

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

TERRY WAYNE CAGLE v. TDY INDUSTRIES, INC., et al.

**Direct Appeal from the Criminal Court of Wilson County
No. 04-0531 J. O. Bond, Judge**

**No. M2005-02936-WC-R3-CV - Mailed - October 10, 2006
Filed - November 15, 2006**

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 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. In this appeal, the employer, TDY Industries Inc., asserts that the trial court erred in awarding the employee 60% permanent partial disability to the right upper extremity and 40% permanent partial disability to the left upper extremity for injuries he incurred during the course of his employment. We conclude that the evidence presented does not preponderate against the findings of the trial judge, and, in accordance with Tennessee Code Annotated section 50-6-225(e)(2), affirm the judgment of the trial court.

**Tenn. Code Ann. § 50-6-225(e)(3); Appeal as of Right;
Judgment of the Trial Court Affirmed**

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

Thomas J. Dement, II, Nashville, TN, for the Appellants, TDY Industries, Inc., et al.

Stanley A. Davis, Nashville, TN, for the Appellee, Terry Wayne Cagle.

MEMORANDUM OPINION

I. FACTUAL BACKGROUND

Terry Wayne Cagle, the employee-appellee, has worked as a class III machinist for TDY Industries ("TDY"), the employer-appellant, since 1980. Cagle is 51 years old, possesses a high school education, and has no other education or training other than that of a machinist. His job involves drilling, hammering, and cutting into metal. The work requires repetitive hand movements

throughout the course of the day; however, his work involves a variety of tasks, and is not strictly repetitive.

In December of 2003, Cagle began experiencing pain and stiffness in his wrists, although he could not attribute it to any specific injury. On March 17, 2004, Cagle noticed large bulges, approximately 2.5 - 3.0 cm in diameter, on the dorsal (back) side of his wrists. Cagle promptly reported the injury to his immediate supervisor, Roger Flatt, and to the company safety director, who, in turn, referred him to Middle Tennessee Occupational & Environmental Medicine, Inc., where he was seen by Dr. Janet Pelmore, the company doctor.

Dr. Pelmore diagnosed Cagle with bilateral chronic tendonitis and onset osteoarthritis. She also referred him to Dr. T. Scott Baker for an EMG of both upper extremities. The EMG suggested a generalized peripheral neuropathy, and Dr. Baker believed that Cagle suffered from right lateral epicondylitis with bilateral wrist tendonitis. Dr. Pelmore subsequently referred Cagle to Dr. Jaselskis, Cagle's primary care physician, for bloodwork to determine whether the knots on his wrists were the result of vitamin deficiency.

Dr. Jaselskis found no evidence of vitamin deficiency but referred Cagle to Dr. Andrew Kreegel for treatment of the bulges on his wrists. Dr. Kreegel is a plastic and reconstructive surgeon who treats patients with hand and upper extremity injuries on a regular basis. Dr. Kreegel diagnosed the bulges on Cagle's wrists as ganglion cysts and surgically removed them on May 11, 2004. Cagle saw Dr. Kreegel a total of seven times after the surgery and also had physical therapy three times per week.

On August 18, 2004, Dr. Kreegel placed Cagle at maximum medical improvement and assigned an impairment rating of 18% to the right upper extremity and 12% to the left upper extremity. The impairment rating for each extremity attributed 2/3 of the percentage to loss of motion and 1/3 of the percentage to pain and was calculated using Chapters 16 and 18 of the AMA Guides, 5th edition, for loss of motion and pain, respectively.

Cagle missed a total of sixteen and one half weeks of work, from April 14 to August 9, 2004. Cagle did, however, make several attempts to return to work during this period, asking Dr. Kreegel on multiple occasions to increase his maximum weight restriction until it was a weight for which TDY would allow him to resume working.

Since returning to work, Cagle has been able to perform all of the duties he performed prior to his injury. However, as Cagle's supervisor testified, he has accomplished this by finding creative ways around physically difficult situations. For example, he frequently switches tasks to avoid repetitive motion and obtains the assistance of a co-worker to lift heavy objects. Cagle has also received a raise since returning to work. This raise was based on Cagle's increased knowledge, and not on physical capacity. Mr. Flatt, Cagle's immediate supervisor, testified that Cagle has always done quality work, generally goes about his business, and keeps to himself. Cagle's relatives likewise

testified that he is not one to complain of pain, and so for Cagle to be manifesting any sign of discomfort or injury indicates that he must be suffering to a significant degree.

On June 17, 2004, Cagle filed suit against TDY Industries Inc. and Fidelity & Guaranty Insurance Company. The complaint requested compensation in the form of medical expenses incurred, temporary total disability benefits for the period during which Cagle was unable to work, and future partial disability benefits. On March 3, 2004, the trial court granted TDY's Motion to Compel Acceptance of Medical Treatment, and Cagle was sent to Dr. Paul Abbey, an orthopedic surgeon who specializes in hand surgery, for a secondary evaluation.

