

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

February 23, 2005 Session

**SARAH L. LANE v. TRANE UNITARY PRODUCTS, ET AL.**

**Direct Appeal from the Chancery Court for Robertson County  
No. 17411, Carol Catalano, Chancellor**

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**No. M2004-00471-WC-R3-CV - Mailed - April 29, 2005  
Filed - June 1, 2005**

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This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with Tennessee Code Annotated section 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 asserts that the trial court erred in awarding to the employee a 30% vocational disability to her upper left extremity and 70% vocational disability to her upper right extremity as a result of her employment with Trane Unitary Products. We conclude that the evidence presented supports the findings of the chancellor and, in accordance with Tennessee Code Annotated §50-6-225(e)(2), affirm the judgment of the trial court.

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

DONALD P. HARRIS, SENIOR JUDGE, delivered the opinion of the court, in which FRANK F. DROWOTA, CHIEF JUSTICE, and WILLIAM H. INMAN, SENIOR JUDGE, joined.

Wm. Ritchie Pigue, Marie I. Militana, Nashville, Tennessee, for appellant, Trane Unitary Products,

William R. Underhill, Springfield, Tennessee, for the appellee, Sarah H. Lane

**MEMORANDUM OPINION**

**I. FACTUAL BACKGROUND.**

Sarah Lane was 39 years of age at the time of the trial, married with three children of her own and three step-children. She completed the ninth grade in school and obtained a General Equivalency Diploma in 1996. Past employment includes hoeing sugar beets, working at a tavern, working on a chicken farm, and working off and on at a truck stop owned by her father as a waitress

and cook. She has also worked as a tow motor operator and at a retirement home where she did general house cleaning and assisted the elderly with bathing and getting about the facility.

Mrs. Lane went to work for Trane in 1996. She was assigned to the crating department. There she would leak test air conditioning units and install the final panel securing it with an air powered screw driver. She then would build a crate around the unit with 2 x 4's and 2 x 6's securing them with a nail-gun. In 1999, she began experiencing pain in her left wrist and was referred to Dr. Kent who prescribed steroid injections and light duty. Her symptoms which included pain in her left elbow, forearm and wrist and pain, swelling and numbness in the fingers of her left hand, improved for a time but worsened when she returned to full duty

She also began experiencing pain in her right arm and over time it became worse and progressed more rapidly than her left hand symptoms. She was returned by Trane to Dr. Kent, who prescribed steroids, light duty and physical therapy. When she returned to full duty, she again experienced severe pain and requested a second opinion. She was given a panel of three physicians and she selected Dr. Michael A. Milek. He treated her conservatively for a time and when that treatment was unsuccessful offered her surgery. Her first surgical procedure was to her wrist and elbow and was performed in April 2001. She underwent a second surgery in December 2001. The surgery helped in that the pain was not as severe as it previously had been but the pain, numbness and swelling has continued. During the trial, she exhibited her swollen left arm to the court.

While she was being treated by Dr. Milek, her left arm flared up again and she was sent by Trane to Dr. Kent. Dr. Kent referred her to a Dr. Doug Wiekert who put her on anti-inflammatory medicines and physical therapy. She was released by Dr. Milek in April 2002, and by Dr. Wiekert in May 2002.

She was laid off from work in April 2002, as a part of a mass layoff at the Trane facility. When Trane returned to production, she made inquiry about returning to work but was told there was not a position for someone with her restrictions. After being laid off, she returned to work at Norma Jean's (formerly Lane's) Truck Stop but after one day cooking, she had to quit because of the pain and swelling she experienced. She has applied for work through temporary agencies, but has not been placed. She was able to work as a substitute teacher but voluntarily discontinued that activity about a month prior to trial in order to keep her grandchild.

When she stopped working at Trane she was making \$14.97 per hour. She does not now believe she could perform any of her previous jobs because of the pain, swelling and numbness in her arms. She believes she might be able to operate a cash register but, at the place where she applied for such a job, was told she would also have to do some stocking which involves lifting.

## II. MEDICAL AND EXPERT TESTIMONY.

Dr. David Gaw testified by way of deposition. He is a member of the American Board of Orthopaedic Surgery and American Board of Independent Medical Evaluators. He saw Mrs. Lane

on December 9, 2002, for the purpose of performing an independent medical evaluation. At the time he saw her, she had undergone two surgeries, the first on April 6, 2001, consisting of a wrist arthroscopy with a partial synovectomy, a decompression of the radial nerve, debridement of the lateral epicondyle and dorsal wrist denervation on the right side. Dr. Gaw described the arthroscopy of the wrist as removing some of the inflamed lining of the wrist and the denervation as taking out small nerves around the joint capsule to help the pain. She had a second surgery done on December 13, 2001, consisting of a right medial epicondylectomy and decompression of the ulnar nerve on the right. According to Dr. Gaw, an epicondylectomy is an ulnar nerve transfer accomplished by taking the ulnar nerve from behind the elbow, moving it to the front and taking off some of the bone. On the right side she had a decompression of the ulnar nerve at the elbow. Mrs. Lane reported to Dr. Gaw that she was better following the surgery but still had difficulty with repetitive activities and was sensitive to touch in the right elbow and wrist.

Mrs. Lane also reported to Dr. Gaw, problems with her left elbow. She was experiencing pain in the left elbow when gripping or squeezing. She reported using her left hand more because of the problems with her right hand and arm.

Upon examination, Dr. Gaw found a slight loss of movement on the right wrist and soreness along the internal lateral epicondylar area and numbness and decreased sensation along the extensor aspect of the forearm and along the superficial radial nerve distribution on the right. She had pain to pronate and supinate against resistance with mild weakness in her right wrist. She had a sensory deficit of the radial nerve and of the ulnar nerve on the right side as well as ten (10%) percent loss of strength of pronation and supination of the right elbow. She had chronic lateral and medial epicondylitis on the left. Epicondylitis is a condition where there is an inflammation or tearing of the ligaments and muscles that attach to the elbow joint.

Dr. Gaw did not believe Mrs. Lane would benefit from additional surgery or diagnostic procedures but may need medical maintenance for flare-ups in the form of anti-inflammatory medications. In the opinion of Dr. Gaw, her condition is permanent. He recommends she avoid continuous twisting her wrists, lifting more than 20 pounds occasionally and more than 10 pounds with just her hands. Based upon the A.M.A. Guides to the Evaluation of Permanent Impairment, Fifth Edition, he believed she would sustain a ten (10%) percent impairment to the right upper extremity. With regard to the left arm, Dr. Gaw opined she would sustain a 4 % impairment.

Also made a part of the record in this case was the Form C-32, Standard Form Medical Report for Industrial Injuries prepared by Dr. Michael A. Milek. Dr. Milek assessed a one (1%) impairment to the right upper extremity. Dr. Milek also limits her to lifting or carrying ten pounds on a frequent basis and pushing or pulling if accompanied by pain. In Dr. Milek's office notes for March 25, 2002 (the last visit noted in the medical records attached to the Form C-32) he recommended she continue limited duty with occasional use of the arm, occasional use of the outstretched arm, no heavy gripping and a five pound weight limitation. He also noted she was having trouble with her left arm and was scheduled to see Dr. Doug Wiekert for that problem.

John McKinney, a vocational evaluator, who has a Master's degree in rehabilitation services from Auburn University, is an Associate Licensed Counselor through the Alabama Board of Examiners in Counseling and holds national certifications as a rehabilitation counselor and a vocational evaluator testified as to plaintiff's vocational disability. Mr. McKinney evaluated Sarah Lane on June 20, 2003. The evaluation consisted of three parts, a clinical interview, psychometric testing and a review of all medical records.

The psychometric testing consisted of a general intelligence test and achievement testing. On the Slossen Intelligence Test, she achieved a score of 88 placing her at the 23<sup>rd</sup> percentile and in the below average category. On the achievement tests, she performed at the fourth grade level in reading, the fifth grade level in spelling and at the sixth grade level in math or arithmetic.

Mr. McKinney noted that Dr. Milek imposed various restrictions including lifting up to five pounds and doing no repetitive activities with the upper extremities. Dr. Gaw's report limited her, basically, to light exertional work. Because of her restrictions, Mr. McKinney was of the opinion that she would lose access to eighty-four (84%) percent of the jobs that had previously been available to her. Moreover, she had been earning approximately \$14 per hour at Trane and since the jobs she could now obtain would pay about \$7.50 per hour, she had lost forty-six (46%) of her ability to earn wages. Combining these two reductions, Mr. McKinney assessed Mrs. Lane's vocational disability as a result of her injuries to be sixty-five (65%) percent.

At the conclusion of the proof, the court found the plaintiff's overall vocational disability to be fifty (50%) percent as a result of the injuries to both arms. It is fairly clear from our review of the trial transcript that in order to achieve that result, the chancellor found her seventy (70%) disabled in the right arm and thirty (30%) disabled in the left.

### III. STANDARD OF REVIEW.

The standard of review of issues of fact is *de novo* upon the record of the trial court accompanied by a presumption of correctness of the findings, unless the preponderance of evidence is otherwise. **Lollar v. Wal-Mart Stores, Inc.**, 767 S.W.2d 143, 149 (Tenn. 1989); Tenn. Code Ann. § 50-6-225(e)(2). 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 afforded those circumstances on review since the trial court had the opportunity to observe the witness' demeanor and to hear the in-court testimony. **Long v. Tri-Con Industries, Ltd.**, 996 S.W.2d 173, 178 (Tenn. 1999). Where the issues involve expert medical testimony that is contained in the record by deposition, determination of the weight and credibility of the evidence necessarily must be drawn from the contents of the depositions and the reviewing court may draw its own conclusions with regard to those issues. **Orman v. Williams Sonoma, Inc.**, 803 S.W.2d 672 at 676 (Tenn. 1991).

#### IV. ANALYSIS.

In making a determination as to disability, the court is required by T.C.A. §50-6-241(c) to consider all pertinent factors, including lay and expert testimony, the employee's age, education, skills and training, local job opportunities, and the capacity to work at types of employment available in the claimant's disabled condition. In the case before the court, the plaintiff has a high school equivalency diploma but scored below average in intelligence, reads at the fourth grade level, spells at the fifth grade level and performs at the sixth grade level in math. Her prior employment has uniformly consisted of working with her hands in unskilled jobs that would now be beyond the restrictions imposed by the physicians whose opinions were before the court. Plaintiff's testimony that she believed herself unable to perform any of the jobs she previously held was accredited by the court and was corroborated by her attempt to return to work as a cook at a truck stop and her inability to continue that employment after the first day because of pain and swelling in her arms. In our view, the record supports the findings of the chancellor that plaintiff has sustained a vocational disability of fifty (50%) percent and that she is seventy (70%) percent disabled in her right arm and thirty (30%) percent disabled in her left.

Appellant cites *Duncan v. Boeing Tennessee, Inc.*, 825 S.W.2d 416 (Tenn. 1992), for the proposition that the court should not consider vocational disability to the whole person when determining the disability caused by an injury to a scheduled member. Contrary to the appellant's assertion, the court in *Duncan* held that while vocational disability is not essential to recovery for the loss of use of a scheduled member, it may be considered along with all other factors involved, to include whether the employee, in light of the employee's education, physical and mental abilities, or the lack thereof, is employable in the open market. We do not consider it error for the trial court to have given this factor primary consideration in view of the other evidence presented.

Because, in our opinion, the evidence does not preponderate against the findings of the trial judge and there is no other error, the judgment is affirmed at the costs of the appellants.

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DONALD P. HARRIS, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
FEBRUARY 23, 2005 SESSION

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**Chancery Court for Robertson County  
No. 17411**

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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 appeals 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, Trane Unitary Products and Travelers Indemnity Company of Illinois, for which execution may issue if necessary.

**IT IS SO ORDERED.**

**PER CURIAM**