

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
June 28, 2010 Session

TACLE SEATING USA, LLC v. RICKY LEE VAUGHN

**Appeal from the Circuit Court for Rutherford County
No. 57858 Royce Taylor , Judge**

**No. M2009-02418-WC-R3-WC - Mailed - September 15, 2010
Filed - October 19, 2010**

Pursuant to Tennessee Supreme Court Rule 51, this workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law. The trial court awarded 100% permanent partial disability ("PPD") to the left arm and 18% PPD to the right arm. The employer contends the trial court erred in awarding compensation to both arms, rather than the left thumb only. We affirm the judgment of the trial court.

**Tenn. Code Ann. § 50-6-225(e) (2008) Appeal as of Right; Judgment of the Chancery
Court Affirmed**

JON KERRY BLACKWOOD, SR. J., delivered the opinion of the Court, in which WILLIAM C. KOCH, JR., J., and WALTER C. KURTZ, SR. J., joined.

Thomas J. Dement III, Nashville, Tennessee, for the appellant, Tacle Seating USA, LLC.

David W. Lawrence, Lebanon, Tennessee, for the appellee, Ricky Lee Vaughn.

MEMORANDUM OPINION

Factual and Procedural Background

It is undisputed that Ricky Vaughn ("Employee") suffered a compensable injury on April 16, 2007. On that date, he was employed as a team member in production for Tacle Seating USA ("Employer"), a manufacturer which produces car seats for Nissan.

Employee was hired in January 2007 to work on the front seat cushion closeout. His job required him to place a foam cushion on seats as they passed down the production line. He would use his thumbs and fingers to attach J clips to the frame of the seat. In preparation for this job, employee received on the job training and participated in some trial run production. April 16, 2007, was the first full day of production. On that date, employee found an extra bin of clips placed at his work station. He was instructed to apply the new clips to the seats he was assembling in addition to the task he had been trained to perform. Employee immediately told the supervisor that his hands were already swelling as a result of his previous training and that he thought that the application of the additional clips would be too strenuous. Employee attempted to apply the new clips before production began. He reported his difficulty to the supervisor, but was told that he must perform these tasks when production began.

Employee testified that, soon after production began, he felt his left thumb pop, accompanied with immediate pain and numbness in his left thumb and wrist. He reported the injury to the safety specialist for Employer, and was taken to an emergency care center. At the center he was examined by Dr. Oldham, who diagnosed severe sprains to both wrists. He received conservative care for several weeks without improvement. He was then referred to an orthopedic surgeon, Dr. Jane Siegel.

Dr. Siegel testified by deposition. She devotes her practice entirely to treatment of problems of the hands and arms. She first saw Employee in May 2007. At that time, he complained of swelling and numbness in both hands and pain that went up his left arm. Dr. Siegel injected Employee with a steroid and placed his left hand in a splint. She also recommended that he rest his right hand. She allowed Employee to return to work on July 18, 2007. However, he was unable to do so due to continuing pain.

Employer attempted to accommodate Employee by placing him in two different light duty jobs. One required him to hold a marker in his right hand and mark the seats where they had been welded. The other required him to rotate the seat on a platform and ensure that it leaned forward and back properly. Employee testified that his right hand went numb about ten minutes after work began.

Dr. Siegel ordered MRI's of both wrists. The study of the left wrist revealed a mild degeneration in the first carpometacarpal (CMC) joint of the left thumb, a cyst, and a small ligament tear. The latter conditions required minor surgery, which was performed in August 2007. Dr. Siegel did not recommend major surgery, such as a CMC arthroplasty, because she considered the risk of negative side effects to be too great due to Employee's age (49). The MRI of Employee's right wrist was normal, but an EMG study revealed mild carpal tunnel syndrome on that side. Dr. Siegel advised Employee not to do any repetitive work, or any

work that required gripping or pinching with his right hand. At this time she also placed his right wrist in a splint.

Dr. Siegel determined that Employee reached maximum medical improvement (MMI) on April 29, 2008. She assigned a 20% permanent impairment rating to the left thumb. She did not assign ratings to any other parts of the body, because she believed that his other symptoms would go away with rest. She placed restrictions on Employee to avoid heavy pinching, gripping, and repetitive work. She also recommended Employee seek employment outside the field of factory work.

Employee testified that he regularly checked with the local career center and attended several career fairs, but had been unable to find a job. He testified that his family's daily life had been altered due to his injury. He could no longer participate in his hobbies, such as hunting and fishing, because he was unable hold a fishing pole or gun. His wife had to help him get dressed every day. He was unable to grip his socks or tie the laces on his shoes.

At the request of Employee's attorney, an orthopedic surgeon, Dr. John Bacon, performed an IME on June 10, 2008. Employee filed a C-32 report containing Dr. Bacon's opinions, and Employer exercised its right to take a cross-examination deposition pursuant to Tenn. Code Ann. § 50-6-235. Dr. Bacon assigned a 19% impairment to the left upper extremity and a 3% impairment to the right upper extremity. The impairment of the left arm was based upon loss of motion in the wrist (12%) and the arthritis in the thumb (7%). The 3% impairment assigned to the right arm was based upon loss of motion in his right wrist. Dr. Bacon testified that Employee had degenerative arthritis of his middle carpal joint at the base of the thumb and that the work injury had aggravated it. He also opined that the injury would not have caused any anatomic change to his body beyond the joint in the left thumb. However, when asked why he assigned impairment to the whole arm instead of just the thumb, he stated that he is always unsure of what to rate "since every attorney asks for something different." Dr. Bacon testified that about 10% of his practice is devoted to treating injuries to the upper extremities.

The trial court found the injuries to both of Employee's wrists were compensable. It found he had 19% impairment of his left arm and 3% impairment of his right arm, and awarded 100% permanent partial disability (PPD) to the left arm and 18% PPD to the right arm.

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. Tenn. Code Ann. § 50-6-225(e)(2) (2008). When credibility and weight to be given testimony are involved, considerable deference is given the trial court when the trial judge had the opportunity to observe the witness's demeanor and to hear in-court testimony. Madden v. Holland Grp. of Tenn., 277 S.W.3d 896, 900 (Tenn. 2009). When 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. Foreman v. Automatic Sys., Inc., 272 S.W.3d 560, 571 (Tenn. 2008). A trial court's conclusions of law are reviewed *de novo* upon the record with no presumption of correctness. Seiber v. Reeves Logging, 284 S.W.3d 294, 298 (Tenn. 2009).

Analysis

Employer argues the trial court erred in finding that the injury extended beyond the left thumb. In support of this argument, it contends that the testimony of Dr. Siegel was more persuasive than that of Dr. Bacon.

When faced with differing expert opinions, a trial judge may use his or her discretion to determine which expert testimony to accept. Kellerman v. Food Lion, Inc., 929 S.W.2d 333, 335 (Tenn. 1996). When, as in the present case, the medical proof is presented entirely by deposition, all the impressions of weight and credibility must be drawn from the contents of these documents. Orman v. Williams Sonoma, Inc., 803 S.W.2d 672, 676 (Tenn. 1991). In doing so, the judge is allowed, among other things, to consider the qualifications of the experts, the circumstances of their examination, and the information available to them. Id. at 676. When the evidence is presented in this manner, it may be even more necessary for the trial court to take under consideration the employee's own testimony of their condition and resulting disability if it is found to be competent testimony. McIlvain v. Russell Stover Candies, Inc., 996 S.W.2d 179, 183 (Tenn. 1999).

Both doctors opined that Employee should limit gripping, pinching, and heavy lifting, and also recommended that he should pursue employment outside the field of manufacturing. The trial court noted that Dr. Bacon's range of motion test verified Employee had injuries to both wrists and that Dr. Siegel had not performed that test. It also found that Employee was a very credible witness. On the basis of those factors it found that he had sustained injuries to both arms. Our review of the record leads us to conclude that the evidence does not compel that finding, but it certainly permits it. Thus, we are unable to conclude that the evidence preponderates against the trial court's decision.

Amount of Compensation Awarded

Employer argues that the award was excessive. This argument is based upon the same contention considered above, i.e., that disability should have been assessed to the left thumb only. No additional arguments are submitted in support of this assertion. For the same reasons we rejected those arguments above, we find them to be without merit here.

Conclusion

The judgment of the trial court is affirmed. The costs are taxed to Tacle Seating USA, LLC and its surety for which execution may issue if necessary.

JON KERRY BLACKWOOD, SENIOR 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 Tacle Seating USA, LLC and its surety, for which execution may issue if necessary.

PER CURIAM