

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

November 22, 2002 Session

**MARY FRANCES WYNN v. HECKETHORN MANUFACTURING CO.,  
INC., ET AL.**

**Direct Appeal from the Chancery Court for Dyer County  
No. 00-C-567 J. Steven Stafford, Chancellor**

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**No. W2002-00565-WC-R3-CV - Mailed December 17, 2002; Filed February 4, 2003**

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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 employee insists the award of benefits based on 55 percent to the body as a whole is inadequate and seeks an increased award. As discussed below, the panel has concluded the evidence does not preponderate against the trial court's findings.

**Tenn. Code Ann. § 50-6-225(e) (2002 Supp.) Appeal as of Right; Judgment of the Chancery  
Court Affirmed**

JOE C. LOSER, JR., SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and JOHN K. BYERS, SR. J., joined.

Jay E. DeGroot, Jackson, Tennessee, for the appellant, Mary Frances Wynn

James H. Tucker, Nashville, Tennessee, for the appellees, Heckethorn Manufacturing Co., Inc. and Vigilant Insurance Company

**MEMORANDUM OPINION**

The employee or claimant, Ms. Wynn, initiated this civil action to recover workers' compensation benefits for an accidental injury to her left shoulder and neck occurring on March 5, 1998, while she was performing production welding. Following trial on November 28, 2001, the trial court awarded, among other things, permanent partial disability benefits based on 55 percent to the body as a whole. The claimant 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) (2002 Supp.). 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). The standard governing appellate review of findings of fact by a trial court requires the Special Workers' Compensation Appeals Panel to examine in depth a trial court's factual findings and conclusions. GAF Bldg. Materials v. George, 47 S.W.3d 430, 432 (Tenn. 2001). 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 extent of an injured worker's vocational disability is a question of fact. Seals v. England/Corsair Upholstery Mfg., 984 S.W.2d 912, 915 (Tenn. 1999). Where the medical testimony in a workers' compensation case is presented by deposition, the reviewing court may make an independent assessment of the medical proof to determine where the preponderance of the proof lies. Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 167 (Tenn. 2002).

The employee is 56 years old with a tenth grade education, general equivalency diploma and experience in manual and labor intensive work. It is undisputed in this appeal that she suffered a compensable injury to her left shoulder and neck on the above date. She was treated for her injuries by Dr. Carl Huff, an orthopedic surgeon and occupational medicine specialist. His examination disclosed degenerative changes in her cervical spine. He diagnosed impingement syndrome, osteoarthritis and tendinitis. Although Dr. Huff was not persuaded the claimant's injuries were work related, he estimated her permanent impairment from such injuries to be 11 percent to the whole person using the range of motion method of evaluation. He referred her to a neurosurgeon.

Dr. John Neblett ordered diagnostic tests which revealed degenerative disc changes at C5-6 and C6-7 secondary to a disc herniation at C5-6, stenosis and arthritis. He performed successful corrective disc surgery on June 1, 1999. Dr. Neblett opined the claimant's accident at work either caused her injuries or aggravated a pre-existing condition. He estimated her permanent impairment to be 25 percent to the whole person, using a different method of evaluation, and restricted her from lifting more than ten to fifteen pounds repetitively above the shoulder level.

Dr. Joseph Boals examined the claimant and estimated her permanent impairment to be 40 percent to the whole person. Dr. Lawrence Fredrick Schrader agreed with Dr. Huff's estimate. Dr. Lowell F. Stonecipher estimated her permanent impairment to be 2 percent to the left shoulder.

Since the injury at work, the claimant has re-injured her shoulder in an automobile accident and has developed additional problems. She testified that she is unable to work. When asked if her inability to work was because of the work related accident, she replied that she did not know. She has asthma, takes Xanax for her nerves, has a thyroid disorder and is borderline diabetic. There is

evidence in the record that her work for the employer would not require her to exceed the restrictions imposed by Dr. Neblett, but she has not returned to work.

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. Moreover, trial courts are not bound to accept physicians' opinions regarding the extent of a claimant's disability, but should consider all the evidence, both expert and lay testimony, to decide the extent of an employee's disability. Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 170 (Tenn. 2002). From our consideration of the pertinent factors, to the extent they were established by the proof in this case, and giving due deference to the findings of the trial court, we cannot say the evidence preponderates against the trial court's award.

For the above reasons, the judgment of the trial court is affirmed. Costs are taxed to the appellants.

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JOE C. LOSER, JR.

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**JUDGMENT ORDER**

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, Mary Frances Wynn, for which execution may issue if necessary.

**IT IS SO ORDERED.**

**PER CURIAM**