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

THOMAS R. MURRAH,	)	
	)	
Plaintiff/Appellee,	)	**SHELBY COUNTY**
	)	
VS.	)	**HON. GEORGE H. BROWN, JR.**
	)	**JUDGE**
AETNA LIFE AND CASUALTY,	)	
	)	**No. 02S01-9607-CV-00065**
Defendant/Appellant.	)	

FILED

February 21, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

FOR APPELLANT:
Karen R. Cicala
80 Monroe Avenue
Suite 410
Memphis, TN 38103

FOR APPELLEE:
A. Wilson Wages
Alice L. Gallaher
8120 Highway 51 North
#7
Millington, TN 38053

MEMORANDUM OPINION

MEMBERS OF PANEL:

LYLE REID, JUSTICE
JOE C. LOSER, JR., SPECIAL JUDGE
CORNELIA A. CLARK, SPECIAL JUDGE

AFFIRMED **CLARK, SPECIAL JUDGE**

This worker's compensation appeal has been referred to the special worker's 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.

In this appeal, the employer contends that the award of permanent partial disability benefits based on twenty (20%) percent to each upper extremity is excessive. The employer also questions the trial court's decision to commute to a lump sum the payment of forty (40%) percent of the total award in addition to attorney fees. This panel finds that the judgment should be affirmed.

No transcript of the hearing is included in the record. Instead, a statement of evidence was submitted by defendant. Plaintiff filed an objection to that statement and a proposed supplement. The record does not reflect that the trial court ever specifically resolved this dispute as required by our rules. T.R.A.P. 24(e). Instead, the trial court entered an "Order Approving Record" wherein the parties agreed that "the record in this matter is complete and should be sent to the Court of Appeals". This issue has not been pursued by either party on appeal. It is with this procedural background that we address the issues before the court.

Plaintiff Thomas R. Murrah was forty-one (41) years old at the time of trial. He was the single father of a seventeen-year-old son. He began working at Delta International in 1981, changing jobs several times over the years. In 1993 he began using a computer for the office work he performed in the technical service department. He typed for up to five hours per day.

Sometime between February and May 1993 plaintiff began experiencing problems with his right hand. In June 1993 he was transferred back into the plant. On June 30, 1993, he had trouble while writing with a pen. Plaintiff saw his personal physician, Dr. Brody, who gave him a splint to wear at night and told him

to stay off his wrist.

When plaintiff returned to work the next day he advised his supervisor, Bill Walker, of the visit to the doctor. Walker then sent plaintiff to the Baptist Minor Medical Center. Ten days later plaintiff began having problems with his left hand. His job at that time included using screwdrivers and working with wire nuts. The professionals at Baptist Minor Medical Center referred plaintiff to Dr. William Harold Knight. At the request of his attorney plaintiff also consulted Dr. William L. Bourland, who provided plaintiff with cortisone injections which seemed to help his condition.

During the course of this medical treatment plaintiff saw Drs. Brody and Bourland once each. He saw Dr. Knight three times, had a nerve conduction study, and visited the Baptist Minor Medical Center approximately three times.

At the request of his attorney plaintiff visited Dr. Regina Lindsey once for evaluation in September 1995.

Plaintiff continues to perform the same job at Delta International. He has had no surgery on either wrist. He has a master of science degree in business with a concentration in management, and hopes to go into the management field. He also continues to be able to perform auto mechanic work on his own car.

No medical depositions were taken. The Standard Form Medical Report for Industrial Injuries completed by William L. Bourland on April 27, 1995, diagnosed defendant as having bilateral carpal tunnel syndrome. Dr. Bourland assigned no permanent impairment rating. He did identify restrictions as to standing and sitting.

The Standard Form Medical Report for Industrial Injuries completed by Dr.

Regina Lindsey September 21, 1995, assigned an impairment rating of ten (10%) percent for each upper extremity, or twelve (12%) percent to the body as a whole. Dr. Lindsey noted that plaintiff had limited functional capacity in handling, fingering and feeling. She advised him to avoid such occupations as hammering, holding a vibrating piece of machinery in the hands, or striking something with the fingertips.

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). This tribunal is required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. Wingert v. Government of Sumner County, 908 S.W.2d 921 (Tenn. 1995).

Once the causation and permanency of an injury have been established by expert testimony, the trial judge may consider many pertinent factors, including age, job skills, education, training, duration of disability and job opportunities for the disabled, in addition to anatomical impairment, for the purpose of evaluating the extent of a claimant's permanent disability. Tenn. Code Ann. §50-6-241(a)(2); McCaleb v. Saturn Corporation, 910 S.W.2d 412 (Tenn. 1995). We have carefully examined the record with respect to those factors and are not persuaded that the evidence preponderates against the findings of the trial court with respect to the extent of the claimant's permanent disability.

Defendant next contends the trial judge erred in commuting forty (40%) percent of the award, after attorney fees, to a lump sum. Plaintiff testified at trial that during the course of the lawsuit he had incurred credit card debts and legal payments for work involved in getting custody of his children. He therefore sought a lump sum commutation of the award granted to him.

Permanent partial disability benefits may, in the discretion of the trial judge,

be awarded in a lump sum. Tenn. Code Ann. §50-6-229(a). The statute requires the court to consider whether the commutation would be in the best interest of the employee, and the ability of the employee wisely to manage and control any commuted award. We find that the evidence does not preponderate against the trial court's determination to commute forty (40%) percent of the award, after calculation of the attorney's fee. We also note that a considerable amount of the award will have accrued in any event by the time this judgment becomes final.

The judgment of the trial court is affirmed. The case is remanded to the trial court for such further proceedings, if any, as may be appropriate. Costs on appeal are taxed to the defendant-appellant.

_____
CORNELIA A. CLARK, SPECIAL JUDGE

CONCUR:

_____
LYLE REID, JUSTICE

_____
JOE C. LOSER, JR., SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE

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THOMAS R. MURRAH,	(	
	(	
Plaintiff-Appellee,	(	
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	(	
	(	
v.	(	Shelby County
	(	No. 64302-6 T.D.
	(	
	(	Hon. George H. Brown, Jr.,
AETNA LIFE AND CASUALTY,	(	Judge
	(	
	(	S. Ct. No. 02S01-9607-CV-00065
	(	
Defendant-Appellant.	(	AFFIRMED.

JUDGMENT ORDER

This case is before the Court upon motion for review pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), 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 motion for review is not well taken and should be denied; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by the defendant-appellant, for which execution may issue if necessary.

IT IS SO ORDERED this ___ day of February, 1997.

PER CURIAM

Reid, J. - Not participating.