

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
April 28, 2000 Session

ALFREDIA J. LEACH v. HENRY I. SIEGEL COMPANY, INC., ET AL.

**Appeal from the Circuit Court for Carroll County
No. 3828 Julian P. Guinn, Judge**

No. W1999-00923-WC-R3-CV - Mailed December 1, 2000; Filed January 25, 2001

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. The defendants, Henry I. Siegel Co., Inc. and Royal Insurance Company (H.I.S.), appeal the judgment of the Circuit Court for Carroll County awarding the plaintiff, Alfredia Leach (Leach), fifty percent (50%) permanent partial disability to her right arm and twenty percent (20%) permanent partial disability to her left arm as being excessive. For the reasons stated in this opinion, we affirm the judgment of the trial court but modify the award to a single award of thirty-five percent (35%) permanent partial disability to both arms.

**Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right;
Judgment of the Circuit Court Affirmed as Modified**

W. MICHAEL MALOAN, SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and HENRY D. BELL, SP. J., joined.

Stephen D. Jackson, Huntingdon, Tennessee, for the appellants, Henry I Siegel Company, Inc. and Royal Insurance Company.

Donald E. Parish, Huntingdon, Tennessee, for the appellee, Alfredia J. Leach.

MEMORANDUM OPINION

The plaintiff, Alfredia Leach, was forty (40) years old at the time of the trial of this case. She has a high school education and worked for H.I.S. in Bruceton, Tennessee, for twenty-one (21) years. Her primary job was a top presser--a repetitive motion, production-type job. She reported pain in both hands on September 3, 1997. She is right handed.

Dr. Kevin Wheatley of Huntingdon, Tennessee, examined Leach on September 4, 1997, and diagnosed carpal tunnel syndrome in her right wrist. He recommended a nerve conduction study

which was performed on October 2, 1997, by Dr. Milton Medeiros. The test results were focal neuropathy of the right medial nerve across the carpal tunnel, with mild motor and moderate sensory involvement. Dr. Wheatley referred Leach to Dr. Claiborne Christian, an orthopedic surgeon in Huntingdon, Tennessee. On examination, he found positive Tinel's and Phalen's signs and diagnosed mild to moderate carpal tunnel syndrome in the right arm. Dr. Christian performed a carpal tunnel release procedure on her right arm on December 15, 1997. He released her to return to work on March 10, 1998, and assessed a two percent (2%) permanent impairment rating to the right arm. He did not believe she gave maximum effort on grip strength testing.

On April 20, 1999, Leach returned to see Dr. Christian with complaints of pain, numbness, and tingling in both hands. Dr. Medeiros performed nerve induction studies and electromyography of both hands, which tests were normal. Dr. Christian released her on April 29, 1999, and stated:

I am not saying that the patient is not having a problem, I think she does have tendinitis....There is nothing else I can do for her as long as she is going to continue with a repetitive motion type job.

Dr. Robert J. Barnett, an orthopedic surgeon in Jackson, Tennessee, saw Leach for an independent medical evaluation on December 18, 1998. Dr. Barnett found mild nerve root compression of the median nerve bilaterally and assessed a ten percent (10%) permanent impairment rating to each arm. He stated, "I don't think she should ever go back to strenuous, repetitive use of her hands and wrists."

Leach testified she continues to have numbness and pain and swelling in her hands and wrists which is aggravated by physical activity. She has problems grasping and lifting objects, especially with her right hand. She wakes at night with arm pain and has difficulty driving a car or pushing a vacuum cleaner. Leach felt any improvement she had from her right arm surgery was lost when she returned to work at H.I.S. and has not had surgery on her left arm. Her production level at H.I.S. before her injury was one hundred seventy percent (170%) of production and decreased to one hundred forty percent (140%) of production after her return to work.

ANALYSIS

The scope of review of issues of fact is *de novo* upon the record of the trial court, accompanied by a presumption of correctness of the findings, unless the preponderance of evidence is otherwise. Tennessee Code Annotated § 50-6-225(e)(2). *Lollar v Wal-Mart Stores, Inc.*, 767 S.W.2d 143 (Tenn. 1989). When a trial court has seen and heard witnesses, especially where issues of credibility and weight of oral testimony are involved, considerable deference must be accorded the trial court's factual findings. *Humphrey v David Witherspoon, Inc.*, 734 S.W.2d 315 (Tenn. 1987). However, where the issues involve expert medical testimony which is contained in the record by deposition, as it is in this case, then all impressions of weight and credibility must be drawn from the contents of the depositions, and the reviewing court may draw its own impression as to weight and credibility from the contents of the depositions. *Overman v Williams Sonoma, Inc.*, 803 S.W.2d 672, 676-77 (Tenn. 1991).

The only issue for the panel to consider on appeal is the amount of the trial court's award of permanent partial disability to each arm. H.I.S. submits that after considering all of the evidence, the award is excessive and should be reduced.

In assessing vocational disability, the trial court is required to 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 employee's disabled condition. *Worthington v Modine Mfg. Co.*, 798 S.W.2d 232, 234 (Tenn. 1990). Applying these factors to the present case, Leach is forty (40) years old with a high school education but no vocational training. She has worked twenty-one (21) years at H.I.S. primarily performing highly repetitive manual labor and, therefore, does not have any other transferable job skills. The expert medical testimony differs in the extent of anatomical impairment, but more importantly each doctor agrees she should not perform a repetitive motion type job such as her present job. Leach has testified her production has decreased; she has pain and numbness in both hands aggravated by physical activity; and she has problems grasping and lifting with her hands, especially her dominant right hand. Considering all these facts, the panel finds the evidence does not preponderate against the judgment of the trial court.

The panel notes the trial court made separate awards to each arm. Tennessee Code Annotated, § 50-6-207(3)(A)(ii)(w) provides scheduled benefits for the loss of two (2) arms; therefore, we modify the award to thirty-five percent (35%) permanent partial disability to both arms which will neither increase nor decrease the award but will conform the trial court's judgment to the statute.¹ *McIlvain v Russell Stover Candies, Inc.*, 996 S.W. 2d 179, 181 (Tenn. 1999).

CONCLUSION

The judgment of the trial court is affirmed as modified. The defendants shall pay the costs of this appeal.

W. MICHAEL MALOAN, SPECIAL JUDGE

¹The trial court awarded fifty percent (50%) permanent partial disability to the right arm or one hundred (100) weeks of benefits and twenty percent (20%) permanent partial disability to the left arm or forty (40) weeks of benefits, based on a two hundred (200) week maximum loss of an arm for a total award of one hundred forty (140) weeks of benefits. Loss of two arms, T.C.A. § 50-6-207(3)(A)(ii)(w), is a scheduled injury with a maximum of four hundred (400) weeks of benefits. Thirty-five percent (35%) permanent partial disability to both arms is also one hundred forty (140) weeks of benefits.

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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 fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs on appeal are taxed to the Appellants, Henry I. Siegel Company, Inc., and Royal Insurance Company, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM