

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
December 17, 2003 Session

**MICHAEL WAYNE PHILLIPS v. LIBERTY MUTUAL INSURANCE
COMPANY and UNITED PARCEL SERVICE**

A Direct Appeal from the Circuit Court of Wilson County
No. 12344 The Honorable John D. Wootten, Jr., Judge

No. M2003-00855-WC-R3-CV - Mailed - January 26, 2004
Filed - February 26, 2004

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. The trial court found plaintiff suffered a compensable injury to his back, sustained a forty-eight percent permanent partial disability to the body as a whole, suffered a compensable carpal tunnel injury to his right arm, and sustained a twenty-five percent permanent partial disability to the right arm. The employer challenges the compensability of the arm injury and the amount of each award. We affirm the judgment of the trial court.

Tenn. Code Ann. 50-6-225(e) (1999); Appeal as of Right: Judgment of the Circuit Court is affirmed

JOHN A. TURNBULL, Sp. J., delivered the opinion of the court in which FRANK DROWOTA C.J., and HOWELL PEOPLES, SP. J., joined.

David T. Hooper, Brentwood, Tennessee, for Liberty Mutual Insurance Company and United Parcel Service, Inc., Appellants.

William Joseph Butler and E. Guy Holliman, McMinnville, Tennessee, for Michael Wayne Phillips, Appellee.

OPINION

I. Facts and Procedural Background

Michael Wayne Phillips, age 43, had been working for United Parcel Service (U.P.S.) for thirteen years when he injured his back and right arm on December 3, 2001. As a part of his job driving tractor trailers, Phillips was required to manipulate a heavy dolly into position between two trailers to connect them. While moving the dolly, Phillips felt a stabbing pain in his back and subsequently felt symptoms in his right arm, hand, leg and foot. Phillips had suffered a previous injury to his back while working for U.P.S. in 1994, but had recovered without disability.

Mr. Phillips gave immediate notice of his injury and was referred to a local physician. He was then referred to Dr. Michael Moore, a specialist in physiatry and electro diagnostic medicine, in Lebanon, who first saw Phillips on December 11, 2001. Since Mr. Phillips was complaining of numbness and tingling in his right hand and arm, Dr. Moore performed electro diagnostic studies which showed entrapment of the right median nerve at the wrist corresponding with carpal tunnel syndrome. Dr. Moore continued to treat plaintiff, who was unable to return to work, until Dr. Moore placed him at maximum medical improvement on April 23, 2003. Dr. Moore assigned a five percent permanent partial impairment to the body for the low back injury, and placed restrictions of occasional lifting up to fifty pounds, frequent lifting up to twenty to twenty-five pounds from knee to waist level, and no repetitive lifting from the floor. U.P.S. could not return Phillips to work as his job description required significant heavy lifting.

With reference to the carpal tunnel injury, Dr. Moore testified that it was “quite possible” that Mr. Phillips’ arm condition was a result of his repetitive duties at U.P.S. Dr. Moore specifically declined to express an opinion as to the extent of any permanent impairment to the arm: “I would not be in a position to make that assessment at this point in time given that I haven’t seen the patient in some ten months, and I’m not aware as to whether there’s been any progression of his symptoms.”

Mr. Phillips was also seen by Dr. Walter Wheelhouse on two occasions in October, 2002, for an independent medical exam. Dr. Wheelhouse agreed with Dr. Moore that Mr. Phillips had mechanical low back pain with bulging discs, but fixed his back impairment at eight percent, rather than the five percent given by Dr. Moore, because of chronic low back pain. In addition, Dr. Wheelhouse found the carpal tunnel injury to be caused by work, and related an impairment of five percent to the right arm. Dr. Wheelhouse assigned work restrictions to Mr. Phillips of no bending, stooping, or lifting over twenty pounds occasionally, and no repetitive motion of his back, or long distance truck for the low back injury. For the carpal tunnel, Dr. Wheelhouse assigned work restrictions of no repetitive motions of his right arm, and no trauma to the right hand. Dr. Wheelhouse further prescribed that plaintiff should wear a splint on the right hand/wrist.

