SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE

DONNA FORRESTER,	)	
	)	
Plaintiff/Appellee,	)	**HUMPHREYS COUNTY**
	)	
VS.	)	**HON. ANTHONY L. SANDERS**
	)	**JUDGE**
OSHKOSH B'GOSH and	)	
TRAVELERS INSURANCE	)	**No. 01S01-9511-JP-00206**
COMPANY,	)	
	)	
Defendants/Appellants	)	

FOR APPELLANT:
Charles L. Hicks
Post Office Box 424
9 N. Court Square
Camden, TN 38320

FOR APPELLEES:
William Ritchie Pigue
William G. McCaskill, Jr.
One Union Street
Post Office Box 198169
Nashville, TN 37219-8169

MEMORANDUM OPINION

MEMBERS OF PANEL:

FRANK F. DROWOTA, III, JUSTICE
JOE C. LOSER, JR., SPECIAL JUDGE
CORNELIA A. CLARK, SPECIAL JUDGE

AFFIRMED AS MODIFIED **CLARK, SPECIAL JUDGE**

This worker's compensation appeal has been referred to the special worker's

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.

In this appeal, the employer contends the award of permanent partial disability benefits based on thirty (30%) percent[1] to the body as a whole is excessive. This panel concurs, and modifies the award of the trial court for the reasons stated below.

Plaintiff Donna Forrester was thirty-seven years old at the time of trial. She completed the tenth grade and received her G.E.D. in 1993 or 1994. Plaintiff began work for Oshkosh B'Gosh in McEwen, Tennessee in 1984. In 1989 she underwent successful bilateral carpel tunnel surgery and returned to work at Oshkosh as a sewing operator. In that job she was required to handle her own bundles of clothing and to pull up to seven hundred pairs of garments a day to sew.

In May 1993 plaintiff began to experience pain in her hands, arms, neck and left shoulder. Plaintiff reported these problems to her employer, who sent her to Dr. Noel R. Dominguez. He prescribed medication and returned her to work. the medication did not help. Plaintiff had severe headaches. Dr. Dominguez referred plaintiff back to Dr. Carl Hampf, who had performed the earlier carpel tunnel surgery. In August 1993 plaintiff saw Dr. Hampf, who ordered a nerve conduction study. The results were normal.

In the fall of 1993 plaintiff saw Dr. John McInniss, an orthopedic surgeon, who ordered an MRI and prescribed physical therapy. She saw Dr. McInniss four or five times. Following her final visit with Dr. McInniss, plaintiff never returned to any of the authorized treating physicians. Plaintiff testified that employer's

[1]In its oral findings the trial court referenced Dr. Barnett's finding of six (6%) percent permanent impairment and stated, "The Court finds the multiplier of six should apply in this case." However, the final order signed by the court awards benefits based on thirty (30%) percent.

representative Karen Jones advised her that her employer would not cover any further visits to a doctor. However, she admitted that on June 20, 1994 Oshkosh notified her in writing that she could return to either Dr. Hampf, Dr. McInniss, or Dr. David Knapp.

Plaintiff then sought treatment from Dr. Dickie Jackson, who ordered physical therapy and referred her to Dr. Michael Pagnani and Dr. Carl Misulis, orthopedic and neurological physicians. Dr. Misulis ordered a CT scan and received a copy of the MRI done by Dr. McInniss. He referred plaintiff to Dr. Joe Rowland in the same clinic, who performed a myelogram. That test result was normal.

Plaintiff last worked for Oshkosh in July 1994. She testified that performing that work caused her hands to cramp and swell, radiating pain through her arms, across the back of her neck, and into her head. She had developed a knot on her neck which still existed at trial. She testified that she could no longer perform work in a sewing factory because sitting for long periods of time was not possible. On the day she quit work for defendant she joined the certified nursing assistant program at Waverly Health Care. She has now completed this course, passed an examination, and become a certified nursing assistant. In September 1994 she began employment at Baptist Three Rivers Hospital. At the time of trial she was still working there part time while attending school to become a licensed practical nurse. She continues to experience problems. She can no longer perform factory work.

There is conflicting medical evidence. All diagnostic tests performed by employer-approved doctors were normal. None of the orthopedists or neurosurgeons who examined and treated plaintiff found any objective findings to substantiate her complaints. Except for plaintiff's testimony, no medical proof was tendered at trial regarding the reports, findings or opinions of any of the treating physicians, authorized or unauthorized. The only direct medical proof introduced at trial was the deposition of Dr. Robert Barnett, who saw plaintiff on one occasion,

October 21, 1994, at the request of her attorney. His notes make reference to the findings of other doctors. Dr. Barnett assigned a six (6%) percent impairment to the body as a whole based on his reading of an earlier MRI report showing a mild disc bulge at the C5-6 level. He did not review the actual MRI film, nor did he measure the plaintiff's range of motion in her neck. Dr. Barnett testified that plaintiff's EMG and nerve conduction studies were normal and that a myelogram of her neck also was normal. He further testified by deposition that the bulging disc at C5-6 was not causing any nerve root impingement. He also testified that he placed no restrictions on plaintiff's activity.

Appellate review is de novo upon the record of the trial court, accompanied by a presumption of the correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. §50-6-225(e)(2). This tribunal is required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. Wingert v. Government of Sumner County, 908 S.W.2d 921 (Tenn. 1995). We also make an independent assessment of the medical proof when testimony is in the form of depositions. Landers v. Fireman's Fund Insurance Company, 775 S.W.2d 355, 356 (Tenn. 1989).

An employee has the burden of proving every element of the worker's compensation case by a preponderance of the evidence. Tindall v. Wearing Park Association, 725 S.W.2d 935, 937 (Tenn. 1987). Causation and permanency must be shown by expert medical evidence except in the most obvious cases.

After carefully reviewing this record, we are of the opinion that the evidence preponderates against the finding of the trial court that plaintiff suffered a thirty (30%) percent permanent vocational disability to the body as a whole as a result of her work-related injury. The judgment of the trial court is modified to provide for an award based on eighteen (18%) percent to the body as a whole.

As modified, the judgment of the trial court is affirmed. The case is remanded to the trial court for the collection of costs and such other proceedings, if any, as may appropriate. Costs on appeal are taxed to the defendants/appellants.

_____
CORNELIA A. CLARK, SPECIAL JUDGE

CONCUR:

_____
FRANK F. DROWOTA, III, JUSTICE

_____
JOE C. LOSER, JR., SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

DONNA FORRESTER,	}	*H U M P H R E Y S*
JUVENILE/PROBATE	}	*No. P-0768-93 Below*
Plaintiff/Appellee	}	
	}	*Hon. Anthony L. Sanders,*
vs.	}	*Judge*
	}	
OSHKOSH B'GOSH and	}	*No. 01S01-9511-JP-00206*
TRAVELERS INSURANCE CO.,	}	
	}	
Defendants/Appellants	}	*AFFIRMED AS MODIFIED.*

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