

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

**FILED**

March 8, 2000

Cecil Crowson, Jr.  
Appellate Court Clerk

CAROLYN KING,

Plaintiff/Appellee

v.

TECUMSEH PRODUCTS COMPANY,

Defendant/Appellant

GIBSON CHANCERY

HON. GEORGE R. ELLIS,  
CHANCELLOR

NO. W1998-00699-WC-R3-CV

**For the Appellant:**

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**MEMORANDUM OPINION**

**Members of Panel:**

Justice Janice Holder  
Senior Judge John K. Byers  
Senior Judge F. Lloyd Tatum

AFFIRMED in part;  
REVERSED in part; and  
REMANDED

BYERS, Senior Judge

## **OPINION**

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.

Review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). *Stone v. City of McMinnville*, 896 S.W.2d 548, 550 (Tenn. 1995). The application of this standard requires this Court to weigh in more depth the factual findings and conclusions of the trial court in a workers' compensation case. See *Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988).

The trial court found that the employee had sustained 30 percent permanent partial disability to the right upper extremity and twenty percent permanent partial disability to the body as a whole for psychological injury.

The employer appeals, and argues that the trial court erred by awarding excessive benefits for the scheduled member, by awarding any benefits for the mental condition, and by ordering additional temporary total benefits.

We affirm the judgment of the trial court except insofar as it provides for two awards of permanent partial disability rather than one. On that issue, we remand the case to the trial court for a finding of permanent partial disability in accordance with the limitations set forth in T.C.A. § 50-6-207(3)(c).

## **FACTS**

The plaintiff is 47 years of age and has ten years of formal education. Her work experience has primarily involved factory assembly; she has worked at a sewing factory, at a Tupperware factory, and assembling motors for this employer. Her post-injury job involves truck driving for an express courier company.

She testified that her hands began hurting and swelling on March 5, 1996 at work, where her duties involved twisting and turning, picking up heavy motors, and handling as many as 2,700 motors each day. She initially saw Dr. Crane of the Jackson

Clinic in Trenton, who referred her to Dr. Torstrick of the Jackson Clinic in Jackson. Dr. Torstrick administered cortisone injections to her left arm and provided her with splints. She also received physical therapy. When a nerve conduction study showed mild right carpal tunnel syndrome, he performed surgical right carpal tunnel release on July 5, 1996. He opined that she had reached maximum medical improvement as of March 3, 1997, and assessed five percent permanent partial disability to the right upper extremity under the *AMA Guidelines*. He referred her to Dr. Elias King Bond, psychiatrist, because she was anxious and upset, and complained that she was being asked to perform tasks at work that she was not able to do because of problems with her hands.

Dr. Bond diagnosed depression, which he believed pre-existed but was aggravated by her work injury. He testified that she suffers from sleep disturbance, a high level of anxiety, a sense of poor self-esteem, a sense that she could not function, and pain accentuated by depression or anxiety. He opined she would require psychotherapy and medication for at least six to twelve months and that she had a permanent impairment from her mental condition of seven percent to the body as a whole under the *AMA Guidelines*.

Plaintiff testified that she began experiencing depression following her surgery because she could not go outside, her hands were hurting, and “they couldn’t do anything for me.” Her son testified that she had no emotional problems before the work accident but that, after the accident, she was nervous.

An independent medical evaluation on September 18, 1996, by Dr. Joseph Boals, orthopedic surgeon, resulted in his assessment of five percent permanent partial disability to the right upper extremity.

The court referred plaintiff to Dr. Martha Nan Hawks, Ph.D., clinical psychologist with specialty in neuropsychology, for psychological examination. Dr. Hawks diagnosed dependent personality disorder, not work-related.

### **DISCUSSION**

The defendant has raised the following issues on appeal:

- I. Did the court err in finding that the plaintiff has sustained a work-related injury to the right upper extremity and giving her an award of 30% to the right upper extremity?

- II. Did the court err in finding that the plaintiff has sustained a psychological or emotional injury as a result of said workers' compensation injury and awarding her a 20% permanent partial disability to the body as a whole?
- III. Did the court err in ordering the defendant to pay additional temporary total benefits?
- IV. Did the court err in ordering the defendant to pay additional medical expenses, including that of Dr. King Bond for the plaintiff's treatment of her alleged psychological and/or emotional injury?
- V. Did the court err in ordering the defendant to pay the expense of Dr. Joseph Boals' deposition?"

#### **EXTENT OF PERMANENT VOCATIONAL DISABILITY**

The defendant contends that the trial court's award of 30 percent permanent partial vocational disability to the right upper extremity is excessive, that the evidence does not support *any* award of vocational disability for plaintiff's psychological condition because it is not work-related, and that T.C.A. § 50-6-207(3)(c) limits the plaintiff's recovery to one award rather than a physical and a mental disability award.

The evidence shows that this 47 year-old plaintiff has a limited education, no vocational training, and a history of factory work requiring repetitive hand motion, which she credibly testified that she was no longer able to do. She also testified that her hands remained painful and swollen after surgery and that she had trouble picking up heavy things, twisting or turning her hands, fastening things, sewing, opening jars and doing other tasks she had done before her injury and surgery.

Her treating surgeon testified that after the surgery, her nerve conduction tests were normal, but her right hand still had a loss of grip strength. He felt that she had sustained a five percent permanent partial impairment to the right upper extremity as a result of the injury and surgery, based on the *AMA Guides*. He felt her grip strength might improve over the next one to two years and her function might or might not improve. He recommended she try to be in a job with minimal repetitive flexion and extension of her wrists, utilize her splints as needed and possibly consider rotating work stations.

In making determinations, the court shall consider all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's

disabled condition. TENN. CODE ANN. § 50-6-241(a)(1); *Roberson v. Loretto Casket Co.*, 722 S.W.2d 380, 384 (Tenn. 1986). Applying these statutory factors, we cannot find that the trial court's award of vocational disability for injury to the right upper extremity is excessive.

While treating the plaintiff for her hand complaints, Dr. Torstrick found her to be anxious and upset, and opined that these psychological symptoms were caused in part by her hand injury. He referred her to psychiatrist Dr. Elias King Bond for evaluation and treatment. Dr. Bond diagnosed major depression of a moderate degree which would require psychotherapy and medication for at least six to twelve months. He thought the depression pre-existed her work injury but the work injury made it worse.

This Court has recognized two factual situations in which employees may recover compensation benefits for mental disorders. First, recovery is appropriate for a mental injury by accident or occupational disease, standing alone, if the mental disorder is "caused by an identifiable, stressful, work-related event producing a sudden mental stimulus such as fright, shock or excessive unexpected anxiety." *Hill v. Eagle Bend Mfg., Inc.*, 942 S.W.2d 483 (Tenn. 1997); *Batson v. Cigna Property & Casualty Companies*, 874 S.W.2d 566, 570 (Tenn. 1994). Secondly, compensation for psychological disorders has been allowed when an employee sustains a compensable work-related injury by accident and thereafter experiences a mental disorder which is caused by the original compensable work-related injury. *Batson*, 874 S.W.2d at 570.

An employer takes an employee as he or she is and assumes the responsibility of having a pre-existing condition aggravated by a work-related injury which might not affect a normal person. This rule applies as well to the aggravation of a pre-existing 'nervous' condition by a physical injury. *Hill v. Eagle Bend*, 942 S.W.2d at 488. Applying these principles of law, we find that the trial court's award of vocational disability for mental injury is supported by the evidence.

While the evidence supports an award for physical injury and for psychological disability, Plaintiff and Defendant agree that T.C.A. § 50-6-207(3)(c) limits plaintiff's recovery to one award.

T.C.A. § 50-6-207(3)(C) states, as pertinent:

When an employee sustains concurrent injuries resulting in concurrent disabilities, such employee shall receive compensation only for the injury which produced the longest period of disability . . .”

We therefore remand the case to the trial court for a determination of the extent of permanent vocational disability consistent with this statutory limitation.

### **TEMPORARY TOTAL DISABILITY**

\_\_\_\_\_The defendant contends that the trial court erred in ordering it to pay additional temporary total benefits, since the employee refused to do the work she was assigned. The plaintiff argues that the work offered was not within her medical restrictions and she was not able to do it.

The plaintiff testified that Dr. Torstrick told her she could return to “light office paperwork,” but that she was instead assigned window washing and other work she could not do. The trial court found the plaintiff to be credible. Where the trial judge has made a determination based upon the testimony of witnesses whom he has seen and heard, great deference must be given to that finding in determining whether the evidence preponderates against the trial judge’s determination. *See Humphrey v. David Witherspoon, Inc.*, 734 S.W.2d 315 (Tenn. 1987). Moreover, Dr. Torstrick testified that he tried unsuccessfully to advise the plaintiff’s supervisor that the work she had been assigned was not within her restrictions. We find the evidence supports the trial court’s award of temporary total disability benefits.

### **BENEFITS FOR PSYCHIATRIC TREATMENT**

The defendant contends that the trial court’s award of future psychiatric treatment should be limited to “several months, or at most a year,” because T.C.A. § 50-6-204 requires the employer to furnish only such care as is reasonably necessary, and Dr. Bond testified that the plaintiff will only need counseling for “several months or at most a year.” The defendant in this case, as in all workers’ compensation cases, is only responsible for such care as is reasonably necessary. However, we are not persuaded that the court should establish a proscriptive time limit for the plaintiff’s psychiatric care, such determination being the within the expertise of her psychiatrist.<sup>1</sup>

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<sup>1</sup>Defendant may petition for termination of such benefits should the medical records indicate that plaintiff no longer needs such treatment for her work injury.

**DISCRETIONARY EXPENSES FOR MEDICAL DEPOSITIONS**

\_\_\_\_\_The defendant argues that the trial court erred in ordering it to pay the expense of Dr. Joseph Boals' deposition, because his evaluation resulted in an assessment of five percent medical impairment, the same amount assessed by plaintiff's treating surgeon. The plaintiff responds that the trial court erred in ordering her to submit to psychological examination by Dr. Nan Hawks, since the court did not adopt Dr. Hawks' findings. We find no evidence that the trial court abused its discretion in ordering independent medical evaluations or in ordering defendant to pay for the expense.

For the reasons herein stated, we affirm the judgment of the trial court except insofar as it provides for two awards of permanent partial disability. We remand the case to the trial court for a finding of the extent of permanent partial disability in accordance with the limitations set forth in T.C.A. § 50-6-207(3)(c). Costs of this appeal are taxed equally to plaintiff and defendant.

\_\_\_\_\_  
John K. Byers, Senior Judge

CONCUR:

\_\_\_\_\_  
Janice Holder, Justice

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F. Lloyd Tatum, Senior Judge

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Defendant/Appellant.

) Gibson Chancery  
) NO. 12786  
) Hon. George R. Ellis,  
) Chancellor  
)  
) NO. W1998-00699-WC-R3-CV  
)  
) Affirmed in Part, Reversed  
) in Part, and Remanded

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 of this appeal are taxed equally to the Plaintiff/Appellee and the Defendant/Appellant, for which execution may issue if necessary.

IT IS SO ORDERED this 8th day of March, 2000.

PER CURIAM