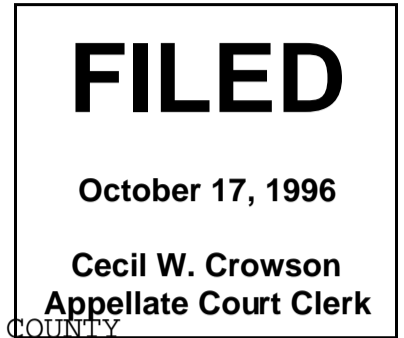


IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE



HELEN CARROLL,)
Plaintiff-Appellee)
)
)
)
v.) HON. JOHN W. ROLLINS, JUDGE
)
)
) No. 01S01-9512-CV-00221
MOORE AND ASSOCIATES and)
TRAVELERS INSURANCE COMPANY,)
Defendants/Appellants)
_____)

FOR APPELLEE:

ROBERT S. PETERS
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Winchester, TN 37398

FOR APPELLANTS:

W. RITCHIE PIGUE
WILLIAM G. McCASKILL, JR.
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MEMORANDUM OPINION

MEMBERS OF PANEL:

ADOLPHO A. BIRCH, JR., CHIEF JUSTICE, SUPREME COURT
JOHN K. BYERS, SENIOR JUDGE
WILLIAM S. RUSSELL, RETIRED JUDGE

AFFIRMED

RUSSELL, RETIRED JUDGE

This appeal from the judgment of the trial court in a workers' compensation case 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.

THE CASE

_____The injured employee was awarded compensation for a 65% permanent occupational disability to her right arm. The court also ordered the recovery of the medical charges of Dr. Keith Brown, who treated the employee without the express prior approval of the employer.

THE ISSUES

The employer and the insurer contend that the aforesaid rulings are not supported by the evidence.

APPLICABLE STANDARD OF REVIEW

Our review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings below, unless the preponderance of the evidence is otherwise. Tennessee Code Annotated Section 50-6-225 (e)(2) (1991). This standard of review requires the court to weigh in depth the factual findings and conclusions of the trial court. Humphrey v. David Witherspoon, Inc., 734 S.W. 2d 315 (Tenn. 1987).

The extent of vocational disability is a question of fact to be determined from all of the evidence, including lay and expert testimony. Worthington v. Modine Mfg. Co., 798 S.W. 2d 232, 234

(Tenn. 1990).

When the medical testimony is presented by deposition and medical records, as it was in this case, this court is able to make its own independent assessment of the medical proof to determine where the preponderance of the evidence lies. Landers v. Fireman's Fund Ins. Co., 775 S.W. 2d 355, 356 (Tenn. 1989); Henson v. City of Lawrenceburg, 851 S.W. 2d 809, 812 (Tenn. 1993).

THE EVIDENCE

The employee was the only witness who testified in person. The deposition of Dr. Keith Brown was introduced; as well as the patient records of Dr. Steven Pratt, who found no objective basis for the employee's complaints of right wrist pain. Dr. Brown, who was not a company approved physician, is an orthopaedic surgeon who was engaged by the employee after she was laid off work by the employer at a time when she had seen several company approved physicians but was still having extreme pain in the hand. Apparently the pain was precipitated by the repetitive assembly work. Dr. Brown diagnosed her injury as work related bilateral hand tendonitis, overuse-type tendonitis, possible nerve entrapment at the wrist; and he subsequently confirmed a diagnosis of overuse tendonitis and compression neuropathy. He gave her restrictions against repetitive activity with the right upper extremity and lifting repetitively more than 20 pounds, and set her permanent anatomical impairment to the right arm at 10%. The trial judge equated this to a 65% vocational right arm disability.

CONCLUSIONS

The evidence does not preponderate against the judgment of a

65% right arm vocational disability, so we affirm same.

The issue of the appropriateness of the employer's liability for the charges of Dr. Keith Brown was not really litigated, but simply judged to be owed by the appellants. At places in the record it is stated that all medicals had been paid. The judgment specifically holds that Dr. Brown's charges are to be paid. We know only that he was not approved by the company, that the injured employee sought his services after she had been laid off and when company doctors were saying that she was not injured, and that Dr. Brown, a specialist found her to be substantially injured. The record does not reflect any reason for this court to overrule this part of the trial court's judgment, as the question was not explicitly litigated below.

The judgment of the trial court is affirmed. Costs on appeal are assessed against the appellants. The case is remanded for enforcement of the judgment.

WILLIAM S. RUSSELL, RETIRED JUDGE

CONCUR:

ADOLPHO A. BIRCH, JR.,
CHIEF JUSTICE, SUPREME COURT

JOHN K. BYERS, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

<p>FILED</p> <p>October 17, 1996</p> <p>Cecil W. Crowson Appellate Court Clerk</p>

<p>HELEN CARROLL,</p> <p style="padding-left: 40px;">Plaintiff/Appellee</p> <p>vs.</p> <p>MOORE AND ASSOCIATES and TRAVELERS INSURANCE CO.,</p> <p style="padding-left: 40px;">Defendants/Appellants</p>	<p>} } } } } } }</p>	<p>COFFEE CIRCUIT No. 26,593 Below</p> <p>Hon. John W. Rollins, Judge</p> <p>No. 01S01-9512-CV-00221</p> <p>} AFFIRMED.</p>
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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

