

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

|                            |   |                         |
|----------------------------|---|-------------------------|
| OCA CRAIN                  | ) | McMINN COUNTY           |
|                            | ) |                         |
| Plaintiff/Appellee         | ) |                         |
|                            | ) |                         |
| V.                         | ) | Hon. Lawrence Puckett,  |
|                            | ) | Circuit Judge           |
|                            | ) |                         |
| THOMAS & BETTS CORPORATION | ) |                         |
|                            | ) |                         |
| Defendant/Appellant        | ) | NO. 03S01-9903-CV-00026 |

**FILED**

January 10, 2000

Cecil Crowson, Jr.  
Appellate Court  
Clerk

**For the Appellant:**

H. Richard Marcus  
800 Vine Street  
Chattanooga, Tenn. 37403

**For the Appellee:**

Douglas W. Hutson  
114½ East Washington Ave.  
Athens, Tenn. 37303

**MEMORANDUM OPINION**

**Members of Panel:**

E. Riley Anderson, Chief Justice  
John K. Byers, Senior Judge  
Roger E. Thayer, Special Judge

AFFIRMED.

THAYER, 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 employer, Thomas & Betts Corporation, has appealed from the action of the trial court in awarding plaintiff, Oca Crain, 100% permanent disability to her right foot. The only issue is whether the 100% award to the foot is excessive.

Mrs. Crain sustained a work-related injury on July 9, 1996, when a forklift truck ran over her foot and then backed up and ran over the foot a second time. She was 63 years of age at the time of the accident and 65 years old at the time of the trial. She completed the 10th grade and had worked for defendant for about 27 years. At the time of her injury, she was working as an "assembler" which required standing on her feet most of the time.

After being off work for about three months, she returned to light duty work. The defendant attempted to accommodate her work restrictions and changed her job to a "bagger" which permitted her to sit down and afforded her an opportunity to elevate her injured foot. She worked at this job for about nineteen months until she fell at home and injured her shoulder. At the trial below, she had not returned to work and did not think she could return.

She testified that after returning to work from the foot injury, she still had problems with her foot such as pain, swelling, tingling toes and numbness; that she had to keep her foot elevated 75% of the time and that her production rate was not at the required level; that she could not do her housework, mow her yard and many other things she enjoyed doing before the accident. She said she had planned to continue working as long as she could as her income was limited since she lived by herself.

Plaintiff came under the care of Dr. William J. Drury, an orthopedic surgeon, who testified by deposition. He saw her eleven times during the seven month period of treatment. Dr. Drury testified she had a severely crushed foot with fractures of two toes; that the fractures did not heal and probably would not heal properly due to poor circulation in her foot; that this resulted because blood vessels were severely damaged and surgery would not be helpful. His prognosis was that although the bad

swelling had ceased, she would continue to have some swelling problems and continue to limp. He gave her a 10% medical impairment to the foot and stated she could not return to her normal job duties as an assembler.

Dr. Gilbert L. Hyde, another orthopedic surgeon, examined plaintiff for evaluation purposes only and gave a 15% impairment to the lower extremity.

Kenneth N. Archer, a disability consultant, was of the opinion plaintiff had a 90% vocational disability considering local job market opportunities.

We are required to review the case *de novo* with a presumption of correctness in favor of the findings of the trial court unless we find the preponderance of the evidence is otherwise. T.C.A. § 50-6-225(e)(2).

The employer argues the award of 100% to the foot is excessive in view of the fact plaintiff returned to light duty work and was employed in such capacity for about nineteen months prior to her nonwork-related shoulder injury and since her earning capacity has not decreased, the award should be less than 100%.

The trial judge found that although she continued to work, she still had complete loss of use of her right foot as “conceded by the fact that her employer lets her sit there with her foot up in the air.”

In *Oliver v. State*, 762 S.W.2d 562 (Tenn. 1988) the claims commissioner denied benefits to a scheduled member holding the employee had not shown any loss of earning capacity. In reversing the holding, the Supreme Court quoted from an earlier case of *Aerosol Corporation of the South v. Johnson*, 435 S.W.2d 832, 834 (Tenn. 1968) where it was stated: “The compensation law of this State contains a schedule of injuries to members of the body; and this schedule governs as to what award, if any, shall be made to one sustaining either total or partial loss, or loss of use, of a member scheduled. Under this statutory system, such award is not measured by diminution of the employee’s earning capacity; and equally so, the award for loss of use of a member is measured by the value fixed in this statute, or a percentage thereof in case of less than total permanent loss of use . . .”.

Also, in considering proof of medical anatomical disability ratings, the trial court is not required to accept without reservation an expert’s opinion, but is charged with making an independent determination on consideration of such factors as age,

education, training job skills, work experience and job opportunities available to the worker with the anatomical disability of plaintiff. *Duncan v. Boeing Tennessee, Inc.*, 825 S.W.2d 416 (Tenn. 1992); *Miles v. Liberty Mutual Ins. Co.*, 795 S.W.2d 665 (Tenn. 1990).

From our independent review of the case, we concur with the findings of the trial court. The judgment is affirmed with costs of the appeal taxed to the defendant employer.

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Roger E. Thayer, Special Judge

CONCUR:

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E. Riley Anderson, Chief Justice

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John K. Byers, Senior Judge

IN THE SUPREME COURT OF TENNESSEE  
AT KNOXVILLE

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OCA CRAIN, )  
 ) MCMINN COUNTY  
 APPELLEE )  
 )  
 v. )  
 ) S. CT. NO. 03S01-9903-CV-00026  
 THOMAS & BETTS CORPORATION, )  
 )  
 APPELLANT )

**JUDGMENT**

This case is before the Court upon motion for review pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), 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 motion for review is not well taken and should be denied; 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 Thomas & Betts Corporation, for which execution may issue if necessary.

It is so ordered.

PER CURIAM

ANDERSON, C.J. - NOT PARTICIPATING

DECEMBER 21, 1999

**TO:** CAROLYN WILLIAMS, DEPUTY CLERK, KNOXVILLE  
**FROM:** WILLIAM M. BARKER, JUSTICE  
**RE:** OCA CRAIN V. THOMAS & BETTS CORPORATION  
MCMINN COUNTY - NO. 03S01-9903-CV-00026

MOTION FOR REVIEW:

DENIED