

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

**FILED**

October 17, 1996

Cecil W. Crowson  
Appellate Court Clerk

BARBARA ANN HOLT, )  
 )  
 )  
 Plaintiff/Appellee, )  
 )  
 v. )  
 )  
 ROYAL INSURANCE COMPANY )  
 and CKR INDUSTRIES, INC., )  
 )  
 Defendants/Appellants. )

FRANKLIN CHANCERY  
No. 01SO1-9505-CH-00071(A)  
No. Below 13,719  
HON. JEFFREY F. STEWART  
CHANCELLOR

**For the Appellant:**

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

Clinton H. Swafford  
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Winchester, Tennessee 37398

**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. Holt \$13,196.80 permanent partial disability benefits, representing eighty (80) weeks at the benefit rate of \$164.96 per week, or twenty percent (20%) to the body as a whole; and future medical benefits pursuant to the Tennessee Workers' Compensation Act. The trial court also allowed attorneys fees of twenty percent (20%) of the award, in the amount of \$2,639.36, 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 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. Holt 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. Holt 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. Holt was excessive and against the weight of the evidence. Ms. Holt is forty-five (45) years old and has a tenth grade education. Her work experience included working at the Jack Daniels Distillery, handling the personal business matters for an individual, and some training as a physical therapist.

At CKR, Ms. Holt's job involved trimming rubber to go around car windows. She was not directly engaged in the use of chemicals in performing this job, but was in the vicinity of chemicals. Ms. Holt began suffering from nausea, dizziness, hoarseness, and difficulty in breathing while on the job.

At trial Ms. Holt also testified that since her termination at CKR she has had lung problems and headaches that seemed to be triggered by fumes from a tow motor or video jet machine. She also testified that she has been diagnosed as having high blood pressure and was first diagnosed with this condition and placed on medication after her chemical exposure.

Ms. Holt was treated by Dr. Stensby who diagnosed her condition as a hypersensitive reaction to Mucote. Dr. Stensby testified that her condition was consistent with repeated exposure to Mucote. Dr. Stensby stated that Ms. Holt retained no permanent disability pursuant to the A.M.A. Guidelines as a result of this exposure. Dr. Stensby testified that Ms. Holt was sensitized to Mucote and could not now or in the future be exposed to it without risk of recurring symptoms.

Mr. Edwards, a vocational consultant with over twenty years experience, testified on Ms. Holt's behalf at trial. He testified that the chemicals causing Ms. Holt'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. Holt to assess industrial disability. His opinion was that she suffered a seventy (70%) to ninety percent (90%) 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. Holt suffered a twenty percent (20%) 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.

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Robert L. Childers, Special Judge

CONCUR:

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Frank F. Drowota, III, Justice

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John K. Byers, Senior Judge

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BARBARA ANN HOLT,  
Plaintiff/Appellee

} FRANKLIN CHANCERY  
No. 13,719 Below

vs.

} Hon. Jeffrey F. Stewart,  
Chancellor

ROYAL INSURANCE COMPANY  
and CKR INDUSTRIES, INC.,

} No. 01S01-9505-CH-00071(A)

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

