

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.

The issue presented is whether the trial court erred in finding that the plaintiff sustained a 35 percent disability to his right arm as a result of a job-related accident.

The standard of review is *de novo* on the record accompanied with the presumption that the judgment is correct unless the evidence otherwise preponderates. TENN. R. APP. P. 13(d); T.C.A. § 50-6-225(e)(2).

The parties stipulated that the “plaintiff had incurred work-related bilateral carpal tunnel syndrome.” The finding of disability to the left arm is not contested on appeal; the defendant argues that a finding of 35 percent to the right arm is excessive.

The treating physician, Dr. Gorman, testified that the plaintiff’s right arm was asymptomatic following corrective surgery and without impairment.

Dr. Eric Roberts was employed by the plaintiff’s attorney to examine and evaluate the plaintiff. He is a board-certified physical medicine specialist. He testified that he performed extensive testing of the plaintiff, reviewed the voluminous medical reports and believed that the plaintiff had a 20 percent impairment to his right arm, based on AMA Guidelines. The deposition of Dr. Roberts is unusually lengthy, and we have considered it in depth. *Henson v. City of Lawrenceburg*, 851 S.W.2d 809, 812 (Tenn. 1993).

The plaintiff apparently had some non-job-related problems with his right elbow which are not fully recounted in the record. The defendant argues that most, if not all, of any impairment to the plaintiff’s right arm is attributable to these problems of which both experts were aware and considered. While we are able to assess the weight of testimony by deposition as well as the trial judge, it is not within our province to substitute our judgment for that of the trial judge; and we cannot find that the evidence preponderates against his finding that the plaintiff sustained a 35

percent permanent partial disability to the right arm. The judgment is affirmed at the costs of the appellant.

William H. Inman, Senior Judge

CONCUR:

E. Riley Anderson, Chief Justice

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

THOMAS H. HARTLEY,)	WASHINGTON CHANCERY
)	
Plaintiff-Appellee,)	No. 30056
)	
vs.)	No. 03S01-9603-CH-00019
)	
)	Hon. G. Richard Johnson
)	Chancellor
)	
SNAP-ON TOOLS CORPORATION,)	
)	
Defendant-Appellant.)	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 it, 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 on appeal are taxed to the defendant/appellant, Snap-On Tools Corporation and sureties Baker, Donelson, Bearman & Caldwell, for which execution may issue if necessary.

10/16/96

Joe C. Loser, Special Judge

