

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
KNOXVILLE, NOVEMBER 1999 SESSION

**FILED**  
March 2, 2000  
Cecil Crowson, Jr.  
Appellate Court  
Clerk

JACKSON MANUFACTURING )	BRADLEY
COMPANY, and LIBERTY MUTUAL )	CIRCUIT
INSURANCE COMPANY, )	
Plaintiffs/Appellants, )	HON. CARROLL L. ROSS,
vs. )	Circuit Judge
MARIE LAMBERT, )	
Defendant/Appellee. )	No. 03S01-9906-CV-00057

**For the Appellants:**

Paul H. Dietrich  
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**For the Appellee:**

James F. Logan, Jr.  
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**MEMORANDUM OPINION**

**Members of Panel:**

E. Riley Anderson, Chief Justice  
Roger E. Thayer, Special Judge  
H. David Cate, Special Judge

AFFIRMED.

CATE, Special Judge

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 plaintiffs, Jackson Manufacturing Company and Liberty Mutual Insurance Company, contend the trial court was incorrect in awarding the defendant, Marie Lambert, 40% permanent partial disability to the body as a whole instead of a lesser amount to a scheduled member on the basis that the disability associated with the shoulder and neck area was not caused by the accident at work.

We disagree with the plaintiffs and affirm the judgment of the trial court.

The defendant Lambert was born March 15, 1940. She failed to complete the ninth grade and has had no other formal education or vocational training. She went to work when she was seventeen. Her work history consists primarily of operating sewing machines in chair factories.

Prior to April 21, 1995, the defendant had never experienced any pain in her shoulder or neck area.

On April 21, 1995, while in the employ of Jackson Manufacturing Company, she was pulling and feeding material into an industrial computer-operated sewing machine when she injured her left ring finger at the knuckle which joins the hand. In order to pull the material she had to pull very hard with her whole arm. She described the incident as follows: “. . . as I got to the end of it (a 20 inch piece of material) my hand came off and that’s when whatever popped hurt, hit - - and I hit myself so hard, you know, and my arm went backwards.”

She was promptly sent to Dr. Chalmer Chastain, Jr., who examined her and recommended she be referred to an orthopedic specialist or hand specialist.

She returned to her place of employment and was referred that same day by her employer to Dr. Cauley Hayes, a specialist in hand surgery. Dr. Hayes treated her hand and on May 11, 1995, performed surgery on her left ring finger metacarpophalangeal joint.

Dr. Hayes returned her to work three months after the accident and she was placed on light duty carrying cushions, which was too much for her condition. Thereafter she cleaned tables and bathrooms. Subsequently she was terminated for missing work and has not worked since then.

While under Dr. Hayes’ care the defendant and her boyfriend testified she complained at each visit to Dr. Hayes of problems with her arm, shoulder and neck. Dr. Hayes’ medical records dated November 7, 1995, show her first complaint of heaviness in the arm. On that occasion the x-rays showed an abnormal cervical spine, and Dr. Hayes referred her to Dr. Adele Ackell, a neurologist.

Dr. Hayes felt the defendant had sustained permanent impairment to the hand but did not assign a percentage of impairment. He did not believe the shoulder and

neck problems were related to her hand injury, because to his knowledge there was no complaint about shoulder and neck pain for several months.

Dr. Ackell ordered an MRI, which was conducted on November 29, 1995. It showed cervical stenosis at C5/6 C6/7 with a small central disc at C6/7 and a posterior bar at C5/6. It was Dr. Ackell's opinion that her cervical problems were not related to her hand injury, although she indicated it was possible the trauma of the hand injury could have caused the cervical problems to become symptomatic.

Upon being advised of Dr. Ackell's findings Dr. Hayes referred the defendant to Dr. Stephen Dreskin, a doctor specializing in pain management. Dr. Dreskin opined that the defendant had a 20% permanent impairment of her left upper extremity, and a 12% impairment to the body as a whole. Dr. Dreskin attributed these impairment ratings to the hand injury, not the chronic degenerative changes in her cervical spine, based upon the information presented and no pre-accident complaints with the shoulder and neck.

The medical impairment ratings of Dr. D. R. Boyd, a medical doctor who performed an independent medical evaluation, were introduced in the form of a written report as follows:

"Total hand impairment 2% which converts to 2% upper extremity impairment. 1% upper extremity impairment was secondary to wrist; 1% upper extremity impairment was secondary to elbow; and 11.5% upper extremity impairment was secondary to shoulder. Total combined upper extremity impairment was 15.5%, which was rounded up to 16%."

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).

## **I. CAUSATION**

"Although causation cannot be based upon mere speculative or conjectural proof, absolute certainty is not required. Any reasonable doubt in this regard is to be construed in favor of the employee. We have consistently held that an award may properly be based upon medical testimony to the effect that a given incident 'could be' the cause of the employee's injury, when there is also lay testimony from which it may be reasonably inferred that the incident was in fact the cause of the injury." Reeser v. Yellow Freight System, Inc., 938 S.W.2d 690, 692 (Tenn. 1997) (citations omitted).

In reviewing and weighing evidence which is in conflict, the trial court has discretion to conclude that the opinion of a particular expert should be accepted over the opinion of another expert and that one expert's testimony contains a more

probable explanation than another expert's testimony. Thomas v. Aetna Life & Cas. Co., 812 S.W.2d 278 (Tenn. 1991).

In making the choice between conflicting medical opinions, the trial court is allowed to consider the qualifications of the experts, the circumstances of their examination, the information available to them and the evaluation of the importance of that information by other experts. Orman v. Williams-Sonoma, Inc., 803 S.W.2d 672, 676 (Tenn. 1991).

We find the trial court was faced with conflicting medical opinions on causation based predominately upon when each believed the defendant began to complain of shoulder and neck pain. The trial court obviously chose to believe the defendant and her lay witnesses concerning the immediate commencement of the shoulder and neck pain, and in turn chose the opinion predicated on that fact.

We likewise conclude that the preponderance of the evidence supports the trial court's conclusion on the issue of causation.

## **II. PERMANENT PARTIAL DISABILITY**

We must now determine if the preponderance of the evidence supports the permanent partial disability award.

" . . . [A]natomical disability ratings are but one factor to consider in measuring vocational disability, the ultimate issue in all workers' compensation cases. The test is whether there has been a decrease in the employee's capacity to earn wages in any line of work available to the employee. The assessment of this disability is based on all pertinent factors, including lay and expert testimony, the employee's age, education, skills and training, local job opportunities, and capacity to work at the types of employment available in his disabled condition." Orman v. Williams-Sonoma, Inc., 803 S.W.2d 672, 677-78 (Tenn. 1991) (citation omitted).

The defendant was 57 years old at the time of trial. She failed to complete the ninth grade, and has no further formal education or vocational training. Her work history primarily consisting of operating sewing machines in chair factories.

The medical impairment ratings are from 16% to 20% to the upper extremity and 12% to the body as a whole.

Having agreed with the trial court that the defendant's shoulder and neck injuries were in substantial part related to the April 21, 1995 on-the-job accidental injury, and considering the other pertinent factors, the 40% award to the body as a whole is not excessive.

Accordingly, the judgment is affirmed. Costs of the appeal are taxed to the plaintiffs jointly.

CONCUR:

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E. Riley Anderson, Chief Justice

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Roger E. Thayer, Special Judge

