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

CHARLES THURMAN, Plaintiff/Appellee	)	MCMINN CIRCUIT
v.	)	NO. 03S01-9902-CV-00023
MAYTAG COOKING PRODUCTS, INC., Defendant/Appellant	)	Decided - April 27, 2000

For the Appellant:	**For the Appellee:**
Denny B. Mobbs P.O. Box 192 55 ½ First Street, NE (37311) Cleveland, TN 37364-0192	Douglas W. Hutson 114 ½ East Washington Avenue Athens, TN 37303

MEMORANDUM OPINION

Members of Panel:

Justice William M. Barker
Senior Judge John K. Byers
Special Judge Howell N. Peoples

AFFIRMED **BYERS, Senior Judge**

_____The trial judge found the plaintiff had sustained a twenty five percent permanent partial disability to the right upper arm.

We affirm the judgment of the trial court.

_____The defendant says the medical impairment rating of Dr. Gilbert Hyde predicated on Table 34 on page 65 of the AMA Guides to Evaluation of Permanent Impairment was not competent or credible because the doctor failed to perform or review any tests which would establish the underlying factual basis for application of the referenced table.

_____This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated § 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 finding, 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 courts in workers' compensation cases. *See Corcoran v. Foster Auto GMC, Inc.,* 746 S.W.2d 452, 456 (Tenn. 1988).

_____FACTS

The plaintiff had a tenth grade education and a work history of manual labor with some limited, high school training in auto mechanics. He was injured on February 16, 1996, during the course and scope of his employment with the defendant when he struck his right elbow on a steel box.

At trial, the parties stipulated that the plaintiff received a work-related injury to his right elbow on February 16, 1996 and the compensation rate in effect was $273.00 per week. The parties also stipulated as to the medical records of Drs. Dan Johnson and Gilbert Hyde. Finally, the parties stipulated that the only issue for trial

was whether and to what extent the plaintiff suffered any permanent vocational disability as a result of the elbow injury. The trial court found a 25% ppd.

The plaintiff continues to have trouble using his right arm. His arm goes numb and tingles when driving, he cannot change a car tire or wash a car. He experiences pain when trying to work above his head i.e. trying to hang a picture. He has trouble picking up a two-liter Coke with his right hand and has trouble sleeping because of pain in his arm. He had quit playing basketball and softball with his children and has been told by Dr. Johnson that he will always have trouble using his right arm.

MEDICAL EVIDENCE

Dr. Dan Johnson, M.D., an orthopedic doctor, treated the plaintiff for epicondylitis as a consequence of the work-related injury. Dr. Johnson's records were introduced at trial. The records show Dr. Johnson's treatment included a tennis elbow strap and anti-inflammatory medication. He also suggested elective surgery might improve the plaintiff's condition. The plaintiff reached maximum medical improvement; however, he still had pain and decreased grip strength but not enough to have a ten percent impairment under the guidelines according to Dr. Johnson's records. He released the plaintiff to work "as tolerated." Dr. Johnson told the plaintiff he would always experience trouble with the injured arm.

Dr. Gilbert Hyde, M.D., an orthopedic surgeon, also treated the plaintiff and his records were introduced at trial. Dr. Hyde also diagnosed lateral and medial epicondylitis of the right elbow and treated the plaintiff with injections of depo-medrol. He restricted the plaintiff from lifting over 20 pounds with his right arm and restricted repetitive motion of the right elbow, hand and wrist. Dr. Hyde found the plaintiff sustained a five percent permanent impairment to the upper extremity and based the calculation mainly on table 34 of the AMA Guidelines.

DISCUSSION

The medical records of Dr. Hyde do not reflect he did any tests to determine the extent of disability suffered by the plaintiff. On the other hand, the records do not show he did not. We may not assume an insufficiency of Dr. Hyde's report on the record before us.

Beyond this, when the record indicates from all the medical evidence and the testimony of the plaintiff show he has suffered a permanent injury, an award may be made even when there is no medical attribution of a percentage of disability. *See Corcoran v. Foster Auto GMC, Inc.,* 746 S.W.2d at 456.

We find the evidence does not preponderate against the finding of the trial court and we affirm the judgment.

The cost of the appeal is taxed to the defendant.

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John K. Byers, Senior Judge

CONCUR:

William M. Barker, Justice

Howell N. Peoples, Special Judge

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE, TENNESSEE

CHARLES THURMAN VS. MAYTAG COOKING PRODUCTS, INC.

McMinn Circuit Court for McMinn County
No. 21430

No. E 1999-01422-WC-R3-CV - Decided April 27, 2000

JUDGMENT

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 facts and conclusions of law are adopted and affirmed and the decision of the Panel is made the Judgement of the Court.

Costs on appeal are taxed to the plaintiff/appellant, Maytag Cooking Products, Inc. and Denny B. Mobbs, surety, for which execution may issue if necessary.

04/27/00