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

FILED

October 17, 1996

Cecil W. Crowson
Appellate Court Clerk

JUANITA D. BEAN,	)	**FRANKLIN CHANCERY**
Plaintiff/Appellee,	)	**No. 01SO1-9505-CH-00071(C)**
	)	**No. Below 13,721**
v.	)	
ROYAL INSURANCE COMPANY and CKR INDUSTRIES, INC.,	)	**HON. JEFFREY F. STEWART CHANCELLOR**
Defendants/Appellants.	)	

For the Appellant:

Randolph A. Veazey
Connie Jones
GLASGOW & VEAZEY
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For the Appellee:

Clinton H. Swafford
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100 First Avenue, SW
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MEMORANDUM OPINION

Members of the Panel:

Justice Frank Drowota, III
Senior Judge John K. Byers
Special Judge Robert L. Childers

AFFIRMED. **CHILDERS, Special Judge**

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. Our review is *de novo* on the record accompanied by a presumption that the findings of fact of the trial court are correct unless the evidence preponderates otherwise. TENN. CODE ANN. § 50-6-225(e)(2).

The trial court awarded Ms. Bean $8,831.04 permanent partial disability benefits, representing forty-eight (48) weeks at the benefit rate of $183.98 per week, or twelve percent (12%) to the body as a whole; future medical expenses pursuant to the Tennessee Workers' Compensation Act; and reasonable costs of Dr. Rodriguez services. The trial court also allowed attorneys fees of twenty percent (20%) of the award, in the amount of $1,766.21, to be paid in lump sum.

The appellant contends that the trial court erred in:

1. Finding that a vocational disability based upon a permanent medical restriction, with medical testimony of no medical impairment rating in accordance with the A.M.A. Guidelines for Evaluation of Permanent Impairment, constitutes a compensable permanent partial disability under the Workers' Compensation Act.

2. Awarding permanent partial disability benefits to the Plaintiff that were excessive and against the weight of the evidence.

We affirm the judgment of the trial court.

Ms. Bean filed her complaint in the Chancery Court for Franklin County, Tennessee, against her employer, Defendant CKR Industries, seeking to recover unpaid benefits under the Tennessee Workers' Compensation Act for work-related injuries. Ms. Bean alleged that she suffered injuries as a result of exposure to chemicals in use at the CKR Plant. The case was consolidated with three (3) other cases for trial due to significant similarities in the cases. The opinion of the Court on the first issue is contained in the case of *Angela K. Hill v. Royal Insurance Company and CKR Industries, Inc., No. 01S01-9505-CH-00071,* filed simultaneously with this opinion. The Court held that the trial court did not err in finding that a vocational disability existed based upon the testimony of the medical experts that a permanent medical restriction existed which constitutes a permanent partial disability under the Worker's Compensation Act, even though no medical impairment rating was given by any of the

medical experts.

As to the second issue, the Appellants argue that the amount of permanent partial disability awarded to Ms. Bean was excessive and against the weight of the evidence. Ms. Bean is thirty (30) years old. She graduated from high school and completed two years of college learning to be a draftsman. She also completed one year of vocational training to be an electrician. Ms. Bean's work experience includes owning and operating a commercial and residential cleaning service, working at General Mills as a temporary employee, caring for children, working as a sewing machine operator, and supervising employees at the University Pub at the University of the South at Sewanee.

While at CKR, Ms. Bean worked with silex molding. She began experiencing difficulty in breathing, coughing up blood, and blowing blood out of her nose.

At trial Ms. Bean also testified that since her termination from employment by CKR that she cannot be around strippers, wax, strong chemicals and Clorox.

Ms. Bean was originally treated by Dr. Worthington. Because she was not satisfied with his treatment, she was sent to Dr. Vallejo with company approval. Ms. Bean was then referred to Dr. Rodriguez, a specialist in pulmonary medicine. Dr. Rodriguez testified that although Ms. Bean suffered from no physical impairment, based upon her history, he concluded that her problems were related to exposure to chemicals. Dr. Rodriguez opined that she should not work where she could be exposed to chemicals and recommended that she not return to work at CKR.

Mr. Edwards, a vocational consultant with over twenty years experience, testified on Ms. Bean's behalf at trial. He testified that the chemicals causing Ms. Bean's problems, or chemicals similar to those, are found in twenty-five percent (25%) of the work places. He opined that in his experience an individual with a respiratory insult should not work in an industrial environment that has respiratory irritants. He also conducted an evaluation of Ms. Bean to access industrial disability. His opinion was that she suffered a thirty (30%) to forty-five percent (45%) industrial wage earning loss.

Once causation and permanency have been established by expert medical testimony, the trial judge may consider many pertinent factors, including age, job skills,

education, training, duration of disability, anatomical disabilities established by medical experts, and job opportunities available to a worker with those anatomical disabilities, to determine the extent of the worker's industrial disability. *Worthington v. Modine Manufacturing Co.,* 798 S.W. 2d 232, 234 (Tenn. 1990). Even where an expert testifies as to vocational disability, the trial judge is not required to accept without reservation the expert's opinion, but is charged with making an independent evaluation based on the factors above. *Miles v. Liberty Mutual Insurance Co.,* 795 S.W. 2d 665, 666 (Tenn. 1990).

The evidence does not preponderate against the trial court's finding that Ms. Bean suffered a twelve percent (12 %) vocational disability.

The judgment of the trial court is affirmed. Costs are assessed to the Appellants. We remand the case to the trial court for the entry of any order necessary to carry out this judgment.

_____
Robert L. Childers, Special Judge

CONCUR:

_____
Frank F. Drowota, III, Justice

_____
John K. Byers, Senior Judge

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

JUANITA D. BEAN,	*}*	*FRANKLIN CHANCERY*
	}	*No. 13,721 Below*
Plaintiff/Appellee	*}*	
	}	*Hon. Jeffrey F. Stewart,*
vs.	*}*	*Chancellor*
	}	
ROYAL INSURANCE COMPANY and CKR INDUSTRIES, INC.,	*}*	*No. 01S01-9505-CH-00071(C)*
	}	
	}	
Defendants/Appellants	*}*	*AFFIRMED.*

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 will be paid by appellants and their surety for which execution may issue if necessary.

IT IS SO ORDERED on October 17, 1996.

PER CURIAM