

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT NASHVILLE  
July 24, 2006 Session

**BOBBY BROWN v. NISSAN NORTH AMERICA, INC.**

**Direct Appeal from the Chancery Court for Rutherford County  
No. 05-0370WC Robert E. Corlew, III, Chancellor**

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**No. M2005-02691-WC-R3-CV - Mailed - October 10, 2006  
Filed - December 18, 2006**

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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 Tennessee Code Annotated section 50-6-226(e)(3) for hearing and reporting of findings of fact and conclusions of law. In determining the appropriate vocational disability rating, the trial court considered conflicting medical testimony, the employee's work duties, and other factors such as the employee's education, age, and skill level. The employer contends the trial court erred when it awarded a 10% vocational disability rating to the plaintiff's right leg. After a careful review of the record, we conclude that the trial court's judgment should be affirmed.

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

FRANK F. DROWOTA, III, delivered the opinion of the court, in which CORNELIA A. CLARK, J., and DONALD P. HARRIS, SR. J., joined.

Van French, Murfreesboro, Tennessee, for the Appellant, Nissan North America, Inc.

Susan K. Bradley, Murfreesboro, Tennessee, for the Appellee, Bobby Brown.

**MEMORANDUM OPINION**

**I. Factual and Procedural Background**

The employee-appellee, Bobby Brown ("Brown"), is a 46-year-old man with a high school education. Brown has worked for Nissan as a production technician since September 1990.

On August 30, 2004, Brown was working on the Altima chassis line when his foot slipped on an unsecured foot pedal, hyper-extending and injuring his right knee. Brown reported this injury to Nissan and was sent to Dr. Richard A. Rogers, who diagnosed a partially torn lateral meniscus and chondromalacia.<sup>1</sup> Dr. Rogers operated on Brown's knee on October 11, 2004, removing torn cartilage and smoothing out the bone. Prior to this injury, Brown did not have any problems with his knee. Dr. Rogers authorized Brown to return to work without any permanent restrictions in January 2005. Brown testified that he is able to complete his work duties, although he still suffers from pain in his knee, especially after standing all day at work. He has to ice down his knee at night and avoids squatting and bending as much as possible because it causes pain. He also has stiffness in his knee.

The issue presented at trial was the extent of Brown's vocational disability caused by the knee injury. Dr. Rogers, the treating physician, testified by deposition that a 2% impairment for the meniscus tear was appropriate. Dr. Walter W. Wheelhouse, an independent medical examiner, testified by deposition that his interpretation of the AMA Guidelines allowed a 2% impairment for the tear as well as a 5% impairment for the chondromalacia.

## **II. Standard of Review**

In a workers' compensation case the appellate court reviews the record of the trial court de novo, accompanied by a presumption of correctness for the findings below, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (Supp. 2005). This Court may “draw its own conclusions about the weight and credibility of expert testimony when the medical proof is presented by deposition,” as it was in this case, since the appellate court is in the same position as the trial judge. Houser v. Bi-Lo, Inc., 36 S.W.3d 68, 71 (Tenn. 2001).

## **III. Analysis**

“The extent of vocational disability is a question of fact to be determined from all of the evidence, including lay and expert testimony.” Cooper v. Ins. Co. of N. Amer., 884 S.W.2d 446, 451 (Tenn. 1994). Vocational disability is determined by factors such as “employee's age, education, skills and training, local job opportunities and capacity to work at types of employment available in claimant's disabled condition.” Tenn. Code Ann. § 50-6-241(d)(1)(A). If an employee is eligible to receive any permanent partial disability benefits, and the pre-injury employer gives the employee his job back at the same or greater wages, “the maximum permanent partial disability benefits that the employee may receive is one and one-half (1-1/2) times the medical impairment rating. . . .” Tenn. Code Ann. § 50-6-241(d)(1)(A). The medical impairment rating is determined based on AMA Guidelines by a medical practitioner who has treated or evaluated the employee. Tenn. Code Ann. § 50-6-204(d)(3)(A).

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<sup>1</sup>Chondromalacia is a medical term for cartilage softening and applies to cartilage degeneration or changes.

In the present case, the trial court determined that Brown suffered a 10% permanent partial disability based on Dr. Wheelhouse's 7% anatomical impairment rating. The trial court considered Brown's age, educational achievements, and past job history when making this decision. Nissan avers that the trial court erred and should have accepted Dr. Rogers' 2% rating. It is established in the case law that the "trial court has the discretion to accept the opinion of one medical expert over another medical expert." Johnson v. Midwesco, Inc., 801 S.W.2d 804, 806 (Tenn. 1990). As previously stated, however, in a case with deposition evidence, the appellate court must review the record and make its own decision.

In his deposition, Dr. Rogers testified that Brown had a permanent partial impairment of 2% of the right lower extremity, based on AMA Guidelines. Dr. Wheelhouse<sup>2</sup> had a different opinion. In his deposition testimony, he explained that he had recently attended an AMA Guides training session that dealt with assigning impairment ratings for chondromalacia, and he was instructed to use a 5 to 7% impairment rating of the lower extremity. In this case, the trial judge gave more weight to the testimony of Dr. Wheelhouse, along with considerations for the factors used to determine an employee's vocation disability. The trial court found the occasional swelling and restrictions in his activities, during both his work activities and his off-work activities, to indicate that Brown suffered a vocational disability of 10% to the leg. We conclude, based on a de novo review of the record, that the trial court did not err in assigning a 10% permanent partial disability to Brown.

#### **IV. Conclusion**

After a thorough review of the record, this Panel affirms the trial court's finding that Brown suffered a 10% permanent partial disability. The costs of this appeal are taxed to the appellant, Nissan North America, Inc.

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FRANK F. DROWOTA, III  
Special Judge

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<sup>2</sup>Dr. Wheelhouse is certified in the evaluation of disability and impairment ratings by the American Academy of Disability Evaluating Physicians. In order to gain this certification, Dr. Wheelhouse had to take several classes and pass a certification test on the AMA Guidelines, Fifth Edition.

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**No. M2005-02691-SC-WCM-CV - Filed - December 18, 2006**

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**JUDGMENT ORDER**

This case is before the Court upon the motion for review filed by Nissan North America, Inc. pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), 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.

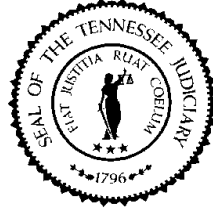
It appears to the Court that the motion for review is not well-taken and is therefore denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to Nissan North America, Inc. and its surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

Cornelia A. Clark, J., not participating



Supreme Court  
State of Tennessee

CHIEF JUSTICE  
WILLIAM M. BARKER

JUSTICES

JANICE M. HOLDER  
CORNELIA A. CLARK  
GARY R. WADE

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**MEMORANDUM**

**TO:** Tracy Skiba, Deputy Clerk - Nashville

**FROM:** Justice Gary R. Wade

**RE:** Bobby Brown v. Nissan North America, Inc.  
(Rutherford County Chancery, No. 05-0370WC)  
Appeal No.: M2005-02691-SC-WCM-CV

**DATE:** December 12, 2006

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APPLICATION FOR PERMISSION TO APPEAL: **Denied**

RELEASE DATE: **Next Available Date**

DISPOSITION OF RECORD: **Previously returned**