

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

January 22, 2001 Session

**SONNIE GAIL PHILLIPS WOOD v. PORTER CABLE CORPORATION,
ET AL.**

**Direct Appeal from the Chancery Court for Madison County
No. 55675 Joe C. Morris, Chancellor**

No. W2000-01771-WC-R3-CV - Mailed March 22, 2001; Filed August 20, 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 Defendant/Appellant Van De Kamp's, Inc., and Defendant/Appellee Porter Cable Corporation, appeal the judgment of the Chancery Court of Madison County awarding Plaintiff/Appellee, Sonnie Gail (Phillips) Wood, thirty percent (30%) permanent partial disability to the right arm and twenty percent (20%) to the left arm. Van De Kamp's, Inc. raises three additional appellate issues: (1) Whether the trial court erred in finding that the "Last Injurious Exposure Rule" applied to the facts in this case; (2) Whether the trial court erred in granting Porter Cable Corporation a directed verdict at the close of Plaintiff's proof; and (3) Whether Porter Cable Corporation's inaction when given notice of Plaintiff's injury estops them from denying liability. Defendant Porter Cable raises three additional appellate questions: (1) Whether the trial court erred in applying the "Last Injurious Exposure Rule"; (2) Whether it was harmless error for the trial court to grant Porter Cable Corporation a directed verdict; and (3) Whether equity was achieved when Plaintiff's injury worsened at Van De Kamp's. From our review of the record, we affirm the trial court's judgment as modified.

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

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

Jeffrey P. Boyd, Jackson, Tennessee, for Defendant/Appellant, Van De Kamp's; and Michael V. Tichenor, Memphis, Tennessee, for Defendant/Appellee, Porter Cable Corporation.

Art D. Wells, Jackson, Tennessee, for the Plaintiff/Appellee, Sonnie Gail Phillips Wood.

MEMORANDUM OPINION

Sonnie Gail Phillips Wood, age 32, a self-employed residential cleaner, testified that at the time of her employment with Porter Cable Corporation (“Porter Cable”), her name was Sonnie Phillips, but she is now married. Plaintiff did not complete the eighth grade, with no further educational attempts. Plaintiff began working for Porter Cable in August 1996 as an assembler and pain commenced in her hands in August 1997. Plaintiff worked both the router line and belt sand line, which required the continuous and repetitive use of her hands with a power screwdriver. When her hands began to “swell like a balloon,” she notified Walter Longmire, a shift manager, about her condition. Longmire suggested that she “suck it up.” Plaintiff’s pain continued and radiated into her shoulders. She told the plant nurse, Connie Leaper, who suggested that it might be tendinitis and that she should take Ibuprofen and use splints. On her own, Plaintiff saw Dr. Timothy Hayden, who suggested that her problems could be from her work. Dr. Hayden referred her to Dr. Keith Nord. Dr. Nord recommended that she wear braces at night and at work, but they did not help. In April 1998, Dr. Nord advised her that she had carpal tunnel syndrome and recommended that she take off work at Porter Cable. In September 1998, Plaintiff decided to leave employment at Porter Cable due to certain problems, her hands were painful and that if she continued to work, her hands might become permanently damaged.

Between September and November of 1998, Plaintiff worked for International Paper Company for a very short time. She began working for Van De Kamp’s Inc. (“Van De Kamp’s”) in early November 1998. Plaintiff began working the pancake and waffle line, in which the pancakes and waffles came down a line bunched up, so she had to pick them up and stack them four at a time and put them in bins for packing. Plaintiff worked a twelve-hour shift. On the very first day, Plaintiff felt intense pain but did not tell anybody for about a month because she was new on the job. In December 1998, Plaintiff reported her injury to her employer and was provided a panel of three physicians. Since Dr. Nord was on the list, she returned to see Dr. Nord and he placed her on light duty, but Van De Kamp’s did not honor her restrictions and put her back on the waffle line. Since her hands became worse and she could not do the job, she left Van De Kamp’s in December 1998. Plaintiff worked at various jobs until she started her own residential cleaning service. As to her daily routine, Plaintiff testified that she has some problems with vacuuming, and house cleaning. She has difficulty in brushing her seven year old daughter’s hair and cannot lift her weights since her wrists are weak. Plaintiff conceded that she did not have surgery for her wrist and/or hand problems.

Mr. Jason Wood, Plaintiff’s husband of one and one-half years, testified that he met Plaintiff while they worked at International Paper in October 1998. He stated that his wife cannot lift a cast iron skillet or heavy pots, and in the mornings he must help her daughter get ready for school. Plaintiff cannot do weeding in the garden or twist off tops of jars and bottles. Mr. Wood did not know Plaintiff when she worked at Porter Cable and is not familiar with her problems at that plant. He stated that when they dated in October 1998, she had no problems with her hands and he never helped her to open jars.

MEDICAL EVIDENCE

The medical evidence in this case consists of the depositions of Dr. Keith Nord, Dr. Joseph Boals and Dr. Riley Jones.

Dr. Keith Nord, an orthopedic surgeon and treating physician, testified that he first saw Plaintiff on April 22, 1998, with a complaint of wrist, elbow, shoulder and neck pain. Plaintiff worked a production line and her hands would swell and she could not sleep at night. X-rays of the hands were normal, and positive Phalen's and Tinel's tests indicated probable bilateral carpal tunnel syndrome to the right wrist. Dr. Nord recommended an EMG and nerve conduction study. Plaintiff was to stay off work until April 25, 1998, take medication, warm soaks, and use splints for night sleeping. Dr. Nord saw Plaintiff on May 4, 1998, and the EMG suggested mild median sensory slowing across the right wrist. The left upper extremity was normal. Dr. Nord opined that Plaintiff had mild right carpal tunnel syndrome. He treated it with an injection and advised Plaintiff to continue using splints for sleeping.

On December 7, 1998, Dr. Nord saw Plaintiff again with a complaint that her left wrist was hurting more than the right. Plaintiff had positive Tinel's, Phalen's and median nerve compression tests on the left. Diagnosis ruled out bilateral carpal tunnel syndrome, but the EMG had already shown that she had mild right carpal tunnel syndrome on the right. Dr. Nord recommended limited duty, 12-7-98, no repetitive gripping or twisting, and the use of night splints for both wrists. Dr. Nord saw Plaintiff on May 17, 1999, and July 12, 1999, with complaints to the right wrist. Diagnosis was mild right carpal tunnel syndrome. As of July 1999, Dr. Nord opined that Plaintiff did not have an impairment rating for the right or left wrist. Also, Dr. Nord could not testify as to whether Plaintiff's symptoms were caused by working at Porter Cable, Van De Kamp's or other activities. During cross-examination, Dr. Nord agreed that either employment at Porter Cable or Van De Kamp's could have caused carpal tunnel syndrome and that the work at Van De Kamp's could have accelerated, aggravated or contributed to her carpal tunnel syndrome, but he had no objective way of quantifying that Plaintiff's condition worsened between May 1998, and December 1998.

Dr. Joseph C. Boals, III, a board certified orthopedic surgeon, testified that he evaluated Plaintiff on November 2, 1999, at the request of counsel. Plaintiff worked for Porter Cable for about three years and worked for Van De Kamp's for one month performing repetitive production work. Her symptomology began one and one-half years before in her wrists, hands, shoulders, neck and back. Dr. Nord had treated Plaintiff for carpal tunnel syndrome. Dr. Boals' examination ruled out any injury to Plaintiff's neck and back, but a positive Phalen's test indicated that the right wrist was worse. Dr. Boals opined that Plaintiff suffered from bilateral carpal tunnel syndrome and bilateral over-use syndrome of both upper extremities. Plaintiff's repetitive work caused these conditions. When asked if Plaintiff's activity at Van De Kamp's either accelerated, aggravated or worsened her carpal tunnel syndrome, Dr. Boals testified:

“What I understand is that this woman did have some symptoms while working at Porter Cable but apparently got worse when she went to her job at Van De Kamp's,

that's the understanding I have. Based upon that assumption and based upon the fact that I had no knowledge there was any treatment under a workmen's compensation claim while at Porter Cable, then one would make the assumption with the facts that are before me here that the thing that kind of put her over the edge was the work at Van De Kamp's which necessitated her going to a doctor and getting the workup."

Dr. Boals opined that Plaintiff sustained a ten percent (10%) permanent partial impairment to the right arm with less symptoms on the left side, and a five percent (5%) permanent partial impairment to the left arm. Plaintiff needs to eliminate any repetitive work, heavy gripping and repetitive use of her hands.

At the request of Porter Cable, Dr. Riley Jones, an orthopedic surgeon, saw Plaintiff on December 3, 1999, with a complaint of problems with her hands which began while working for Porter Cable in 1997. An EMG study was made in April 1998, which indicated a mild median and sensory slowing across the wrist and a normal left upper extremity EMG. After leaving Porter Cable, Plaintiff went to work at Van De Kamp's and quit work because it bothered her too much. The Plaintiff still has some tingling in the end of her finger, occasional pain in her elbow, and some numbness in the thumb and along the ring finger. Dr. Jones performed strength and sensory testing on Plaintiff and the strength tests were grossly inconsistent. X-rays were negative and Dr. Jones opined that Plaintiff has possible mild carpal tunnel. Dr. Jones opined that since Plaintiff lacked surgery and based upon the EMG of April 1998, she would have no impairment, therefore, he could not give Plaintiff an impairment rating. When showed an EMG taken in January 2000, Dr. Jones stated that the EMG showed a minimal median sensory slowing across the wrist, which has improved since the EMG of April 1998 and that Plaintiff has no permanent partial impairment. When asked if Plaintiff's work at Van De Kamp's caused an increase in pain, and that her physical deterioration got aggravated or worsened, Dr. Jones responded:

"Not unless there's some comment in Dr. -- I was looking to see, not unless there's some comment in Dr. Nord's records. Let's see. . ."

.....

"I know what they do at Porter-Cable. I've visited Van De Kamp's. So I assume by the length of time that she was there, that you could relate her carpal tunnel to the type of work they did. It's a repetitious work."

Further, Dr. Jones opined that there is no medical evidence that the employment at Van De Kamp's increased, aggravated or made her carpal tunnel more severe than it was in April 1998.

The trial record established that at the end of the testimony of Plaintiff and her husband, Porter Cable moved the trial court for a directed verdict, similar to Porter Cable's motion for summary judgment filed prior to trial and denied. The trial court held :

“All right. It’s my opinion in this case that from the testimony of the plaintiff and I still have -- I haven’t read the depositions, that would -- I think the last injurious exposure rule applies here, and I’m going to dismiss Porter Cable, and we’ll take up the rest of this at 1:00 o’clock or as soon thereafter as possible.”

In its written order of June 2, 2000, the trial court found that the live testimony of the witnesses, combined with the testimony of Drs. Boals and Nord, indicate that Plaintiff developed problems while at Porter Cable, but the problems intensified and a new injury was sustained at Van De Kamp’s. Therefore, Van De Kamp’s is the Defendant responsible for the resulting permanent partial disability benefits. Furthermore, based on the testimony of the witnesses and the treating and evaluating physicians, Plaintiff has sustained a thirty percent (30%) permanent partial impairment to the right arm and a twenty percent (20%) permanent partial impairment to the left arm.

LEGAL ANALYSIS STANDARD OF APPELLATE REVIEW

Review of the findings of fact made by the trial court is *de novo* upon the record, 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)(2000); *Story v. Legion Ins. Co.*, 3 S.W. 3d 450, 451 (Tenn. Sp. Workers Comp. 1999); *Stone v. City of McMinnville*, 896 S.W.2d 548, 550 (Tenn. 1995). The application of this standard requires this Panel to weigh in more depth the factual findings and conclusions of the trial court in a workers’ compensation case. *See Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988). However, considerable deference must be given to the trial court, who has seen and heard witnesses especially where issues of credibility and weight of oral testimony are involved. *Story v. Legion Ins. Co.*, 3 S.W.3d at 451.

LAST INJURIOUS EXPOSURE RULE

Defendant Van De Kamp’s, asserts that the trial court erred in finding that the last injurious exposure rule applied to the injury sustained by Plaintiff while employed at Van De Kamp’s. Further, the lay testimony and medical testimony established that Plaintiff’s injury occurred at Porter Cable and that the trial court’s judgment must be reversed, liability assessed to Porter Cable and Van De Kamp’s dismissed from this case. Naturally, Porter Cable contends that the trial court was justified in finding that the last injurious exposure rule applied in this case and requests this Panel to affirm the trial court’s judgment as to this issue.

The plaintiff in a workers' compensation case bears the burden of proving every element of the case by a preponderance of the evidence, including the existence of a work-related injury by accident. *Talley v. Virginia Ins. Reciprocal*, 775 S.W.2d 587, 591 (Tenn. 1989). To be eligible for workers’ compensation benefits, an employee must suffer an injury by accident arising out of and in the course of employment which causes either disablement or death. Tenn. Code Ann. § 50-6-102(a)(5). Generally, an injury arises out of and in the course and scope of employment if it has a rational connection to the work and occurs while the employee is engaged in the duties of his or her

employment. *Hall v. Auburntown Industries, Inc.*, 684 S.W.2d 614, 617 (Tenn. 1985).

In this case, the trial court found that while Plaintiff's problems began at Porter Cable, she sustained a new injury when her problems intensified at Van De Kamp's. Thus, Van De Kamp's was responsible for her workers' compensation benefits. A successive employer may become liable for a plaintiff's carpal tunnel syndrome, even though the symptoms of such injury may have begun while employed at another or with another employer. The last injurious injury rule was first adopted and recognized in Tennessee in *Baxter v. Smith*, 211 Tenn. 347, 364 S.W.2d 936 (Tenn. 1962). In *Baxter*, the rule is stated as follows:

The rule then in Tennessee is that an employer takes an employee as he finds him. He is liable for disability resulting from injuries sustained by an employee arising out of and in the course of his employment even though it aggravates a previous condition with resulting disability far greater than otherwise would have been the case.

This rule seems to be almost identical with the Massachusetts-Michigan rule indicated above. It is the rule in Tennessee that there must be a causal connection between the employment and the resulting injury or that the most recent injury causally related to the employment renders the employer at that time liable for full compensation for all of the resulting disability even though increased by aggravation of a previous condition of disease or injury of such employee.

This rule was applied by the Supreme Court in *Barker v. Home-Crest Corp.*, 805 S.W.2d 373 (Tenn. 1991), in which the Court was faced with the question of which of two successive insurance companies were liable. The Court held that the second insurance company was liable, because this gradual injury commenced during the time that the first insurance company carried the employer's insurance but that the injury continued to progress during the period that the second insurance company was the insurance carrier. *Id.* at 373. The question in this suit is identical to the facts decided by the Court in *Barker v. Home-Crest Corp.* See *Moore v. Liberty Mutual Ins. Co.*, No. 02S01-9806-CH-00056, 1999 WL 640251 (Tenn. Sp. Workers Comp. 1999).

From our review of the lay testimony and medical evidence in this record, we find that Plaintiff sustained a gradual injury at Van De Kamp's, in lieu of a new injury as found by the trial court. We do agree with the trial court that Plaintiff's condition intensified, worsened and was aggravated by the repetitious work at Van De Kamp's. Dr. Nord was equivocal in his testimony. During direct examination he could not say if Plaintiff's symptoms were caused by working at Porter Cable or Van De Kamp's or her other activities. However, during cross-examination, Dr. Nord agreed that either employment could have caused carpal tunnel syndrome, or that the work at Van De Kamp's could have accelerated, aggravated or contributed to her carpal tunnel syndrome, but he had no quantifying objective test to determine if Plaintiff's condition worsened between May 1998, and December 1998. Dr. Boals opined that Plaintiff, in the absence of treatment for a workers' compensation claim at Porter Cable, believed that the work at Van De Kamp's put Plaintiff over the

edge necessitating medical treatment. Dr. Jones found no medical evidence that the work at Van De Kamp's caused a worsening of Plaintiff's injury. Where medical testimony is documentary or by depositions, such as in this case, this Panel is able to pass on the weight and value of the evidence as the trial court. *Humphrey v. David Witherspoon, Inc.*, 734 S.W.2d 315, 315-16 (Tenn. 1987). We find that Plaintiff's condition did not result from a single accident, but developed gradually from repeated work-related incidents and culminated when Plaintiff had to leave Van De Kamp's since she could no longer do her job. After considering the medical testimony, Plaintiff's and her husband's testimony, we do not find that the evidence preponderates against the trial court's ruling on this issue.

DIRECTED VERDICT

Defendant Van De Kamp's, asserts that the trial court erred in granting Porter Cable's motion for a directed verdict at the close of Plaintiff's proof without reading the medical depositions of any doctor. Thus, the trial court could not have determined that the last injurious exposure rule applied. Van De Kamp's would have this Panel reverse for the trial court to review the entire proof for a proper determination of the application of the last injurious exposure rule. Defendant Porter Cable, contends that the trial court reached the correct result, but if the trial court did err, it was at best harmless error.

At the conclusion of Plaintiff's proof, the trial court, upon motion of Porter Cable, granted a directed verdict. The trial court based its decision that the last injurious exposure rule applied on the testimony of Plaintiff and candidly admitted that it did not read the medical depositions prior to its ruling. We agree with Van De Kamp's that this is reversible error. However, we must decide if such error is harmless at best.

Prior to trial of these issues, Defendant Porter Cable filed a motion for summary judgment on February 14, 2000, pursuant to Tenn. R. Civ. P. 56, on the grounds that no genuine issue as to a material fact exists, therefore, the Defendant is entitled to a summary judgment as a matter of law. At the conclusion of a hearing, the trial court denied the Defendant's motion for summary judgment. We agree. At the conclusion of the trial, Porter Cable moved the trial court for a directed verdict on two grounds: (1) Plaintiff failed to file her law suit within the statute of limitations; and (2) the proof fully established the application of the last injurious exposure rule. In opposition to this motion by Van De Kamp's, the trial court granted the motion for a directed verdict without reading the doctors' depositions. As we have stated, ordinarily this would constitute reversible error. From our review of this record, we agree with Porter Cable that the trial court's grant of a directed verdict is harmless error at best.

Under Tenn. R. Civ. P. 36(b), an error does not of itself necessarily require a reversal; a judgment "shall not be set aside unless, considering the whole record, error involving a substantial right more probably than not affected the judgment or would result in prejudice to the judicial process." *See Blackburn v. Murphy*, 737 S.W.2d 529, 533 (Tenn. 1987). Thus, unless the error affirmatively appears to have affected the result, the error is considered harmless and this Panel is

compelled to affirm the trial court's judgment. *Bass v. Barksdale*, 671 S.W.2d 476, 486 (Tenn. Ct. App. 1984); *Thomas v. Harper*, 53 Tenn. App. 549; 385 S.W.2d 130 (Tenn. Ct. App. 1964).

Before rendering its final judgment, the trial court reviewed the testimony of Wood and her husband, then considered the medical evidence of Drs. Nord and Boals in determining the application of the last injurious exposure rule in this case. We have agreed with the trial court that the record established that Van De Kamp's is liable for Plaintiff's compensation benefits. Likewise, we agree with Porter Cable that to remand this case on the basis urged by Van De Kamp's, the trial court will reach the same conclusion. From our review of the whole record, we cannot find that the trial court's granting of Porter Cable's motion for a directed verdict affected the ultimate result in this case. There is no merit to this issue.

EQUITABLE ESTOPPEL

Defendant Van De Kamp's asserts that an equitable construction of the Workers' Compensation Act dictates that Porter Cable is estopped from denying Plaintiff benefits on the basis that Porter Cable ignored her repeated requests for assistance, ultimately causing her to quit her job. This issue is viable even if the last injurious exposure rule applies. Van De Kamp's cites Tenn. Code Ann. § 50-6-116. Defendant Porter Cable contends that Tennessee Code Annotated § 50-6-116, requires a liberal construction of the coverage of the act and not of matters of practice and procedure, such as the burden of proof and weight accorded to evidence. Thus, Van De Kamp's interpretation is misguided.

From our review of the record, we must respectfully disagree with Defendant Van De Kamp's argument. Van De Kamp's claims that Porter Cable ignored Plaintiff's repeated requests for assistance. We assume that this assistance was for workers' compensation benefits. However, our search of the record does not establish that Plaintiff actually filed an employee's notice of injury for workers' compensation benefits with Porter Cable from August 1997, through September 4, 1998, although she may have sustained a work-related injury during this period. Plaintiff did file an employee's notice of injury on December 14, 1998, with Van De Kamp's.

Tennessee Code Annotated § 50-6-116 provides:

The rule of common law requiring strict construction of statutes in derogation of common law shall not be applicable to the provisions of the Workers' Compensation Law, but the same is declared to be a remedial statute which shall be given an equitable construction by the courts, to the end that the objects and purposes of this chapter may be realized and attained.

Our Supreme Court in its analysis of this statute suggests that a liberal construction should be limited to the coverage of the Act and not usually applied to matters of practice and procedure, such as issues of burden of proof and weight of evidence. *Tenpenny v. Batesville Casket Co., Inc.*, 781 S.W.2d 841, 845 (Tenn. 1989). Likewise, the interpretation involved means to find coverage

for employees in workers' compensation cases where an injured worker may otherwise go without a remedy. *Id.* It has been long recognized in Tennessee, "that an employer takes an employee as he finds him or her, that is, with his or her existing defects and diseases." *Sweat v. Superior Industries, Inc.*, 966 S.W.2d 31 (Tenn. Sp. Workers Comp. 1998). The trial court utilized this statute to determine if Plaintiff sustained a gradual injury and thus the application of the last injurious exposure rule to the facts of this case. There is no merit to this issue.

VOCATIONAL DISABILITY

Both Defendants, Porter Cable and Van De Kamp's, assert that the trial court erred in awarding Plaintiff permanent partial disability of thirty percent (30%) to the right arm and twenty percent (20%) to the left arm. Naturally, Plaintiff urges that the evidence does not preponderate against the trial court's findings.

Both Defendants argue that Plaintiff has not undergone carpal tunnel syndrome surgery, and that her injury is mild carpal tunnel syndrome to the right wrist at best. Further, nerve conduction studies in April 1998, and January 1999, indicate that Plaintiff's condition is self resolving. Furthermore, Plaintiff has had several periods of employment since leaving Van De Kamp's. She is running her own residential cleaning service, and the treating physician, Dr. Nord, failed to find any permanent medical impairment. But, if Plaintiff continued to work in a factory environment, she would have problems. Plaintiff counters that Dr. Boals found that she sustained permanent medical impairment to both arms and that in the future she would be restricted in heavy gripping, repetitive work and use of hands.

Where there is a difference in the opinions of medical experts, the trial court may accept the testimony of one or more experts over the opinion of other experts. *Johnson v. Midwesco*, 801 S.W.2d 804 (Tenn. 1990). Where the trial court has seen and heard 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 the trial court had the opportunity to observe the witnesses's demeanor and to hear the in-court testimony. *Long v. Tri-Con Ind., Ltd.*, 996 S.W.2d 173 (Tenn. 1999).

In making determinations of vocational disability, the trial court is to consider all pertinent factors, including lay and expert testimony, the employee's age, education, skills and training, local job opportunities for the disabled, and capacity to work at types of employment available in the claimant's disabled condition. Tenn. Code Ann. § 50-6-241(a)(1). An injured employee is competent to testify as to her own assessment of her physical condition and such testimony should not be disregarded. *McIlvain v. Russell Stover Candies, Inc.*, 996 S.W.2d 179 (Tenn. 1999). Plaintiff's ability to engage in her own business of residential cleaning, which requires some repetitive use of her hands, is somewhat troublesome. However, the trial court saw and heard her testimony about her ability to accomplish this work. Thus, from our independent evaluation of the record and consideration of applicable law, we cannot say that the evidence preponderates against the trial court's finding as to the extent of Plaintiff's permanent disability.

We note 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 twenty-five percent (25%) 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

For the above reasons, the judgment of the Chancery Court of Madison County is affirmed as modified. Costs on appeal are taxed to both Defendants.

L. TERRY LAFFERTY, SENIOR JUDGE

¹The trial court awarded thirty percent (30%) permanent partial disability to the right arm or sixty (60) 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 (100) weeks of benefits. Loss of two arms, Tenn. Code Ann. § 50-6-207(3)(A)(ii)(w), is a scheduled injury with a maximum of four hundred (400) weeks of benefits. Twenty-five percent (25%) permanent partial disability to both arms is also one hundred (100) weeks of benefits.

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

**SONNIE GAIL PHILLIPS WOOD v. PORTER CABLE CORPORATION
AND VAN DE KAMP'S, INC.**

**Chancery Court for Madison County
No. 55675**

No. W2000-01771-SC-WCM-CV - Filed August 20, 2001

ORDER

This case is before the Court upon motion for review of Van De Kamp's, Inc., 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 Porter Cable Corporation and Van De Kamp's, Inc., for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM

HOLDER, J. - NOT PARTICIPATING