

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT NASHVILLE  
July 2001 Session

**WAL-MART STORES, INC., ET AL v. DANIEL WILSON**

**Direct Appeal from the Criminal Court for Macon County  
No. 3286, Hon. J.O. Bond, Judge**

---

**No. M2000-02978-WC-R3-CV - Mailed - October 15, 2001  
Filed - March 14, 2002**

---

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. The trial court awarded permanent partial disability benefits based on the functional equivalent of 40% to the employee's left arm and 60% to his right arm. The court based its findings upon the conclusions of a local doctor not presented as a panel option to the employee. The employer contends that the trial court erred in 1) interpreting the appropriate composition for a medical panel under Tenn. Code Ann. § 50-6-204 and (2) assessing permanent partial disability benefits. As discussed below, the Panel has concluded that the judgment of the trial court should be affirmed on both issues.

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

GAYDEN, Sp. J. delivered the opinion of the Panel, in which DROWOTA, J., and LOSER, Sp. J. joined.

Allen, Kopet & Boyd, PLLC  
Nashville, Tennessee, for the appellant, Wal-Mart Stores, Inc.

Farrar & Holliman  
Lafayette, Tennessee, for the appellee, Daniel Wilson.

## MEMORANDUM OPINION

The employee/appellee, Daniel Wilson, is a thirty-nine-year-old male with a sixth grade education. Mr. Wilson never passed the G.E.D. and claims to have no special skills or training. His work experience has been limited to labor work.

Mr. Wilson worked for Wal-Mart, Inc., as a stocker for the dairy department in the Gallatin, Tennessee store. On or about July 17, 1998, he began to experience elbow pains while opening boxes of juice and stocking the dairy department. He described his injuries as tendonitis of the elbow from repetitious work. Before his employment with Wal-Mart, Mr. Wilson had never sustained an injury to his right or left arm.

Wal-Mart, the employer-appellant, provided Mr. Wilson with a panel of three physicians as provided by Tenn. Code Ann. § 50-6-204(a)(4) for the July 17 injury. From this panel, Drs. Sanders and Cowden treated Mr. Wilson. He returned to work on light duty on August 25, 1998, and full duty on September 2, 1998. Upon returning to work on full duty, Mr. Wilson reported a second aggravating injury to his arms. When he sought treatment, Dr. Cowden advised him to visit an orthopaedic physician.

Pursuant to Tenn. Code Ann. § 50-6-204(a)(4), Wal-Mart presented Wilson with a separate panel of three orthopaedic physicians, all of who practiced in a neighboring community. Mr. Wilson saw Dr. McInnis, who diagnosed bilateral tennis elbow and ultimately performed surgery on both of Mr. Wilson's elbows.

Dr. McInnis assigned Mr. Wilson permanent restrictions of less than 20 pounds and a permanent partial disability of 5% to each arm. After surgery, Mr. Wilson continued to complain of elbow discomfort and sought additional treatment from Dr. Calvin Dyer, a local orthopaedic surgeon not included as a panel option.

In accordance with AMA guidelines, Dr. Dyer performed a detailed examination before diagnosing epicondylitis. Dr. Dyer measured Mr. Wilson's range of motion and tested his grip strength. Based upon this test, Dr. Dyer assigned a permanent partial impairment rating of 10% to each arm. He also assigned permanent lifting restrictions of less than thirty pounds.

The trial court used the conclusions of Dr. Dyer, rather than those of Dr. McInnis, to award permanent partial disability benefits to the Mr. Wilson in the amount of \$34,066.00. The court assigned a 40% permanent partial disability rating to the Mr. Wilson's left arm and a 60% permanent partial disability rating to his right arm.

Appellate review is de novo upon the record of the trial court, accompanied by a presumption of the correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). Panel composition is determined in accordance

with Tenn. Code Ann. § 50-6-204(a)(4) which provides that:

an employer shall designate a group of three or more reputable physicians or surgeons not associated together in practice, *if available in that community*, from which an injured employee shall have the privilege of selecting the operating surgeon or the attending physician

**Tenn Code Ann. § 50-6-204(a)(4) (1989) (emphasis added).**

A related section provides:

whenever medical attention is required and such specialized medical attention is not available in that community in which the employee resides, the injured employee can be required to go, at the request of and at the expense of the employer, to *the nearest location* at which such specialized medical attention is available.

**Tenn. Code Ann. § 50-6-204(d)(6) (1989) (emphasis added).**

Wal-Mart argues that the trial court should never have considered the findings of Dr.Dyer because he was not included on the panel provided. According to Wal-Mart, the court should have awarded damages based upon the findings of Dr. McInnis.

Wal-Mart construes the applicable statutes to exclude a local physician. Section 50-6-204(d)(6) allows an employer to provide treatment options from a neighboring community when no local medical attention is available. This provision does not provide a means for an employer to overlook an available physician in the locality. Section 50-6-204(d)(6) simply allows an employer the ability to fill the remaining slots with nearby physicians when there are not sufficient physicians in the community in which the employee resides.

It is this panel's opinion that the trial court properly interpreted the provisions of the Workers' Compensation Act to include Dr. Dyer on the panel. Wal-Mart has provided no convincing reason to exclude Dr. Dyer from the panel.

The argument of Wal-Mart to the effect that because there is not a panel of "three or more reputable physicians or surgeons" in the community disqualifies a lesser number in that community is spurious! As early as 1841 the Supreme Court said that where the language contained within the four corners of a statute is plain, clear, and unambiguous and the enactment is within legislative competency, "the duty of the courts is simple and obvious...obey it". Miller v. Childress, 21 Tenn(2HUM)320-22(1841).

Once the cause and permanency of an injury have been established, the courts may consider pertinent factors, including age, job skills, education training, duration of disability and job opportunities for the disabled for the purpose of evaluating the extent of a claimant's disability. Pittman v. Lasco Industries, Inc. 908 S.W.2d 932, 933 (Tenn. 1995). From a consideration of those factors, the trial court's decision of Mr. Wilson's impairment rating does not constitute an abuse of discretion and is affirmed. Considering the results of Dr. Dyer's testing as well as the claimant's inability to return to work, the evidence does not preponderate against the trial court's decision.

Thus, after careful review of the record, this Panel affirms the holdings of the trial court.

Costs of appeal are taxed to the appellant, Wal-Mart.

---

Hamilton V. Gayden, Jr., Judge

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

**WAL-MART STORES, INC., ET AL. v. DANIEL WILSON**

**Chancery Court for Macon County  
No. 3286**

---

**No. M2000-02978-SC-WCM-CV - Filed - March 14, 2002**

---

**JUDGMENT**

This case is before the Court upon the motion of for review filed by Wal-Mart Stores, 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.

It appears to the Court that the motion for review is not well-taken and is therefore denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs will be paid by Wal-Mart Stores, Inc., for which execution may issue if necessary.

IT IS SO ORDERED.

DROWOTA, J., NOT PARTICIPATING