

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT JACKSON  
August 20, 2001 Session

**JANIE LOU COBB v. HENRY I. SIEGEL, INC.**

**Direct Appeal from the Circuit Court for Carroll County  
No. 4036 C. Creed McGinley, Judge**

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**No. W2000-02656-WC-R3-CV - Mailed September 21, 2001; Filed October 24, 2001**

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This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. In this appeal, the employer contends the evidence preponderates against the trial court's award of permanent partial disability benefits based on 42 percent to the body as a whole. As discussed below, the panel has concluded the judgment should be affirmed.

**Tenn. Code Ann. § 50-6-225(e)(3) (2000) Appeal as of Right; Judgment of the Circuit Court Affirmed.**

JOE C. LOSER, JR., SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and ROBERT L. CHILDERS, SP. J., joined.

Jill A. Hanson, Nashville, Tennessee, for the appellant, Henry I. Siegel Company.

Donald E. Parish, Huntingdon, Tennessee, for the appellee, Janie Lou Cobb.

**MEMORANDUM OPINION**

The employee or claimant, Cobb, is 57 years old with a high school education, but a low intelligence level, and no vocational training. She has spent her working career in production work and worked for the employer, Henry I. Siegel Company, for 33 years. It is undisputed she suffered a compensable low back injury on March 22, 1999. Because of the disability from that injury, she has not worked since the employer closed its factory on December 17, 1999.

Following her injury, the claimant chose Dr. Claiborne Christian. Dr. Christian provided conservative care and ordered a magnetic resonance imaging scan (MRI). The MRI revealed a herniated nucleus pulposus on the left side. Dr. Christian estimated her permanent impairment at none, but referred her to a neurosurgeon, Dr. John Brophy. Dr. Brophy agreed with the diagnosis

and produced a written report, but expressed no opinion as to the extent of the claimant's permanent impairment. She was referred to Dr. Robert Barnett, for examination and evaluation.

Dr. Barnett estimated her permanent medical impairment from the injury to be 7 percent, using AMA guidelines. A vocational expert estimated her vocational impairment to be 95 percent, considering, among other things, the claimant's physical limitations.<sup>1</sup> The claimant testified that she is unable to work.

The trial judge, after making specific findings of fact as required by Tenn. Code Ann. § 50-6-241, awarded permanent partial disability benefits based on six times the medical impairment rating or 42 percent. Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225 (e)(2). This tribunal is not bound by the trial court's findings but instead conducts an independent examination of the record to determine where the preponderance lies. Galloway v. Memphis Drum Serv., 822 S.W.2d 584, 586 (Tenn. 1991). Where the trial judge 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 had 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, 177 (Tenn. 1999). The extent of an injured worker's vocational disability is a question of fact. Story v. Legion Ins. Co., 3 S.W.3d 450, 456 (Tenn. 1999).

The appellant argues the medical evidence preponderates against the trial court's finding of permanency because he should have accepted the testimony of the treating physician, Dr. Christian. When the medical testimony differs, the trial judge must choose which view to believe. In doing so, he is allowed, among other things, to consider the qualifications of the experts, the circumstances of their examination, the information available to them, and the evaluation of the importance of that information by other experts. Orman v. Williams Sonoma, Inc., 803 S.W.2d 672, 676 (Tenn. 1991). Moreover, it is within the discretion of the trial judge to conclude that the opinion of certain experts should be accepted over that of other experts and that it contains the more probable explanation. Hinson v. Wal-Mart Stores, Inc., 654 S.W.2d 675, 676-7 (Tenn. 1983). From our independent examination of the record, we are not persuaded the trial court abused its discretion by accepting the opinion of Dr. Barnett.

The appellant argues that the opinion of the vocational expert should have been ignored because it is based in part on information provided by the claimant as to her limitations. Notably, the claimant gave similar testimony to the trial judge, who expressly found her to be a truthful person. Trial courts have broad discretion to determine whether to accept or reject the opinion of a proffered expert. We find no abuse of that discretion in this case.

The appellant argues the award is excessive because there is no medical evidence of

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<sup>1</sup> The claimant testified about her limitations, but none of the doctors specifically prescribed any restrictions.

prescribed restrictions or limitations. An injured employee is competent to testify as to her own assessment of her physical condition and such testimony should not be disregarded. Walker v. Saturn Corp., 986 S.W.2d 204, 208 (Tenn. 1998). Such testimony should be considered. Collins v. Howmet Corp., 970 S.W.2d 941, 943 (Tenn. 1998).

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

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JOE C. LOSER, JR., SPECIAL 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 Company, for which execution may issue if necessary.

**IT IS SO ORDERED.**

**PER CURIAM**