

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

September 30, 2004 Session

**MICHAEL BRITTON v. EMERSON ELECTRIC**

**Direct Appeal from the Chancery Court for Crockett County  
No. 8386 George R. Ellis, Chancellor**

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**No. W2004-00396-WC-R3-CV - Mailed November 1, 2004; Filed December 6, 2004**

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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 employer insists the award of permanent partial disability benefits based on 25 percent to the hand should be modified to one based on 50 percent to the finger. As discussed below, the panel has concluded the award should be modified to one based on 80 percent to the third finger.

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

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

Kyle C. Atkins, Humboldt, Tennessee, for the appellant, Emerson Electric

T. J. Emison, Jr., Alamo, Tennessee, for the appellee, Michael Britton

**MEMORANDUM OPINION**

The employee or claimant, Mr. Britton, initiated this civil action to recover workers' compensation benefits for a work related injury. The only issue submitted for trial was the extent of the claimant's permanent disability. After hearing the evidence, the trial court awarded permanent partial disability benefits based on 25 percent to the hand. The employer, Emerson Electric, 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. Hill v. Wilson Sporting Goods Co., 104 S.W.3d 844 (Tenn. Workers' Comp Panel 2002). Issues of statutory construction are solely questions of law. Id. 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, McCaleb v. Saturn Corp., 910 S.W.2d 412, 414 (Tenn. 1995), 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, 178 (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 appellate tribunal, however, is as well situated to gauge the weight, worth and significance of deposition testimony as the trial judge. Walker v. Saturn Corp., 986 S.W.2d 204, 207 (Tenn. 1998). Extent of vocational disability is a question of fact. Story v. Legion Ins. Co., 3 S.W.3d 450, 456 (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. Bridges v. Liberty Mutual Ins. Co. of Hartford, 101 S.W.3d 67 (Tenn. Workers Comp Panel 2000).

While working for the employer, the claimant accidentally amputated a portion of the skin protecting the tip of his left ring finger. He was treated by Dr. Frederick Torstrick. After being released by Dr. Torstrick, he was examined and evaluated by Dr. Joseph Boals. As stipulated by the parties, Dr. Torstrick estimated his permanent medical impairment to be 1 to 2 percent to the finger. Dr. Boals estimated his permanent medical impairment to be five percent to the finger. Dr. Boals also opined there was more loss of motion and strength in the hand than would normally be seen with partial amputation of the ring finger. The claimant has returned to his regular job without restrictions or limitation, but continues to have some sensitivity in the affected injured finger, which causes pain when making a fist or lifting. Both doctors testified that the only injury, however, was to the finger.

The employer contends the award of benefits based on a percentage of the hand is excessive because the only injury was to the finger. The claimant contends the award of benefits to the hand should be affirmed because of lost grip strength in the hand.

Compensable disabilities are divided into four separate classifications: (1) temporary total disability, (2) temporary partial disability, (3) permanent partial disability and (4) permanent total disability. Tenn. Code Ann. § 50-6-207. Each class of disability is separate and distinct and separately compensated for by different methods. When an injured employee's partial disability is adjudged to be permanent, the employee is entitled to benefits based on a percentage of disability. Corcoran v. Foster Auto GMC, Inc., 746 S.W.2d 452 (Tenn. 1988). In such cases, benefits are payable for the number of weeks established by a statutory schedule of various members of the body.

Tenn. Code Ann. § 50-6-207. The ring finger is a scheduled member. See Tenn. Code Ann. § 50-6-207 (3)(e)(A)(d). Where a worker's only injury is to a scheduled member, he may receive only the amount of compensation provided by the schedule for his permanent disability. Such injuries are exclusively controlled by the statutory schedule. McIlvain v. Russell Stover Candies, Inc., 996 S.W.2d 179, 185 (Tenn. 1999).

The appellee correctly argues that where an injury to a scheduled member produces an unusual and extraordinary condition affecting other members of the body, then compensation would not necessarily be limited to the loss of the injured member. See Jeffrey Mfg. Co. of Tenn. v. Underwood, 426 S.W.2d 189, 191 (Tenn. 1998).

The injured finger was immobilized for some period of time, possibly resulting in some temporary loss of grip strength, which Dr. Boals characterized as unusual. However, the record contains conflicting medical proof as to whether or not there was any such loss. The treating physician testified there was none. Dr. Boals, relying entirely on a physical therapy report, testified there was a slight loss of grip strength, but did not say there was any permanent injury to any part of the claimant's body other than the ring finger of the left hand. No restrictions were prescribed. In order to recover permanent disability benefits, except in obvious cases, permanency must be established by expert medical testimony. Wade v. Aetna Cas. and Sur. Co., 735 S.W.2d 215, 217 (Tenn. 1987).

There being no evidence of a permanent injury to the hand, other than to one finger, the award is modified to one based on 80 percent to the third finger, but otherwise affirmed. Costs are taxed to the appellee.

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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 Appellee, Michael Britton, for which execution may issue if necessary.

**IT IS SO ORDERED.**

**PER CURIAM**