

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
March 27, 2002 Session

VICKY LYNN PRESLEY v. VF WORKWEAR, INC.

**Direct Appeal from the Chancery Court for Putnam County
No. 2000-328 Vernon Neal, Chancellor**

**No. M2001-01912-WC-R3-CV - Mailed - May 24, 2002
Filed - June 25, 2002**

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 insists (1) the trial court erred by considering the operating surgeon's medical impairment rating and (2) the award of permanent partial disability benefits 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, C. J., and JOHN K. BYERS, SR. J., joined.

Robert V. Durham, Cookeville, Tennessee, for the appellant, VF Workwear, Inc.

Donald G. Dickerson, Cookeville, Tennessee, for the appellee, Vicky Lynn Presley

MEMORANDUM OPINION

The employee or claimant, Ms. Presley, is 43 years old with a twelfth grade education and no vocational or other training. She gradually developed bilateral carpal tunnel syndrome from repetitive use of her hands while working as a sewing machine operator for the employer, VF Workwear, Inc., also known as Red Kap. She was referred to Dr. Carl Hollman, who performed corrective surgery on both arms and estimated her permanent medical impairment to be 10 percent to both arms, using AMA Guides, Fourth Edition. He restricted her from any activity requiring repetitive use of the hands and arms. She has not returned to work.

She sued for workers' compensation benefits and, after a trial on the merits, the trial court awarded her, inter alia, permanent partial disability benefits based on the functional equivalent of 60 percent to both arms. The employer has appealed.

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). The reviewing court is required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. Wingert v. Government of Sumner County, 908 S.W.2d 921, 922 (Tenn. 1995). Conclusions of law are subject to de novo review on appeal without any presumption of correctness. Nutt v. Champion Intern. Corp., 980 S.W.2d 365, 367 (Tenn. 1998). Issues of statutory construction are solely questions of law. Bryant v. Genco Stamping & Mfg. Co., 33 S.W.3d 761 (Tenn. 2000). 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 trial court's findings with respect to credibility and weight of the evidence may generally be inferred from the manner in which the court resolves conflicts in the testimony and decides the case. Tobitt v. Bridgestone/Firestone, Inc., 59 S.W.3d. 57, 61 (Tenn. 2001).

The employer contends the trial court erred in giving weight and value to Dr. Hollman's opinion of permanent impairment because it was based on the fourth edition, rather than the fifth edition. Use of the fifth edition would have resulted in a lower impairment rating, according to Dr. Hollman's testimony. Physicians are required by law to include in their reports an estimate of the injured worker's anatomic impairment, using the most recent edition of the American Medical Association Guides to the Evaluation of Permanent Impairment or the Manual for Orthopedic Surgeons in Evaluating Permanent Impairment. Bolton v. CNA Ins. Co., 821 S.W.2d 932, 936-37 (Tenn. 1991).

It is undisputed that the fourth edition was the most recent edition at the time Dr. Hollman made his estimate, having determined the claimant had reached maximum medical improvement. Thus the trial court did not err in considering the opinion.

The employer further contends the above award of permanent partial disability benefits is excessive. Once the causation and permanency of an injury have been established by expert testimony, the trial judge may consider many pertinent factors, including age, job skills, education, training, duration of disability, and job opportunities for the disabled, in addition to anatomic impairment, for the purpose of evaluating the extent of a claimant's permanent disability. McCaleb v. Saturn Corp., 910 S.W.2d 412, 416 (Tenn. 1995). The opinion of a qualified expert with respect to a claimant's clinical or physical impairment is a factor which the court will consider along with all other relevant facts and circumstances, but it is for the court to determine the percentage of the claimant's industrial disability. Kellwood Co. v. Gibson, 581 S.W.2d 645 (Tenn. 1979). The

undisputed proof is that the claimant is unable to return to her job at Red Kap and has made a significant effort to obtain other employment within her limitations, without success. She continues to have pain and numbness in her right hand when she attempts to use it for as long as thirty minutes. The extent of a claimant's vocational disability is a question of fact. Story v. Legion Ins. Co., 3 S.W.3d 450, 456 (Tenn. 1999).

From a consideration of the pertinent factors, to the extent they were established by the proof in the case, we cannot say the evidence preponderates against the findings of the trial court. The judgment is accordingly affirmed. Costs are taxed to the appellant.

JOE C. LOSER, JR.

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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 will be paid by the appellant, VF Workwear, Inc., for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM