

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
August 30, 2000 Session

JOHN EDWARD WHITAKER v. LEAR CORPORATION

**Direct Appeal from the Circuit Court for Hawkins County
No. 8475 Kindall T. Lawson, Circuit Judge**

**No. E2000-00060-WC-R3-CV - Mailed - October 13, 2000
FILED: FEBRUARY 9, 2001**

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 appellant-employer appealed the trial court's ruling awarding appellee-employee 60 percent permanent partial disability to each arm. Appellant argues the award of disability is excessive and should be reduced. Judgment of the trial court is affirmed.

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

THAYER, SP. J., delivered the opinion of the court, in which ANDERSON, C. J. and BYERS, SR. J., joined.

Steven H. Trent and Jennifer P. Keller, of Johnson City, Tennessee, for the Appellant, Lear Corporation.

James M. Davis, of Morristown, Tennessee, for the Appellee, John Edward Whitaker.

OPINION

The employer, Lear Corporation, has appealed the ruling of the trial court awarding the employee, John E. Whitaker, 60 percent permanent partial disability to each arm.

General Background

The employee was 50 years of age at the time of the trial and had completed the 8th grade. While serving in the United States Army, he received his GED certificate. He is a long-term (26 years) employee of Lear Corporation and developed pain, numbness and tingling sensations in his

hand and arms due to repetitive motions of his work duties which involved spray painting.

When his physical condition became acute, the employer referred him to Dr. John M. Ambrosia, the company physician, who treated him for a long period of time. Dr. Ambrosia performed five separate surgical procedures and returned him to work each time without any restrictions. Surgery was performed on each hand or arm because of a severe bilateral carpal tunnel syndrome diagnosis. Later when problems developed with the thumbs not being able to bend, surgery was performed on each thumb. A fifth procedure involved the left ring finger.

Employee Whitaker testified that the surgery on each hand or arm caused some improvement in his condition but that he still had problems as his hands became sore and ached near the end of a workday; he felt his condition was beginning to get worse; he cannot do any manual labor as he did in the past; he cannot grip anything well and drops objects when he attempts to hold something; he cannot tighten or loosen a bolt; his hands still swell and he cannot wear a wedding ring; and that he is currently operating two welding machines.

Before his employment with Lear Corporation, he was a cook in the army and after his discharge had employment as a general laborer.

Medical Evidence

All of the expert medical evidence was presented by deposition testimony.

Dr. John M. Ambrosia, an orthopedic surgeon specializing in hand surgery, was the only treating physician. He gave a 2 percent impairment due to the right carpal tunnel syndrome procedure but was of the opinion there would be no impairment as to the left carpal tunnel procedure. He later performed a trigger release on his right thumb and then on his left thumb. The same trigger release was also performed on the left ring finger. He opined there was no impairment from the thumb and finger procedures.

Dr. Gilbert L. Hyde, an orthopedic surgeon, did an independent medical examination on December 29, 1998 and was of the opinion the employee had a 20 percent impairment to each arm. He did not find any impairment because of the surgery to the thumbs and ring finger. However, he did recommend certain restrictions on his work activity relating to lifting, repetitive motions, etc.

Dr. William J. Gutch, a semi-retired orthopedic surgeon, also did an independent medical examination on April 14, 1999 and opined there was a 25 percent impairment to each arm but there was no impairment as a result of the surgery on each thumb and the ring finger. He also recommended certain restrictions on his work activity with regard to lifting and repetitive motions.

Dr. Paul W. Gorman, also an orthopedic surgeon, performed an independent examination on August 19, 1999 and gave a 7 percent impairment to the right arm and a 3 percent to the left arm. He recommended the employee avoid repetitive wrist movements and found no impairment due to

the surgical procedures on the thumbs and the left ring finger.

Vocational Evidence

Each party presented the testimony of a vocational consultant.

Witness Rodney Caldwell testified by deposition and stated he was of the opinion the employee would not have any vocational disability based on the opinion of Dr. Ambrosia but would have a vocational disability of 80-85 percent considering the evidence of Dr. Hyde and Dr. Gutch.

Witness Susan Seylor testified orally and stated the employee would not have any vocational disability based on Dr. Ambrosia's opinion. She stated that based on Dr. Gorman's testimony the vocational disability would be 18 percent; based on Dr. Gutch's testimony 40 percent vocational disability; and based on Dr. Hyde's opinion vocational disability would be 37 percent.

Issue on Appeal

The only issue on appeal is whether the evidence preponderates against the trial court's award of 60 percent permanent disability to each arm.

Analysis

In weighing conflicting medical evidence, the trial court is not bound by any witnesses' testimony but has the discretion to conclude that the opinion of one witness should be accepted over the opinion of another witness. *Thomas v. Aetna Life & Cas. Co.*, 812 S.W.2d 278 (Tenn. 1991); *Orman v. Williams-Sonoma, Inc.*, 803 S.W.2d 672, 676 (Tenn. 1991).

In fixing permanent legal disability, the trial court must consider many factors including the employee's age, education, work experience, local job opportunities, etc. and this is to be examined in relation to the open labor market and not whether the employee is able to return and perform the job held at the time of the injury. *Orman v. Williams-Sonoma, Inc.*, *supra*; *Clark v. National Union Fire Ins. Co.*, 774 S.W.2d 586, 588 (Tenn. 1989). Also, medical impairment ratings and vocational opinions are to be considered but are not controlling on the issue of permanency.

Our review of the issue in this case is *de novo* with a presumption of the correctness of the findings of the trial court unless we find the preponderance of the evidence is against the conclusion of the court. Tenn. Code Ann. § 50-6-225(e)(2).

The employer argues the trial court did not consider the evidence of Dr. Ambrosia and vocational consultant Seylor in fixing the award of disability. We do not find any evidence to support this conclusion. Obviously, in resolving the conflicting evidence, the trial court declined to accept the opinion of these witnesses on the issue before the court but this does not establish their opinions were not considered.

It is also argued the award is excessive and numerous cases have been cited where awards for similar type injuries were reduced on appeal. We are not persuaded by this analysis of the case. Each case must be decided on its own peculiar evidence and the rules we have heretofore cited make no provision for this type of appellate review of a workers' compensation award.

Conclusion

The employee's injury to his arms became acute during the early part of the year of 1997 and when the case was presented to the trial court during September 1999, he was still experiencing considerable difficulty with his injury. From our independent review of the case, we do not find the evidence preponderates against the award fixed by the trial court.

The judgment is affirmed. Costs of the appeal are taxed to the employer.

ROGER E. THAYER, SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

JOHN EDWARD WHITAKER v. LEAR CORPORATION

**Circuit Court for Hawkins County
No. 8475**

**No. E2000-00060-SC-WCM-CV
FILED - FEBRUARY 9, 2001**

ORDER

This case is before the Court upon motion for review of Lear Corporation 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 Lear Corporation, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM

Anderson, C.J. - Not Participating

FEBRUARY 6, 2001

TO: CAROLYN WILLIAMS, DEPUTY CLERK, KNOXVILLE
FROM: WILLIAM M. BARKER, JUSTICE
RE: JOHN EDWARD WHITAKER V. LEAR CORPORATION
HAWKINS CIRCUIT - NO. E2000-00060-SC-WCM-CV

MOTION FOR REVIEW:

DENIED