IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

MICHAEL GRANDBERRY v. ILLINOIS TOOL WORKS, ET AL.

Chancery Court for Maury County
No. 96-295

No. M1998-00528-SC-WCM-CV - Decided April 12, 2000

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 Michael Grandberry, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM

BIRCH, J., NOT PARTICIPATING

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

MICHAEL GRANDBERRY,	)	**APPEAL NO.**
	)	**M1998-00528-SC-WCM-CV**
	)	
	)	
Plaintiff/Appellant,	)	**MAURY CHANCERY**
	)	**NO. 96-295**
vs.	)	
	)	
ILLINOIS TOOL WORKS and	)	
AMERICAN MANUFACTURERS	)	
MUTUAL INSURANCE COMPANY,	)	
	)	
Defendants/Appellees.	)	

FOR THE APPELLEE:

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FOR THE APPELLANT:

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MEMORANDUM OPINION
Mailed - January 10, 2000
Decided - April 12, 2000

MEMBERS OF PANEL:

ADOLPHO A. BIRCH, JR., JUSTICE
LLOYD TATUM, SENIOR JUDGE
CAROL L. MCCOY, SPECIAL JUDGE

OPINION FILED: **Affirmed**

CAROL L. MCCOY
Special Judge

MEMORANDUM OPINION

This workers compensation appeal has been referred to the Special Workers Compensation Appeals Panel of the Supreme Court in accordance with T.C.A. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

On May 22, 1996, appellant Michael Grandberry (Grandberry) filed this suit alleging that he was suffering from bilateral carpal tunnel syndrome, cervical pain with radiculopathy, and upper extremity radiculopathy as a result of a June, 1993 work related injury. A hearing was held and the trial court found that Grandberry has not carried his burden of proving that he had any permanent impairment. Grandberry's complaint was dismissed. Grandberry appealed this dismissal asserting that he did prove permanent impairment, and that he is entitled to recover the medical expenses for treatment by Dr. Winston Griner.

Appellate review is *de novo* upon the record of the trial court accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. T.C.A. § 50-6-225(e)(2). To satisfy this standard of review, this Court must conduct an independent examination to determine where the preponderance of the evidence lies. Williams v. Tecumseh Products Co., 978 S.W.2d 932, 935 (Tenn. 1998).

Grandberry began working at the employer appellee, Shippers Paper Products (Shippers), in 1985, where he held various assembly positions. In June of 1993, he began having problems with tingling and aching in his wrists and pain in his arms. Grandberry reported his problems to his supervisor. Over the next two years he was seen, at his request, by 6 doctors, received a total of four electromyograms, a magnetic resonance imaging study, a myelogram, and a post-myelogram computerized tomography study. In 1995, Grandberry asked to be seen by yet another doctor for his problems and was told by his employer that they would not send him to another doctor because none of the previous doctors had found anything wrong with him. He then went to Dr. Winston Griner who saw him for the first time in July of 1995 for complaints of numbness and tingling in his right and left arms and

neck pain. Dr. Griner reviewed Grandberry's medical records, and performed some additional tests. Dr. Griner prescribed pain medications, vitamins, cock-up wrist splints and nerve treatments. On July 25, 1995, Dr. Griner wrote a letter to Grandberry in which he stated that Grandberry was suffering from cervical pain with radiculopathy, bilateral carpal tunnel syndrome, upper extremity radiculopathy and myofascitis. He placed Grandberry on various restrictions, including no lifting over 30 pounds, no gripping or grasping or repetitive movements, and no pushing or pulling over 50 pounds. Grandberry did not show these restrictions to Shippers until March of 1996.

In June of 1996, Dr. Griner wrote a letter stating that Grandberry was no longer able to perform his job at Shippers. Grandberry quit and went to work for Prime Colorants where he still worked at the time of the trial. His job at Prime Colorants involved driving a tow motor, moving 30 to 40 pound bags of pellets and pushing a 110 pound barrel. At the time of trial, Grandberry was working between 32 and 45 hours per week at Prime Colorants. Grandberry had never showed the physical restrictions imposed by Dr. Griner to Prime Colorants.

Grandberry was seen by Dr. Mary Clinton, a neurologist, in the spring of 1998 for an independent medical examination at the request of Shippers. Dr. Clinton testified by deposition that Grandberry did not have any permanent impairment as a result of his work at Shippers, but rather a mild soft-tissue injury to the upper extremities as a result of repetitious work. Dr. Griner testified by deposition that Grandberry's injury at Shippers had caused a 6% impairment to each extremity from a mild carpal tunnel syndrome and a 3% impairment from his neck problems resulting in a 15% impairment to the body as a whole.

When medical testimony differs it is within the discretion of the trial judge to evaluate the weight of credibility of each expert and determine which expert testimony to accept. Kellerman v. Food Lion, Inc., 929 S.W.2d 333, 335 (Tenn. 1996). However, where the medical testimony is submitted by deposition, this Court is in the same position as the trial court regarding the evaluation of the weight and credibility of the medical experts. Krick v. City of Lawrenceburg, 945 S.W.2d 709, 712 (Tenn. 1997). The trial court reviewed

the conflicting expert opinion and accepted Dr. Clinton's conclusion that there was no permanent impairment. This Court has independently reviewed the record and finds no error in the trial judge's acceptance of this opinion.

Appellant's second argument on appeal is that he was entitled to the costs of Dr. Griner's medical treatment. This Court does not agree. Shippers more than satisfied its duty of giving Grandberry a panel of physicians from which to choose to be treated as required by T.C.A. § 50-6-204(a)(4). In addition, there is no evidence in the record as to the cost of Dr. Griner's treatment. His fee was supposed to be attached to his deposition as a late filed exhibit and it was never filed.

For the reasons stated above, the judgment of the trial court is affirmed. Costs are taxed to the Appellant, Michael Grandberry, for which execution may issue.

It is so ORDERED.

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Carol L. McCoy, Special Judge

CONCUR:

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Adolpho A. Birch, Associate Justice

_____
Lloyd Tatum, Senior Judge