Dr. Abbey subjected Cagle to a functional baseline assessment, which measured his hands in a variety of ways, including range of motion. Based on these measurements, Dr. Abbey assigned Cagle 10% impairment to the right upper extremity and 6% impairment to the left upper extremity. However, Dr. Abbey questioned the validity of the measurements upon which these ratings were based. He testified that he had never known a patient to suffer such loss of motion and pain simply from ganglion cysts. He also noted that Cagle's passive range of motion was much greater than his active range of motion and stated that this could not be attributed to ganglion cysts. Moreover, unlike Dr. Kreegel, Dr. Abbey calculated Cagle's impairment ratings based solely on loss of motion, using Chapter 16 of the AMA Guides, 5th edition. Dr. Abbey did not include pain as part of his calculation, and thus did not employ Chapter 18 of the Guides.

Cagle continues to work full-time in his previous position, yet he remains severely limited in his ability to use his upper extremities. He still experiences pain and stiffness in his hands. He is often unable to move his hands and fingers in the morning and must use one hand to loosen up the fingers on the other hand. He must now employ two hands for normal activities, such as opening doorknobs or picking up a cup of coffee. He has also taken to buying half gallons of milk because he is no longer able to lift a full gallon of milk out of the refrigerator. He wears braces at times. Although described as an active, outdoor person prior to his injury, Cagle is no longer able to ride horses, play with his grandchildren, or do general field and barn work.

II. RULING OF THE TRIAL COURT

The trial judge found Cagle's testimony credible, noting that his employer thought well of his work and character and that Cagle had demonstrated a high motivation to return to work by repeatedly requesting that his work restrictions be reduced. He also found that, while Cagle has returned to work and is able to accomplish the same amount and quality of work, he is nonetheless living under restrictions. Cagle now needs to use ingenuity to accomplish various tasks in roundabout ways, which were previously straightforward. Unlike before his injury, he must request the help of others for various tasks.

Adopting Dr. Kreegel's impairment rating, the trial judge found that Cagle had an impairment to the right and left upper extremities. He further found that Cagle had sustained 60% permanent partial disability to the right upper extremity and 40% permanent partial disability to the

left upper extremity. He awarded Cagle 120 weeks of compensation for the right upper extremity and 80 weeks of compensation for the left upper extremity, for a total award of \$97,430.00. Cagle was to receive a lump sum payment for all accrued benefits, the remainder to be paid in bi-weekly payments. Finally, Mr. Cagle's medical benefits were to remain open for his lifetime. This timely appeal followed.

III. STANDARD OF REVIEW

Review of the trial court's findings of fact shall be de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (Supp. 2005). However, where the medical proof is taken by deposition or is documentary, all impressions of weight and credibility must be drawn from the contents thereof, and not from the appearance of witnesses on oral testimony at trial. Humphrey v. David Witherspoon, Inc., 734 S.W.2d 315, 315-16 (Tenn. 1987).

IV. ANALYSIS

TDY avers that Cagle's injury on March 17, 2004 did not result in significant vocational disability. TDY asks the Court to reverse the judgment of the trial court in all respects, or, in the alternative, to reduce the trial court's award for permanent partial disability. We decline to do either.

A. No Disability

For the judgment of the trial court to be reversed in all respects, as TDY requests, the Court would need to find that Cagle suffered no permanent disability. TDY advances two arguments in support of this proposition: (1) Cagle's symptoms are inconsistent with ganglion cysts and thus not genuine, and (2) Cagle is not only back at work but is earning a greater rate of pay; thus, he suffers no vocational impairment. These arguments are without merit.

1. Cagle's Symptoms are Inconsistent with Ganglion Cysts

Relying on the testimony of Dr. Abbey, TDY contends that Cagle's symptoms, namely diminished range of motion and pain, would not result from ganglion cysts, the only injury for which Cagle was treated. Likewise, the discrepancy between Cagle's active and passive range of motion had no physiological explanation if Cagle had suffered merely from ganglion cysts. TDY suggests that Cagle is therefore engaging in symptom magnification or is malingering.

Dr. Abbey indeed testified that, having performed over 200 similar operations, he had never seen these symptoms result solely from ganglion cysts. Yet this does not mean that these symptoms are without explanation or are contrived. When asked what would explain Cagle's symptoms, Dr. Abbey suggested a multitude of other conditions, including chronic tendonitis of the hands and wrists, elbow tendonitis, peripheral neuropathy, chondrocalcinosis, radiocarpal narrowing of the wrists (essentially arthritis), and Heberden nodes (indicative of arthritis in the fingers). That Cagle

suffered from these other maladies, he noted, found support in his notes as well as the diagnoses of Dr. Pelmore and Dr. Baker. Thus, although ganglion surgery may have been of some benefit, he did not think that it was sufficient to deal with the variety of problems in light of the findings.

