

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

January 25, 2001 Session

**WILLIAM DAVID HOLDEN v. PETERBILT MOTORS COMPANY**

**Direct Appeal from the Chancery Court for Wilson County  
No. 97404 C. K. Smith, Chancellor**

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**No. M2000-00484-WC-R3-CV - Mailed - March 2, 2001  
Filed - May 2, 2001**

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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. In this appeal, the employer contends the evidence preponderates against the trial court's finding that the employee's carpal tunnel syndrome was work related and that the award of permanent partial disability benefits based on 50 percent to the arm is excessive. As discussed below, the panel has concluded the judgment should be affirmed.

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

JOE C. LOSER, JR., SP. J., delivered the opinion of the court, in which FRANK F. DROWOTA, III, J., and JOHN K. BYERS, SR., J., joined.

Patrick A. Ruth, Ruth, Howard, Tate & Sowell, Nashville, Tennessee, for the appellant, Peterbilt Motors Company.

William E. Farmer, Lebanon, Tennessee, for the appellee, William David Holden.

**MEMORANDUM OPINION**

The employee or claimant, Holden, is 48 with a high school education and one year of college with experience as a welder and in construction trades. He began working at Peterbilt in August 1983. On July 1, 1997, while using a pry bar to slide a truck on the line, his hand slipped and he hit his left hand against the truck. He felt immediate pain and numbness in the hand and arm. He chose Dr. John McInnis from a list of three provided by the employer.

Dr. McInnis x-rayed and splinted the hand and returned the employee to one handed work,

after diagnosing a fractured fifth metacarpal. The employee returned to work after an uneventful recovery, but has been unable to make production expectations, for which he was reprimanded, because of pain and numbness in the injured hand and arm. His testimony as to the effect of his injury on his ability to work is supported by the testimony of co-workers and by the testimony of Mrs. Holden.

On November 5, 1998, he saw Dr. Richard Fishbein with complaints of pain in the injured hand. Dr. Fishbein attributed a 3 percent permanent impairment to the hand and an additional 5 percent to the left arm for carpal tunnel syndrome caused by the July 1, 1997 injury. Dr. McInnis testified that trauma could cause carpal tunnel syndrome, but estimated the employee's permanent impairment at 1 percent to the left hand only.

Upon the above summarized evidence, the trial court found that both injuries, the fractured hand and the carpal tunnel syndrome, were work related and awarded permanent partial disability benefits based on 50 percent to the left arm. Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). The panel is not bound by the trial court's findings but conducts an independent examination of the evidence to determine where the preponderance of the evidence lies. Wingert v. Government of Sumner County, 908 S.W.2d 921 (Tenn. 1995).

The employer points to the absence of expert medical evidence that the claimant's carpal tunnel syndrome was caused by repetitive trauma at work and argues that such repetitive trauma is the usual cause of the condition. The argument ignores the testimony of Dr. Fishbein, accepted by the chancellor, that both injuries were caused by the accident at work and the testimony of Dr. McInnis that a single trauma could be the cause of carpal tunnel syndrome.

It is within the discretion of the trial judge to conclude that the opinion of one expert should be accepted over that of another expert and that it contains the more probable explanation. Story v. Legion Ins., Co., 3 S.W.3d 450 (Tenn. 1999). Moreover, in a workers' compensation case, a trial judge may properly predicate an award on medical testimony to the effect that a given incident "could be" the cause of a claimant's injury, when, from other evidence, it may reasonably be inferred that the incident was in fact the cause of the injury. See P. and L. Construction Company, Inc. v. Lankford, 559 S.W.2d 793 (Tenn. 1978) and its progeny. Following those principles, the panel cannot say that the evidence preponderates against the trial court's finding that both injuries were work related.

In support of its contention that the award of permanent disability benefits is excessive, the employer points to the claimant's relative youth, the absence of medical restrictions and the fact that the highest medical impairment rating is 5 percent to the arm. Anatomic impairment is distinct from the ultimate issue of vocational disability. Hill v. Royal Ins. Co., 937 S.W.2d 873, 876 (Tenn. 1996). Moreover, trial courts are not bound to accept physicians' opinions regarding the extent of a claimant's disability, but should consider all the evidence, both expert and lay testimony, to decide the extent of an employee's disability. Walker v. Saturn Corp., 986 S.W.2d 204, 207 (Tenn. 1998).

The claimant's own testimony and that of other lay witnesses support a finding that he is seriously disabled from doing any work requiring the use of his left arm. From our independent examination of the evidence and a consideration of the above principles, we cannot say that the evidence preponderates against the trial court's award.

For those reasons, the judgment of the trial court is affirmed. Costs on appeal are taxed to the appellant.

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JOE C. LOSER, JR.

IN THE SUPREME COURT OF TENNESSEE  
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PACCAR, INC.**

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**No. M2000-00484-SC-WCM-CV - Filed - May 2, 2001**

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**ORDER**

This case is before the Court upon motion for review filed by Peterbilt Motors Company 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 Peterbilt Motors Company, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM

DROWOTA, J. - NOT PARTICIPATING

