

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

TREVA MILAN,)
)
Plaintiff/Appellee)
)
v.)
)
QUEBECOR PRINTING (U.S.A.))
GROUP and LUMBERMENS MUTUAL)
CASUALTY COMPANY,)
)
Defendants/Appellants)

MONTGOMERY CIRCUIT
NO. 01S01-9601-CV-00005
Hon. James E. Walton

FILED

July 8, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

For the Appellant:

Lauren S. Disspayne
Richard C. Mangelsdorf, Jr.
Gregory H. Oakley
2300 First American Center
Nashville, TN 37238

For the Appellee:

Steve R. Darnell
101 North Third Street
Clarksville, TN 37040

MEMORANDUM OPINION

Members of Panel:

Justice Adolpho A. Birch, Jr.
Senior Judge John K. Byers
Special Judge William S. Russell

AFFIRMED

BYERS, Senior 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.

Plaintiff injured her arms and wrists while working for defendant in April 1994. The trial judge awarded her 35 percent permanent partial disability to each upper extremity.

We affirm the judgment of the trial court.

Plaintiff was working on an assembly line, feeding magazine pages into a sorter, when a wooden pallet slid onto her arms, causing pain. She was placed on light duty and wore wrist splints for at least a month, but when she returned to full duty, she had a recurrence of pain, numbness and tingling.

Dr. W. Cooper Beazley, orthopedic surgeon, diagnosed plaintiff with overuse syndrome in both hands and told her to consider changing to a job where she would not have to perform rapid, repetitious work with her hands. However, he did not assess any medical impairment under AMA Guidelines because the Guides do not provide for a permanent impairment rating for overuse syndrome.

Dr. Lloyd Walwyn, orthopedic surgeon, conducted an independent medical examination including objective testing. He diagnosed cumulative trauma disorder with mild bilateral carpal tunnel syndrome and assessed 28 percent permanent partial impairment to each upper extremity.

The employer made efforts to put plaintiff back to work with her post-injury limitations, but there was no work available at the factory that she was able to do.

Plaintiff is 26 years old with a high school education and work experience mostly in factory work. The trial judge found that the injury plaintiff sustained reduced her ability to compete in the open job market because it permanently affected her use of her hands. He also found her testimony that she has pain to be convincing.

Our review is *de novo* upon the record accompanied by the 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).

There must be medical evidence to show an impairment exists, unless the impairment is obvious, to support an award of permanent disability. However, the trial judge may, when there is a difference in opinion between the experts, accept the opinion of one or more over the opinion of another or others. *Johnson v. Midwesco, Inc.*, 801 S.W.2d 804 (Tenn. 1990). The testimony of expert witnesses must be considered in conjunction with the employee and other lay witnesses. *Thomas v. Aetna Life Ins. Co.*, 812 S.W.2d 278 (Tenn. 1991).

The trial judge considered the deposition testimony of both plaintiff's treating physician and her independent medical examiner and found that the two were not as far apart as it first seemed. Both doctors said she would have difficulty doing repetitive motions with her hands, although only one assessed permanent disability. The plaintiff's testimony about her difficulties and pain was credible and, considering all the evidence, the trial judge found her to have 35 percent permanent partial disability to each upper extremity.

We find the preponderance of the evidence supports the decision of the trial court, which is affirmed. Costs are assessed to the appellant and the case is remanded.

John K. Byers, Senior Judge

CONCUR:

Adolpho A. Birch, Jr., Justice

William S. Russell, Special Judge