

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.

Plaintiff injured her right arm while using an air screwdriver on the assembly line at defendant's automotive products plant. The trial judge awarded her 90 percent permanent partial disability to the right arm and modified the average weekly wage and compensation rate.

We find the evidence preponderates against an award of 90 percent and in favor of an award of 50 percent permanent partial disability to the right arm and affirm the judgment of the trial court as so modified.

The plaintiff is 56 years old with a tenth grade education and a GED certificate. She had worked in factory assembly with defendant for 17 years at the time she was injured.

On July 13, 1992, while using an air screwdriver to build fuel pumps, she experienced severe pain. Her family practice physician diagnosed acute lateral epicondylitis caused by repetitive motion. He recommended that she change jobs so that she would not have to apply pressure with her arms. He placed her on light duty and prescribed physical therapy. Her pain complaints did not improve.

Dr. Fonda J. Bondurant, orthopedic surgeon, treated plaintiff for three months with cortisone injections. When plaintiff's complaints of pain still did not improve, he performed surgical release of the elbow in November of 1992. She was able to return to work in January of 1993, but worked long days and experienced recurrent pain. She was placed on a reduced work schedule of four hours per day.

Plaintiff reached maximum medical improvement on April 19, 1993, and Dr. Bondurant opined she would continue to have pain and would be restricted to work that did not require repetitive motion. He found no loss of grip strength, no sensory changes, full range of elbow motion, and 3 percent permanent partial disability to the body as a whole according to AMA Guidelines as a result of her residual pain.

Dr. Robert Paul Landsberg, orthopedic surgeon, conducted an independent medical examination for plaintiff's counsel on October 20, 1994. He diagnosed

continuing right lateral epicondylitis and bursitis in the right shoulder with mild cervical strain. He found mild decreased range of motion and grip strength deficit of 14.7 percent. He assessed an 11 percent upper extremity impairment according to AMA Guidelines. He further stated she would have work restrictions against repetitive flexion or extension of the wrist or elbow, use of the arm above the shoulder level, or lifting more than 5 pounds frequently or 10 pounds occasionally. He also limited her to no repetitive gripping or squeezing with the right hand.

Gordon Doss, Ph.D., Certified Rehabilitation Counselor, saw plaintiff and reviewed her medical records at her counsel's request on November 14, 1994. He assessed 70 - 75 percent vocational disability in the open labor market, and opined that her restrictions would eliminate all of the jobs plaintiff has done in the past.

Plaintiff testified that she continues to take pain medication and is unable to do most of her prior activities which require the use of her right arm. She is unable to lift anything with her right arm, cannot cook with it and cannot do any of her former jobs because they required use of both arms. However, she is able to do light housekeeping, wash dishes and drive a car.

The trial judge awarded plaintiff 90 percent permanent partial disability to the right arm. Our review is *de novo* on the record accompanied by a presumption that the findings of fact of the trial judge are correct unless the preponderance of the evidence is otherwise. TENN. CODE ANN. § 50-6-225(e)(2). In reviewing the evidence, we note that plaintiff's treating physician assessed 3 percent permanent partial disability to the body as a whole as a result of pain. The independent medical examiner assessed 11 percent upper extremity impairment. Plaintiff has at most a mild decreased range of motion and a grip strength deficit of less than 15 percent. We find the evidence preponderates against an award of 90 percent and in favor of an award of 50 percent permanent partial disability to the right arm and we so modify the trial court's award.

The defendant filed a Motion to Alter or Amend Judgment asking that the original compensation rate of \$276.78 be amended to either \$216.55 or \$260.35. There were obvious computational errors in the original \$276.78 rate which were

caused by counting vacation time as time worked. The trial court granted appellant's motion and reduced the compensation rate to \$256.36. Appellant now argues that the correct rate should be \$216.55, contending no credit should be given for work missed due to illness because plaintiff has not met her burden of proving entitlement. However, plaintiff testified at trial that she missed no time from work other than for sickness. Her credibility was not at issue.

We find the trial court correctly modified the compensation rate and affirm the judgment on this issue.

As modified, we affirm the judgment of the trial court, and tax costs to the appellee. The case is remanded to the trial court for entry of any orders necessary to carry out this judgment.

John K. Byers, Senior Judge

CONCUR:

Frank F. Drowota, III, Justice

Robert L. Childers, Special Judge