

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

**SHERRY LYNN HUDGENS v. ROYAL & SUNALLIANCE INSURANCE
COMPANY, ET AL.**

**Direct Appeal from the Criminal Court for Macon County
No. 01-42 J.O. Bond, Judge**

**No. M2001-02984-WC-R3-CV - Mailed - November 14, 2002
Filed - December 16, 2002**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with *Tennessee Code Annotated* § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The employer appeals the judgment of the trial court awarding the employee 45% permanent partial disability to her left arm. The employee, who was diagnosed with DeQuervain's Syndrome caused by repetitive use of her hands while working for the employer, had sustained a 2% anatomical impairment to the upper extremity and had permanent restrictions on the use of her left hand. The employer contends the trial court erred by 1) granting an excessive award; and 2) finding that the injury was to the arm rather than the hand. We hold that the evidence does not preponderate against the trial court's findings. Accordingly, the judgment of the trial court is affirmed.

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

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

John W. Barringer, Jr., Nashville, Tennessee, for the appellants, Royal & Sunalliance Insurance and TennPlasco, Inc.

Frank D. Farrar and William Joseph Butler, Lafayette, Tennessee, for the appellee, Sherry Lynn Hudgens.

MEMORANDUM OPINION

Mrs. Sherry Lynn Hudgens, the employee/appellee, was 42 years old at the time of trial, has

a twelfth grade education, and has no special skills or training. All of the jobs she has held in the past involved some type of manual labor. She has worked as a dishwasher, hotel maid, custodian and school bus driver. She has also worked in factories and fast food restaurants, and on farms baling hay.

From 1999 until 2001, Mrs. Hudgens worked in the finishing department for TennPlasco, Inc., the employer/appellant, where she unpacked boxes of parts and loaded these parts onto an assembly line.

On January 5, 2001, Mrs. Hudgens felt burning and pain in her forearm and wrist area while working at TennPlasco. She was referred to Dr. Paul Abbey who gave her a wrist immobilizer to reduce the pain. Prior to her employment with TennPlasco, Mrs. Hudgens had never experienced or complained of pain or complications with her left wrist, hand, or arm.¹

Still experiencing pain, Mrs. Hudgens sought additional treatment from Dr. Robert P. Landsberg, a board certified orthopedic surgeon. On July 18, 2001, Dr. Landsberg conducted an evaluation of her left arm and also reviewed her prior medical records. Dr. Landsberg diagnosed Mrs. Hudgens with “DeQuervain’s syndrome which is constrictive tenosynovitis in the first dorsal extensor compartment on the left.” He found the anatomical problem to be above the wrist, but that it affected the use of her thumb and wrist.

Dr. Landsberg assigned a 2% permanent partial impairment rating to the left upper extremity based upon the latest edition of the *AMA Guides*. On February 21, 2001, Mrs. Hudgens was released to return to work with permanent restrictions of no repetitive gripping or squeezing with the left hand. She was laid off on February 24, 2001, and has not been called back to work at TennPlasco.

Mrs. Hudgens testified that she cannot return to any of her previous jobs because of her injury and permanent restrictions. She applied for eight or nine jobs within three weeks prior to trial, but had not been contacted by any employer. According to Mrs. Hudgens, “Whenever I use [my left arm] a lot, I have swelling that comes up in the arm area down into the wrist and thumb.” She can only perform moderate physical activities with her left arm for 15 to 20 minutes before the pain and swelling begins.

Mrs. Hudgens testified that before her injury she could feed her animals, mow the lawn, cook, clean, and perform other household chores. She now uses paper plates and cups because she is unable to lift her ceramic plates and glassware.

The trial court found that Mrs. Hudgens had sustained a 45% permanent partial disability to

¹ Mrs. Hudgens suffered a previous injury to her right arm while working for TennPlasco for which she received a 10% upper extremity impairment rating for loss of strength to her right side. This injury is not an issue in the present case.

her left arm.

ANALYSIS

Review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise. *Tenn. Code Ann.* § 50-6-225(e)(2). The application of this standard requires this Court to weigh in more depth the factual findings and conclusions of the trial courts in workers' compensation cases. See *Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988).

When a trial court has seen and heard witnesses, especially where issues of credibility and weight of oral testimony are involved, considerable deference must be accorded the trial court's factual findings. *Jones v. Sterling Last Corp.*, 962 S.W.2d 469, 471 (Tenn. 1998).

When the medical testimony is presented by deposition, as it was in this case, this Court is able to make its own independent assessment of the medical proof to determine where the preponderance of the evidence lies. *Cooper v. Insurance Co. of North America*, 884 S.W.2d 446, 451 (Tenn. 1994).

I. Whether the evidence preponderates against the trial court's finding that the plaintiff's impairment was to the arm rather than the hand

The only medical proof submitted in this case was the deposition of Dr. Landsberg. Dr. Landsberg found that Mrs. Hudgens suffered from DeQuervain's syndrome caused by her repetitive work activities. Using Mrs. Hudgens' description of her pain, the tests conducted on her, and the Fifth Edition of the *AMA Guides*, Dr. Landsberg assigned a 2% anatomical impairment rating to her left upper extremity and assigned permanent restrictions of no repetitive gripping or squeezing with the left hand.

When asked the anatomical location of Mrs. Hudgens' injury, Dr. Landsberg testified that "the anatomical problem is at - above the wrist, just above the wrist." He further stated that in orthopedic terms the wrist is not part of the hand, but part of the upper extremity or forearm. On cross examination, Dr. Landsberg clarified his testimony by stating that "the pain is in the distal portion of the forearm but it affects use of the hand."

Mrs. Hudgens also testified as to the location of her injury. She stated that there was pain, burning, and swelling in her arm and wrist area. She further indicated that whenever she moves or bends her hand, arm and wrist in frequent activity, there is swelling that "comes up in the arm area down into the wrist and thumb." The claimant's own assessment of her physical condition and resulting disabilities is competent testimony and cannot be disregarded. *Tom Still Transfer Co. v. Way*, 482 S.W.2d 775, 777 (Tenn. 1972).

Dr. Landsberg based his rating in part on Mrs. Hudgens' description of her symptoms. The trial court, who was in the best position to judge witness credibility, found Mrs. Hudgens to be a "credible and believable witness."

After reviewing the medical proof and giving deference to the trial court's finding as to Mrs. Hudgens' credibility, we find that the evidence supports the finding of the trial court that she had sustained a work-related injury to her left arm as opposed to an injury to the hand.

II. Whether the evidence preponderates against the trial court's award of 45% permanent partial disability to the left arm

We next address the trial court's finding of 45% permanent partial disability to the left arm. TennPlasco contends that the trial court's award of 45% is excessive because it is over 22 times higher than Mrs. Hudgens' anatomical impairment rating.

Anatomical disability ratings are but one factor to consider in determining vocational disability, the ultimate issue in all workers' compensation cases. *Orman v. Williams Sonoma, Inc.*, 803 S.W.2d 672, 677-78 (Tenn. 1991). The test is whether there has been a decrease in the employee's ability to earn wages in any line of work available to the employee. *Corcoran*, 746 S.W.2d at 459.

The extent of vocational disability is a question of fact to be determined from all the evidence, including both lay and expert testimony. *Henson v. Lawrenceburg*, 851 S.W.2d 809, 812 (Tenn. 1993).

In assessing the extent of an employee's vocational disability, the trial court may consider the employee's age, education, skills and training, local job opportunities, anatomical impairment ratings, and the capacity to work at the types of employment available in her disabled condition. *Walker v. Saturn Corp.*, 986 S.W.2d 204, 208 (Tenn. 1998).

Mrs. Hudgens has participated in hand-intensive manual labor for the majority of her work life. She has a twelfth grade education and no special skills or training. She testified that she could not return to any of her former jobs which all require repetitive gripping or squeezing of the hands which is prohibited by her medical restrictions.

After her injury, she is not able to perform any moderate physical activity for more than 15 to 20 minutes without pain and swelling in her left hand. She has problems performing household activities. Further, Mrs. Hudgens has been forced to change from using her glassware and plates to styrofoam cups and paper plates because she cannot lift the heavier articles without pain.

After careful review of the record, we find that the trial court properly weighed all of the relevant factors in determining that Mrs. Hudgens has a 45% permanent partial disability to the left arm. The evidence does not preponderate against the finding of the trial court.

CONCLUSION

The judgment of the trial court is affirmed. Costs of appeal are taxed to the appellants, TennPlasco, Inc. and Royal & Sunalliance Insurance Company.

JAMES L. WEATHERFORD, SR.J.

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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 appellants, TennPlasco, Inc. and Royal & Sunalliance Insurance Company, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM