

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT JACKSON
(April 18, 1996 Session)

SANDRA WHITEHEAD,) LAUDERDALE CHANCERY
)
Plaintiff-Appellee,) Hon. Dewey C. Whitenton,
) Chancellor.
v.)
) No. 02S01-9511-CH-00118
EXPRESS SERVICES, INC.,)
)
Defendant-Appellant.)

FILED

August 28, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

For Appellant:

Sam L. Crain, Jr.
Laurie Meehan
Burch, Porter & Johnson
Memphis, Tennessee

For Appellee:

Ricky L. Boren
Hill Boren P.C.
Jackson, Tennessee

MEMORANDUM OPINION

Members of Panel:

Lyle Reid, Associate Justice, Supreme Court
John K. Byers, Senior Judge
Joe C. Loser, Jr., Special Judge

AFFIRMED AS MODIFIED

Loser, 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. section 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. In this appeal, the employer, Express Services, contends the trial court's award of permanent partial disability benefits on the basis of eighty percent permanent partial disability to the left arm is excessive. The panel has concluded that the award should be modified to provide permanent partial disability benefits on the basis of fifty percent to the left arm.

At the time of the trial, the claimant, Sandra Whitehead, was thirty-five years old and had a GED. She has worked on an assembly line and as a sewing machine operator. She began working for the employer as a temporary employee on June 22, 1994. On July 1, 1994, she accidentally cut her left wrist while opening boxes with a box cutter.

She was first referred to Dr. Charles Stewart, who diagnosed a laceration of the left wrist. He sutured the laceration, but later referred her to Dr. Anthony Segal, a neurosurgeon, when she continued to complain.

Dr. Segal conducted nerve conduction studies and found mild nerve damage and possible reflex dystrophy. Dr. Segal testified by deposition but assigned no permanent impairment.

The claimant went to Dr. James Varner, an orthopedic surgeon. Dr. Varner diagnosed a partial sensory nerve laceration of the median nerve and reflex dystrophy syndrome. He treated her condition with medication, physical therapy and a stellate block, and assessed a permanent anatomical impairment of fifteen percent to the left arm. The doctor advised her to avoid repetitive use of the left arm, but said she could perform jobs that did not require such repetitive use. He said she was not impaired from pronating and supinating her wrist.

A physical therapist testified that functional capacity evaluation tests were invalid because the claimant refused to exert maximum effort. The claimant testified that her arm stays cold all the time and that she is unable to perform household chores such as twisting caps from jars and opening doors.

The trial court awarded permanent partial disability benefits on the basis of eighty percent to the left arm. Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. section 50-6-225(e)(2).

In determining the extent of vocational disability, the courts must consider many factors, including job skills, education, age, training, duration of disability and job opportunities for the disabled, in addition to medical or clinical impairment. Worthington v. Modine Mfg. Co., 798 S.W.2d 232, 234 (Tenn. 1990). As noted in Corcoran v. Foster Auto GMC, Inc., 746 S.W.2d 452, 458 (Tenn. 1988), the question is not whether the employee is able to return to the work being performed when injured, but whether the employee's earning capacity in the open labor market has been diminished by the residual impairment caused by a work-related injury.

There is little or no proof in this record regarding the claimant's diminished job opportunities. The panel thus finds that the evidence preponderates against the trial court's award and in favor of one based on fifty percent to the left arm.

The judgment of the trial court is modified accordingly. Costs on appeal are taxed to the parties, one-half each.

Joe C. Loser, Jr., Judge

CONCUR:

Lyle Reid, Associate Justice

John K. Byers, Judge