The trial judge, in a detailed and comprehensive opinion dictated from the bench, found Mr. Phillips to be “a very solidly credible individual” and “very, very credible.” Noting that Dr. Wheelhouse, as an orthopedic surgeon and member of the American Academy of Disability Evaluating Physicians, had greater qualifications in disability evaluation than did Dr. Moore, the trial judge accepted the opinions and ratings of Dr. Wheelhouse. The trial judge fixed an award of forty-eight percent disability to the body as a whole on the back injury applying a multiplier of six since Phillips was unable to return to his previous employment, had failed to make any improvement since last seen by Dr. Moore, and had limited job opportunities due to his restrictions and twelfth grade education.

With reference to the carpal tunnel injury, the trial judge found a causal connection to the work noting that both the lay and medical testimony supported a finding of causation. The trial judge accepted the five percent impairment rating assigned by Dr. Wheelhouse, and fixed a twenty-five percent disability to the right arm.

Analysis

We are to review the record of the trial court anew with the presumption that the factual findings of the trial court are correct, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. 50-6-225(e)(25); *Stone v. City of McMinnville*, 896 S.W.2d 548 (Tenn. 1995). When the trial judge has seen and heard a witness’ testimony, considerable deference must be accorded on review to the trial court’s finding of credibility and the weight to be given that testimony. *Townsend v. State*, 826 S.W.2d 434, 437 (Tenn. 1992); *Humphrey v. Witherspoon*, 734 S.W.2d 315 (Tenn. 1987).

With reference to the issue of causation of the arm injury, every reasonable doubt as to causation must be resolved in favor of the employee. See, *Reeser v. Yellow Freight Systems*, 938 S.W.2d 690 (Tenn. 1997). Here the trial court had one equivocal medical opinion; “it was quite possible” the carpal tunnel injury was caused by work; and one reasonably certain medical opinion supporting causation. These medical opinions were buttressed by the lay testimony of causation which was found to be credible by the trial judge. The finding of causation was amply supported. See, *Long v. Tri-Con Industries, Ltd.*, 996 S.W.2d 173, 176-78 (Tenn. 1999).

The trial court gave more weight to the medical opinions of Dr. Wheelhouse on both impairment and restrictions. The trial judge reasoned that Dr. Wheelhouse had seen Mr. Phillips more recently, had performed more thorough testing on motion, and had more appropriately applied the *AMA Guidelines*. In addition, Dr. Wheelhouse’s opinions

were found by the trial court to better coincide with the symptoms described by Mr. Phillips. The trial court has discretion to accept the opinion of one medical expert over that of another medical expert. *Kellerman v. Food Lion, Inc.*, 929 S.W.2d 333 (Tenn. 1996).

The finding of forty-eight percent disability to the body as a whole from the back injury is fully supported. U.P.S. could not take Phillips back to work because even the restrictions given by Dr. Moore were exceeded by the job description and work requirements. None of Mr. Phillips' past employments could now be performed unless accommodated to his present restrictions. He has no education beyond the twelfth grade. Mr. Phillips' local job opportunities are limited considering his lifting and bending restrictions.

In addition, the twenty-five percent award to the right arm is reasonable assuming the impairment and restrictions given by Dr. Wheelhouse which were accepted by the trial court. Considerable testimony at trial documented Mr. Phillips' inability to grasp and hold tightly, grip a steering wheel for long periods, and manipulate smaller objects. The trial court was in better position to evaluate the live testimony and assess its credibility than is this panel. We note the detailed findings of the trial court and afford them deference. We accordingly affirm the judgment of the trial court in all respects and tax the cost of the appeal to the appellant.

John A. Turnbull, Sp. 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 will be paid by the appellants, Liberty Mutual Insurance Company and United Parcel Service, Inc., for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM