IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

JACKSON, JANUARY 1996 SESSION

FILED

July 15, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

CECELIA TEAGUE	)	
	)	
Employee/Appellee,	)	**HENRY CIRCUIT NO. 42**
	)	
V.	)	**Hon. Julian P. Guinn,**
	)	**Judge**
TECUMSEH PRODUCTS COMPANY	)	
	)	**02S01-9509-CV-00081**
Appellant.	)	

FOR THE APPELLANT:

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FOR THE APPELLEE:

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MEMORANDUM OPINION

Opinion mailed: June 3, 1996

MEMBERS OF PANEL

Lyle Reid, Associate Justice, Supreme Court
Joe C. Loser, Jr., Retired Judge
Joe H. Walker, III, Circuit Judge

AFFIRMED AS MODIFIED

JOE H. WALKER, III
Judge

Teague v. Tecumseh Products Co.

MEMORANDUM OPINION

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.

Employer appeals from an award by the trial court of thirty percent (30%) permanent partial disability to both upper extremities of employee.

Findings of Fact

Appellate review is de novo upon the record of the trial court, accompanied by a presumption of the correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225 (e)(2).

There were no written findings of fact by the trial court. The statement of evidence contained no findings stated by the trial court at trial, and the transcript contains no written findings of fact, other than a finding of permanent partial disability of thirty percent to both upper extremities.

This tribunal is required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. Galloway v. Memphis Drum Service, 822 S.W.2d 584, 586 (Tenn. 1991).

Employee is forty years of age with a high school education and has worked at Tecumseh Products Company for approximately sixteen years. Her work at employer/company required repetitive use of her hands, wrists, and arms eight hours a day.

In May, 1993, she reported pain in her wrists to her supervisor, and was eventually seen by doctors while she continued to work. Dr. John Everett took her off regular duty and placed her on light duty. Her employer had no light duty work, so she began receiving worker's compensation benefits from December, 1993, until

August, 1994, while she was off work. During that time she was also expecting, and delivered a child in June, 1994.

She returned to full duty with employer in August, 1994, at a different job. This work was lighter than her previous work. She earns approximately the same amount as before her leave of absence. No evidence was presented with regard to decreased earning capacity.

Employee is right handed, and has sharp pains in her wrists. Her right hand goes to sleep, and she wears splints on her hands. Pain in her wrist decreased after the delivery of her child, and she has not seen a doctor for this condition of her wrist since November, 1994.

She is not taking any prescription medication, but does take Advil on occasions. The pain in her wrist is not bad enough for her to have surgery.

Since she returned to work in August, 1994, employee has worked full time without any absenteeism, has been able to make production, and is considered a good employee.

Dr. Joseph C. Boals, III, testified by deposition. The medical reports of Dr. Vince Tusa, Dr. H. Glenn Barnett, and Dr. John Everett were admitted by stipulation. The nerve conduction studies of Dr. Ron Bingham were admitted by stipulation.

Dr. Vince Tusa of Paris initially treated employee for her condition in her wrist. He attempted conservative treatment, and then she was referred to Dr. Glenn Barnett with Semmes Murphy Clinic of Jackson. Dr. Barnett found the neurological examination to be normal. He thought she had an industrial overuse syndrome. He did not think she would make dramatic improvement if she had surgical intervention. He recommended she wear wrists splints at night, to try to change her job if possible to one where she did not have to do rapid production type work.

She was referred to Dr. John Everett, of the West Tennessee Bone and Joint Clinic in Jackson, who diagnosed her condition as DeQuervain's tendinitis on the left wrist. Due to employee's pregnancy, he did not recommend surgery. She was placed on light duty, and since the plant had none, she was off work until after the delivery of her child. After she returned to work, she continued to be bothered by

the DeQuervain's on the left wrist, and began developing more carpal tunnel symptoms. After consulting with her, Dr. Everett did not feel that surgery was recommended at that point in September, 1994. She was to sleep in a wrist splint. He released her to continue work, and return as needed. He did not think she had any permanent impairment.

She was seen by Dr. Joseph Boals, on November 8, 1994, for an independent medical evaluation. He diagnosed her condition as carpal tunnel syndrome in both wrists. He felt that was caused by the repetitive work done for employer. He testified that using the AMA Guidelines, she would have a twenty percent permanent impairment rating in each upper extremity. He testified that this syndrome comes and goes in most patients, and that pregnancy is sometimes a causative reason for carpal tunnel syndrome, and can certainly make an existing carpal tunnel syndrome worse. Employee did not tell Dr. Boals about her pregnancy in December of 1993, and delivering a child in June of 1994. Dr. Boals did not test employee for DeQuervain's tenosynovitis.

Disability Award

The opinions of qualified experts with respect to a claimant's clinical or physical impairment are factors which the courts will consider along with all other relevant facts and circumstances, but it is for the courts to determine the percentage of the claimant's industrial disability. Bailey v. Knox Co., 732 S.W.2d 597 (Tenn. 1987).

Dr. Boals gave his opinion with regard to permanent impairment to each arm of employee after a one-time examination. He diagnosed her condition as bilateral carpal tunnel syndrome and recommended surgery. Employee had advised Dr. Boals that she had a positive nerve conduction study, when in fact she had two studies done which were substantially normal on both occasions, the last study being equivocal on the right. The last test was conducted in September, 1994, and Dr. Boals' examination was in November, 1994. Employee had failed to advise Dr. Boals that she had been pregnant, and had delivered a child in June, 1994, and Dr.

Boals testified that pregnancy is sometimes a causative reason for carpal tunnel syndrome, and can certainly make an existing carpal tunnel syndrome worse.

Dr. John Everett, who treated employee for several months, was of the opinion that she did not sustain any permanent impairment for her wrists or arm conditions up to the point of his last seeing her. That her condition had improved after pregnancy, and was such that surgery was not indicated.

Dr. Barnett also treated and followed the employee as a patient, and concurred with the opinion of Dr. Everett.

It appears from the record that the trial court gave great weight to the opinion of Dr. Boals and very little weight to that of the treating physicians. The Panel is persuaded that the circumstances of this case require that greater weight be given to the opinion of the treating physicians, particularly considering the recovery employee has enjoyed. We find that the evidence preponderates against an award based on thirty percent to the upper extremities, and in favor of an award based on twenty percent to both arms.

The judgment is modified accordingly. Costs on appeal are taxed to the defendants-appellants.

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JOE H. WALKER, JUDGE

CONCUR:

_____
LYLE REID, ASSOCIATE JUSTICE

_____
JOE C. LOSER, JR., JUDGE