

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED

January 3, 1997

Cecil W. Crowson
Appellate Court Clerk

MARY POTTS,)	Lawrence Chancery
)	No. 6805-94
Plaintiff/Appellee,)	
)	
VS.)	Hon. William B. Cain, Judge
)	
)	No. 01-S-01-9604-CH-00064
TRIDON, INC. and ROYAL)	
INSURANCE COMPANY,)	
)	
Defendants/Appellants.)	Affirmed as Modified.

JUDGMENT ORDER

This case is before the Court upon a 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 one-half by the plaintiff/appellee and one-half by the defendants/appellants and their surety, for which execution may issue if necessary.

IT IS SO ORDERED this 3rd day of January, 1997.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE
(October 22, 1996 Session)

FILED

January 3, 1997
LAWRENCE CHANCERY
Cecil W. Crowson
Appellate Court Clerk

MARY POTTS,)
)
Plaintiff-Appellee,)
)
v.)
)
TRIDON, INC. and ROYAL)
INSURANCE COMPANY,)
)
Defendants-Appellants.)

LAWRENCE CHANCERY
Cecil W. Crowson
Appellate Court Clerk
Hon. William B. Cain,
Judge.
No. 01S01-9604-CH-00064

For Appellant:

For Appellee:

David T. Hooper
Hooper & Hooper
Brentwood, Tennessee

Samuel B. Garner
Henry, Henry, Stack, Garner & Speer
Pulaski, Tennessee

MEMORANDUM OPINION

Members of Panel:

Frank F. Drowota, III, Associate Justice, Supreme Court
Ben H. Cantrell, Special Judge
Joe C. Loser, Jr., Special Judge

AFFIRMED AS MODIFIED

Loser, Judge

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. section 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. In this appeal, the employer and its insurer contend the award of permanent partial disability benefits based on sixty percent to both arms is excessive. As discussed below, the panel has concluded the award should be modified to one based on forty percent to both arms.

At the time of the trial, the employee or claimant, Potts, was thirty-six years old. She possesses a GED and average intelligence. She has worked as a sewing machine operator, as a truck driver, in a convenience market and on an assembly line. She gradually developed carpal tunnel syndrome while working on an assembly line at Tridon. She has also worked for Tridon as an assistant facilitator.

She became disabled to work in March of 1993 and was referred to an orthopedic surgeon, who surgically repaired both wrists. Ms. Potts was able to return to light duty on July 14, 1993.

The operating surgeon testified that she is able to work but should avoid repetitive use of the hands and the use of any vibrating tools, such as air guns. From appropriate guidelines, the doctor assigned a permanent impairment rating of ten percent to each arm.

Ms. Potts continues to have pain in both wrists and loss of strength in both hands. A vocational expert, employed by the claimant for an evaluation, estimated her vocational impairment at more than ninety percent. The claimant returned to work but has since quit, apparently because of later occurring injuries not related to her job.

The trial court awarded permanent partial disability benefits based on sixty percent to both arms. Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. section 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. Galloway v. Memphis Drum Service, 822 S.W.2d 584 (Tenn. 1991).

Once the causation and permanency of an injury have been established by expert testimony, the courts 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. section 50-6-241(a)(2).

From our examination of the evidence, and in light of the factors to be considered in this case, we find the evidence to preponderate against an award based on sixty percent to both arms and in favor of one based on forty percent to both arms. The judgment is modified accordingly.

As modified, the judgment of the trial court is affirmed. Costs on appeal are taxed one-half to the plaintiff-appellee and one-half to the defendants-appellants.

Joe C. Loser, Jr., Judge

CONCUR:

Frank F. Drowota, III, Justice

Ben H. Cantrell, Judge