None of this, however, is of benefit to TDY. It is clear from the medical testimony contained in the record that, whatever may be the proper diagnosis or treatment of Cagle's current condition, those underlying injuries found their cause in his work. Therefore, it is immaterial that Cagle's symptoms do not seem to be attributable solely to ganglion cysts; they are nevertheless attributable to a variety of other maladies, all of which stem from Cagle's work and are thus similarly compensable.

2. Cagle's Continued Employment and Greater Rate of Pay

TDY contends that because Cagle has returned to working in the same position, is performing the same tasks, and is even earning a higher rate of pay, he has therefore suffered no vocational impairment. TDY is mistaken in this view. The law of Worker's Compensation in Tennessee is that "[i]n determining vocational disability, the question is not whether the employee is able to return to the work being performed when injured, but whether the employee's earning capacity in the open labor market has been diminished by the residual impairment caused by a work-related injury." Corcoran v. Foster Auto GMC, Inc., 746 S.W.2d 452, 458 (Tenn. 1988). See, e.g., Holder v. Wilson Sporting Goods Co., 723 S.W.2d 104, 108 (Tenn. 1987); Prost v. City of Clarksville Police Dept., 688 S.W.2d 425, 427 (Tenn. 1985). The test for vocational disability is "whether there has been a decrease in the employee's capacity to earn wages in any line of work available to the employee." Orman v. Williams Sonoma, Inc., 803 S.W.2d 672, 677-78 (Tenn. 1991).

While it is true that Cagle has been able to continue performing his job duties, due to his ingenuity in working around physically difficult tasks and with the help of co-workers, it is not certain that he will be able to likewise maneuver around tasks or take advantage of similar accommodations in another job, should he discontinue his employment with TDY. There can be no dispute that Cagle's earning capacity in the open market has been diminished because of his injury. He is therefore entitled to compensation.

B. Reduced Disability

In the alternative, TDY asks the Court to reduce the award for permanent partial disability. The basis for such an adjustment, TDY contends, is that the trial court erred in accepting the impairment ratings of Dr. Kreegel over the impairment ratings of Dr. Abbey.

Because both Dr. Kreegel and Dr. Abbey testified by deposition, this Court is not required to give any deference to the findings of the trial court with respect to their testimony and thus which impairment rating to adopt. As stated above, where the medical proof is taken by deposition or is documentary, "all impressions of weight and credibility must be drawn from the contents thereof, and not from the appearance of witnesses on oral testimony at trial." Humphrey, 734 S.W.2d at 315-

16. However, this statement does not mean that the deposition testimony of experts should be read and evaluated in a vacuum. Thomas v. Aetna Life & Casualty Co., 812 S.W.2d 278, 283 (Tenn. 1991). Such testimony must be considered in conjunction with the lay testimony presented at trial, and considerable deference must be given to the trial court's evaluation of that oral testimony. Id. We believe that the record does not preponderate against the trial court's finding with respect to Cagle's impairment rating, as calculated by Dr. Kreegel. Accordingly, we will not disturb the trial court's judgment in this matter.

While there is a dispute between the parties over whether it is proper to include both loss of motion and pain in an impairment rating, according to Chapters 16 and 18 (respectively) of the AMA Guides, 5th edition, we find it unnecessary to decide the issue in this case. The trial judge was chiefly concerned with the extent to which Cagle's injury had affected his ability to work and stated that the dispute over the precise impairment rating was "unimportant." The anatomical impairment was only one of several factors taken into consideration in determining Cagle's disability. He weighed the testimony of Cagle, his supervisor, and his relatives to arrive at what he thought was an accurate permanent partial disability of 60% to the right upper extremity and 40% to the left upper extremity. It was from this disability that he awarded Cagle's compensation.

"[T]he extent of vocational disability is a question of fact for the trial court to determine from all of the evidence, including lay and expert testimony; the medical expert's rating of anatomical disability is merely one of a number of relevant factors used to make this determination." Corcoran, 746 S.W.2d at 458. "In this case, as in all workmen's compensation cases, the claimant's own assessment of his physical condition and resulting disabilities is competent testimony and cannot be disregarded." Tom Still Transfer Co. v. Way, 482 S.W.2d 775, 777 (Tenn. 1972).

V. CONCLUSION

Because the record does not preponderate against the trial court's findings, we affirm his finding of permanent partial disability. Accordingly, the judgment of the trial court in all respects is *affirmed*. Costs of the appeal are taxed to the appellants, TDY.

FRANK F. DROWOTA, III
Special Judge

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JULY 24, 2006 SESSION

TERRY WAYNE CAGLE v. TDY INDUSTRIES, INC., ET AL

Criminal Court for Wilson County

No. 04-0531

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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, TDY, Inc., et al, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM

