IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
January 22, 2001 Session

MURIEL C. WARREN v. HENRY I. SIEGEL CO., INC., ET AL.

Direct Appeal from the Circuit Court for Benton County
No. 99CCV-163 Ron E. Harmon, Chancellor

No. W2000-01387-WC-R3-CV - Mailed March 21, 2001; Filed May 4, 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)(2000) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The employer has appealed two issues from the trial court: (1) Whether the ten percent (10%) of the anatomical rating provided by Plaintiff's evaluating physician should have been assigned to Plaintiff's thumbs rather than to the arms; and (2) Whether the preponderance of the evidence supports the trial court's award of ninety percent (90%) permanent partial disability to the right arm and fifty percent (50%) permanent partial disability to the left arm. From our review of the record, we affirm the trial court's judgment.

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

L. TERRY LAFFERTY, SR. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and JOE C. LOSER, SP. J., joined.

Stephen D. Jackson, Huntingdon, Tennessee, for the Appellants, Henry I. Siegel, et al.

Charles L. Hicks, Camden, Tennessee, for the Appellee, Muriel C. Warren.

MEMORANDUM OPINION

The Employee/Plaintiff, a 52 year-old divorcee, testified that she is a high school graduate. From 1965 to 1998, Plaintiff has worked in various factories, with some interruptions. During these interruptions, she raised her children and kept her ex-husband's books. In 1987, Plaintiff returned to work for the Defendant, Henry I. Siegel Co., Inc. ("H.I.S."), making an approximate total of 5,500 to 6,000 pairs of belt loops a day. This work required the continuous use of both hands. Plaintiff stated that her hands and arms started to swell and she lost sleep. The nurse at H.I.S. recommended

that she wear braces while working. Plaintiff indicated that the pain began in her hands, then moved to her wrists and finally to the top point of her shoulder blades.

Dr. Alex Heffington performed surgery on the palm of Plaintiff's right hand and she was given a nerve injection in her left arm or wrist. Plaintiff underwent therapy and took muscle relaxants, pain pills, and anti-inflammatories for relief. Plaintiff was terminated when the factory closed in December 1999. Plaintiff testified that she cannot work anymore, although she did put in an application for employment at Jones Plastics Company and several convenience stores. As to her daily activities, she has difficulty opening bottle caps, jars and peeling potatoes. She cannot lift her grandchildren and she must wear braces while driving her car. Up to the date of trial, Plaintiff complained of swelling in her right arm and wrists, and sometimes even up to her shoulder. Although she did not have surgery on her left arm, the swelling is confined to her wrist and above.

MEDICAL EVIDENCE

The medical evidence in this case consists of the medical records of Dr. Alex Heffington and the medical records and C-32 form of Dr. Joseph Boals. Other medical records consist of medical tests, reports, and hospital records.

Dr. Alex Heffington, the treating physician, saw Plaintiff on January 31, 1997, at Camden General Hospital. Plaintiff complained that her right and left wrists were hurting for about three (3) or four (4) months, but the right hand hurts worse. She stated, "by afternoon it is really, really bad and wakes me up at night." Dr. Heffington diagnosed Plaintiff with bilateral tendinitis and recommended that she wear wrist splints. Between January 31 and May 2, 1997, Dr. Heffington saw Plaintiff five (5) times. Plaintiff continuously complained of pain and swelling in the wrists and arms up to her shoulder. On several occasions, Plaintiff complained of pain at the base of the right thumb, the metacarpo-trapezoid joint. Dr. Heffington recommended that she take Loratab, 5mg and Naprelon, 500mg. Plaintiff is to continue to use splints. On May 2, 1997, Dr. Heffington recommended that Plaintiff undergo an EMG. On May 8, 1997, Dr. James Anderson reported that a nerve reduction study and the EMG reflected that Plaintiff had borderline right carpal tunnel syndrome.

Between May 8, 1997, and January 6, 1998, Dr. Heffington saw Plaintiff seven (7) times. As before, Plaintiff complained of continued pain and some swelling to her right and left wrists, arms and into her shoulder. The right arm hurts worse than the left and she frequently wakes up at night with pain. Dr. Heffington recommended a repeat EMG, which on January 8, reflected borderline mild carpal tunnel syndrome. Dr. Heffington performed carpal tunnel release on February 12, 1998, as the result of the visits on January 30, and February 3, 1998. Plaintiff's incision appeared to be healing well; however, she had some tenderness and numbness at the right thumb. On March 30, 1998, Dr. Heffington permitted Plaintiff to return to work on a half-day schedule. On April 24, 1998, Plaintiff complained of her right thumb hurting while peeling potatoes, and that her left hand was hurting worse. On April 27, 1998, Plaintiff was permitted to resume full-time work.

Between May 8, 1998, and April 15, 2000, Dr. Heffington saw Plaintiff eighteen (18) times. Plaintiff still complained of pain to the right and left arms and wrists, with some pain to the base of her left thumb. On one occasion, Plaintiff complained of pain to her right elbow, which Dr. Heffington diagnosed as right lateral epicondylitis and recommended a tennis elbow strap. As to Plaintiff's right wrist, Dr. Heffington believed that Plaintiff suffered from tendinitis and arthritis to the right thumb and to the base of the left thumb. As of July 27, 1998, Dr. Heffington opined that Plaintiff sustained a four percent (4%) permanent partial impairment to the right hand. Dr. Heffington did not rate the left hand.

Dr. Joseph C. Boals, III, evaluated Plaintiff on September 28, 1999, at her attorney's request. Based upon Plaintiff's work history and medical records, Dr. Boals opined that Plaintiff has impairment from bilateral over-use syndrome. Plaintiff has impairment for the strength loss sustained from right carpal tunnel release and based upon a strength index of twenty-four (24), she has a ten percent (10%) impairment rating of the right upper extremity. In addition, Plaintiff has a ten percent (10%) impairment of the left upper extremity on the basis of typical clinical symptoms of carpal tunnel syndrome. Also, Dr. Boals opined that Plaintiff incurred an additional ten percent (10%) impairment to each upper extremity on the basis of over-use syndrome which manifests itself by causing arthritis in the carpometacarpal joints bilaterally and DeQuervain's tenosynovitis bilaterally. Thus, Plaintiff has an overall impairment rating of nineteen percent (19%) of each upper extremity using the combined tables on page 322, AMA Guides. Dr. Boals recommended that Plaintiff avoid repetitive work and heavy gripping in the future, and if possible, she should undergo a job change.

Based on this summarized evidence, the trial court awarded permanent partial disability benefits of ninety percent (90 %) to the right arm and fifty percent (50%) permanent partial disability to the left arm. Appellate review of findings 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 the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). This standard requires this Panel to conduct an independent examination of the record to determine where the preponderance lies. *Story v. Legion Ins. Co.*, 3 S.W.3d 450, 451 (Tenn. Sp. Workers Comp. 1999); *Galloway v. Memphis Drum Serv.*, 822 S.W.2d 584, 586 (Tenn. 1991). The extent of vocational disability is a question of fact to be determined from all of the evidence, including lay and expert testimony, if any. *Story*, 3 S.W.3d at 456; *Worthington v. Modine Mfg. Co.*, 798 S.W.2d 232, 234 (Tenn. 1990).

The Defendant asserts, through expert medical evidence, that Plaintiff has two distinct injuries: bilateral carpal tunnel syndrome (arms) and bilateral aggravation of arthritis in her carpometacarpal joints (thumbs). Thus, by improperly combining the two into one rating, Dr. Boals elevated the thumb injuries from a basis of sixty (60) weeks to two hundred (200) weeks. Plaintiff argues that, as the trial court found, she suffered separate injuries to her arms, hands, and fingers. Thus, Plaintiff is entitled to recover two (2) two hundred (200) weeks for a total of four hundred (400) weeks due to her work related injuries. Based upon Plaintiff's testimony and the testimony of Dr. Boals, the trial court found that Plaintiff has suffered carpal tunnel in each wrist, accompanied by tendinitis and cumulative arthritis and impairment from over-use syndrome manifested itself in

the radiation of pain into the elbow, shoulder, and swelling in the right arm. Also, the right arm was more severely impaired than the left arm.

Where the trial court has seen and heard the witnesses, especially if issues of credibility and weight to be given oral testimony are involved, considerable deference must be accorded those circumstances on review, because it is the trial court which has the opportunity to observe the witnesses' demeanor and to hear the in-court testimony. *Long v. Tri-Con Ind., Ltd.*, 996 S.W.2d 173, 178 (Tenn. 1999); *Hill v. Eagle Bend Mfg., Inc.*, 942 S.W.2d 483, 487 (Tenn. 1997).

Where a worker's only injury is to a scheduled member, he or she may only receive the amount of compensation provided by the schedule for his or her permanent disability. *Genesco, Inc. v. Creamer*, 584 S.W.2d 191, 193 (Tenn. 1979). If an Employee sustains the loss of a thumb, Tenn. Code Ann. § 50-6-207(3)(A)(ii)(a), sixty (60) weeks applies. However, if an Employee sustains the loss of both arms, Tenn. Code Ann. § 50-6-207(3)(A)(ii)(w), four hundred (400) weeks applies. Subsection (3)(C) of Tennessee Code Annotated provides that when an employee sustains concurrent injuries resulting in concurrent disabilities, such employee shall receive compensation only for the injury which produced the longest period of disability. *See Crump v. B & P Const. Co.*, 703 S.W.2d 140, 142-3 (Tenn. 1986).

While Dr. Heffington found that Plaintiff had sustained only a four percent (4%) permanent partial impairment to the right hand, Dr. Boals found that Plaintiff had sustained a ten percent (10%) impairment rating of the right upper extremity from an anatomical change resulting from a carpal tunnel release and a ten percent (10%) impairment rating to the left upper extremity based on typical clinical symptoms of carpal tunnel syndrome. Also, Plaintiff has sustained an additional ten percent (10%) to each upper extremity on the basis of overuse syndrome from cumulative arthritis in the carpometacarpal joints. When medical testimony differs, the trial court is entitled to choose which expert's view is to be believed. *Orman v. Williams Sonoma, Inc.*, 803 S.W.2d 672, 676 (Tenn. 1991). Coupled with Plaintiff's in-court testimony, the trial court found that Plaintiff has sustained permanent impairment to each upper extremity. From our review of the record, we find that the evidence does not preponderate against the trial court's findings as to this issue.

Next, the Defendant contends that the trial court erred in awarding permanent partial disability to Plaintiff's right and left arm.

In determining the extent of an injured Employee's permanent vocational disability, trial courts are not limited to consideration of the worker's ability to return to his or her previous employment, but must consider his or her job skills and training, education, age extent of anatomical impairment, duration of disability, local job opportunities, and his or her capacity to work at kinds of employment available to him or her in a disabled condition. *Perkins v. Enterprise Truck Lines, Inc.*, 896 S.W.2d 123, 127 (Tenn. 1995). Likewise, an employee's own testimony concerning the extent of his or her disability is competent and must be considered in assessing the extent of permanent disability, in addition to the opinions of expert medical witnesses. *Tom Still Transfer Co. Inc., v. Way*, 482 S.W.2d 775, 777 (Tenn. 1972).

Plaintiff's employment record is limited to jobs involving the repetitive use of her hands. As a result of the injuries to the right and left arms from this repetitive use and a loss of grip strength, Dr. Boals recommended that Plaintiff avoid repetitive work, requiring the use of her hands and heavy gripping. Even up to the date of trial, Plaintiff continued to have swelling to her right and left arms, as noted by the trial court.

Under all the facts and circumstances in this record, including Plaintiff's lack of education, training and experience in jobs other than manual, hand-intensive labor, and the termination of her job at H.I.S., this Panel is persuaded that the trial court was correct in its assessment of Plaintiff's disability impairment to the right and left arms. We find that the evidence fails to preponderate against the trial court's findings. The judgment of the Circuit Court for Benton County is affirmed. Costs on this appeal are taxed to the Defendant Henry I. Siegel Co., Inc.

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L. TERRY LAFFERTY, SENIOR JUDGE

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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 Appellant, Henry I. Siegel Co., Inc., for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM