

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT KNOXVILLE MAY 1996 SESSION

**FILED**

July 31, 1996

Cecil Crowson, Jr.  
Appellate Court Clerk

LARRY H. MULL,	)	HAMILTON CIRCUIT
	)	
Plaintiff/Appellant	)	NO. 03S01-9512-CV-
00135	)	
	)	
v.	)	HON. L. MARIE WILLIAMS
	)	JUDGE
TRANSPORT SOUTH, INC.,	)	
	)	
Defendant/Appellee	)	

For the Appellant:

For the Appellee:

Glenn R. Copeland  
Copeland & Whittenburg  
3505 Brainerd Road  
Chattanooga, TN 37411  
PLLC

C. Douglas Dooley  
D. Scott Bennett  
Leitner, Warner, Moffitt, Williams  
Dooley & Napolitan,

Third Floor, Pioneer Building  
Chattanooga, TN 37402

MEMORANDUM OPINION

Members of Panel:

Justice Penny J. White  
Senior Judge John K. Byers  
Special Judge Joseph C. Loser

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.

The employee/plaintiff injured his right arm while working as a truck driver for defendant.

The trial judge awarded plaintiff 12 percent disability to the right arm.

We find that the evidence preponderates against an award of 12 percent and in favor of an award of 20 percent permanent partial disability to the right arm and we affirm the judgment of the trial court as so modified.

On February 19, 1993, Plaintiff was trying to pry loose a stuck fuel valve on the employer's fuel truck so that he could fill the truck with jet fuel when his wrist "popped" and started tingling. He went to the emergency room that day for treatment, where he was given a forearm splint. Three days later he saw orthopedic surgeon Dr. Alan Odom, who placed plaintiff on light duty for ten days and told him to

return to regular duty after ten days.

Plaintiff continued to have severe pain and a sedimentation rate test indicated inflammation, so Dr. Odom ordered a bone scan on March 1, 1993, which showed post-traumatic change. Dr. Odom suspected reflex sympathetic dystrophy and found that plaintiff had muscle atrophy. He ordered physical therapy, which improved plaintiff's condition but left him with range of motion less than 50 percent of normal by August 1993. Dr. Odom opined plaintiff had reached maximum medical improvement and assessed 23 percent permanent partial disability to the right upper extremity which, under AMA Guidelines, converts to 14 percent to the body as a whole.

Dr. Neil H. Spitalny, orthopedic surgeon, saw plaintiff on July 25, 1994 for an independent medical evaluation. His examination revealed that plaintiff had slight swelling of the arm with no muscle atrophy. He had pain on rotation of the hand and decreased range of motion, but normal range of motion in the fingers. He found no evidence of reflex sympathetic dystrophy. His review of x-rays taken at the time of plaintiff's injury revealed mild to moderate post-traumatic bone changes. He assessed 8 percent permanent partial disability to the upper extremity based on decreased range of motion, but opined this was mostly related to arthritic changes rather than from the injury.

Our review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a

presumption of the correctness of its finding, unless the preponderance of the evidence is otherwise. TENN. CODE ANN. § 50-6-225(3)(2). *Stone v. City of McMinnville*, 896 S.W.2d 584 (Tenn. 1991).

We examine in depth the trial court's factual findings and conclusions and are not bound by the trial court's factual findings, but instead conduct an independent examination to determine where the preponderance of the evidence lies. *Galloway v. Memphis Drum Serv.*, 822 S.W.2d 584 (Tenn. 1991).

In making determinations, the court shall consider all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job opportunities and capacity to work at types of employment available in claimant's disabled condition. TENN. CODE ANN. § 50-6-241(a)(1).

Plaintiff is 50 years old with a tenth grade education and work experience in carpet mills, painting, general labor and truck driving. He is right-hand dominant. He testified that since this injury, he has trouble writing bills of lading and other paperwork on the job because his right hand is weaker and he cannot hold a pen. He cannot lift objects as well as before and often drops them. He must use lighter hoses than he used before, and such hoses have been secured for him at his new job. He has pain in his wrist and arm, increasing as the day goes on, so that he must take pain medication every evening.

We find that the evidence preponderates against an award of 12 percent and in favor of 20 percent vocational disability to the

right arm, and we so modify the judgment of the trial court. As modified, the judgment is affirmed. Costs are assessed to the appellant.

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CONCUR:

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John K. Byers, Senior Judge

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Penny J. White, Justice

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Joseph C. Loser, Special Judge



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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 facts 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 appellant, Larry H. Mull, and surety, Glenn R. Copeland, for which execution may issue.

07/31/96