the Blocker court, of the employee innocently allowing the statute of limitations to run when the employer switches sources of payment of benefits without the employee understanding that he has lost his workers' compensation benefits. We find that the evidence does not preponderate against the findings of the trial court, and the judgment of the trial court is affirmed as to this issue.

COMPENSABLE INJURY AND PERCENT DISABILITY

It is well-established that the plaintiff in a workers' compensation case has the burden of proving causation and permanency of his injury by the preponderance of the evidence using expert medical testimony. See Thomas, 812 S.W.2d at 283; Roark v. Liberty Mutual Ins. Co., 793 S.W.2d 932, 934 (Tenn. 1990). However, such testimony is not evaluated in total isolation but must be considered in conjunction with the employee's testimony as to how his injury occurred and his subsequent physical condition. Thomas, 812 S.W.2d at 283. In determining where the preponderance of the evidence lies, this Court may choose which expert's view to believe among differing opinions and may consider the experts' qualifications, circumstances of their examination, what information was available to them, and how important that information was to other experts. See Orman v. Williams Sonoma, Inc., 803 S.W.2d 672, 676 (Tenn. 1991).

Although absolute certainty is not required to prove causation, the medical testimony connecting the injury with the work-related activity must not be so uncertain or speculative that assigning liability to the employer would be arbitrary or only a mere possibility. Livingston v. Shelby Williams Industries, Inc., 811 S.W.2d 511, 515 (Tenn. 1991) (quoting Tindall v. Waring Park Ass'n., 725 S.W.2d 935, 937 (Tenn. 1987)).

To constitute sufficient medical proof to establish permanency, the expert witness must state his opinion in language that means that the factors in favor of a permanent disability outweigh those against permanency. Singleton v. Procon Products, 788 S.W.2d 809, 811-12 (Tenn. 1990). Words that mean, in essence, that there is only a likelihood or just a possibility of the events happening is not sufficient to carry the burden in favor of permanency. See id. at 811.

Dr. Michael Craig Ferrell, the plaintiff's orthopedic surgeon, testified by deposition. Dr. Ferrell first saw the plaintiff on November 2, 1994, for left hand pain that occurred from an injury at work on June 6, 1994. An examination revealed that the plaintiff had early Dupuytren's disease in the left hand[5] with inability to fully straighten the big knuckles in the finger and ulnar intrinsic muscle atrophy with numbness in his ring finger and little finger associated with the ulnar nerve. Dr. Richard Hoos conducted neurological studies on the

[5]Dr. Ferrell explained that this is a condition where some scarring in the palm occurs.

plaintiff's arm and hand and found that he had diabetic neuropathy. After Dr. Ferrell received the results of Dr. Hoos' tests, he discussed the findings with the plaintiff on November 9, 1994, and explained to him that the test findings were not consistent with a one-time injury and were due to his diabetes. Dr. Ferrell restricted him from heavy grasping and pinching. It was Dr. Ferrell's opinion that the problems the plaintiff experienced with his left arm were from a combination of diabetes and nerve compression at the elbow, neither of which were work-related. Dr. Ferrell acknowledged that Dr. Hoos' studies that he relied on for his opinion differed from Dr. Anthony W. Kilroy's studies that were relied on by Dr. Milek. Dr. Kilroy's studies showed entrapment in the hand and wrist, rather than at the elbow. The plaintiff's last visit to Dr. Ferrell was in June, 1995.

The deposition of Dr. Michael Andrew Milek, an orthopedic surgeon specializing in surgery of the upper extremities, was offered at trial. Dr. Milek first saw the plaintiff for problems with his left hand on August 13, 1995, upon a referral from his personal physician, Dr. Benny McKnight. Tests led Dr. Milek to the conclusion that the plaintiff was suffering from an ulnar nerve problem in the hand and inflammation of the tendons related to his thumb. An electrical diagnostic study conducted by Dr. Anthony W. Kilroy showed a problem with the median nerve at the wrist, degeneration of the nerves secondary to diabetes, and problems with the motor branch of the ulnar nerve in the left palm. Dr. Milek stated the opinion that it was most likely that the plaintiff's condition in his left hand was related to an injury or compression caused when the plaintiff used his palm to push or hit something, such as pushing in the push pins with the palm of his hand. By September of 1995, Dr. Milek felt that the plaintiff had carpal tunnel disease from a combination of his diabetes and his work activities. Dr. Milek stated that the plaintiff was predisposed to carpal tunnel, because of his diabetes, but his work aggravated his condition. According to Dr. Milek, the rating related to the ulnar nerve could be related to some type of injury. In November, 1997, Dr. Milek rated the plaintiff with a 31 percent permanent partial impairment to his left arm.[6]

Upon our de novo review, we find that the evidence does not preponderate against

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[6]Dr. Milek broke this down as 10 percent impairment to the arm due to carpal tunnel and 23 percent impairment from the ulnar nerve problem, according to the fourth edition of the AMA Guides. Combining the two corresponds to a 31 percent impairment rating to the arm.

the trial court's findings that the plaintiff sustained a compensable injury. The plaintiff's testimony was found to be credible by the trial judge, and we give considerable deference to his findings on credibility. Although the plaintiff had used insulin since 1985, he had experienced no problems in his extremities related to diabetes up to the time of trial. The plaintiff's description of his job duties and the types of hand and arm problems he experienced as a result was supported by his co-worker's testimony, who had the same problems without being a diabetic. It was Dr. Milek's opinion that the plaintiff's problems were caused by an aggravation of his diabetic predisposition to carpal tunnel syndrome and from hammering with his palm on the job. The trial court credited Dr. Milek's rating and found that the plaintiff was entitled to a 31 percent medical impairment to the left arm pursuant to the AMA Guides. The court found that the plaintiff had sustained a work-related injury and awarded the plaintiff benefits for a permanent partial disability of 75 percent to the left arm. We find nothing in the record that warrants a reversal of the trial court's position and affirm.

CONCLUSION

Therefore, for the above reasons, we affirm the judgment of the trial court that the plaintiff's claim was timely filed, that he suffered a work-related injury, and that he is entitled to benefits for a 75 percent permanent partial disability to his left arm. Costs are assessed against the defendant.

F. LLOYD TATUM, SENIOR JUDGE

CONCUR:

ADOLPHO A. BIRCH, JR., JUSTICE

CAROL L. MCCOY, SPECIAL JUDGE