

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT KNOXVILLE
(December 3, 1996 Session)

FILED
March 4, 1997
Cecil Crowson, Jr.
Appellate Court Clerk

GWENDOLYN CHESNEY,) KNOX CIRCUIT
)
Plaintiff-Appellant,) Hon. Wheeler Rosenbalm,
) Judge.
v.)
) No. 03S01-9602-CV-00014
KNOXVILLE GLOVE CO. and)
CIGNA INSURANCE CO.,)
)
Defendants-Appellees.)

For Appellant:

James L. Milligan, Jr.
Gary T. Dupler
Finley
Milligan & Associates
Knoxville, Tennessee

For Appellees:

Rebecca B. Murray
Kennerly, Montgomery &
Knoxville, Tennessee

MEMORANDUM OPINION

Members of Panel:

E. Riley Anderson, Associate Justice, Supreme Court
Roger E. Thayer, 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 employee contends the evidence preponderates against the trial court's award of permanent partial disability benefits based on twenty-five percent to the body as a whole and in favor of a higher award. As discussed below, the panel has concluded the award should be modified to provide for benefits based on fifty percent to the body as a whole.

The employee or claimant, Chesney, is fifty-six years old and has a tenth grade education, with no skills. After working for Knoxville Glove Company for nearly twenty-seven years sewing, piecing, patching and hemming gloves, she developed disabling pain in her neck and right arm.

She was referred to an orthopedist, Dr. Burns, who diagnosed cervical strain and radiculopathy caused or aggravated by work and superimposed on pre-existing cervical disc disease. He also ordered nerve testing which revealed right carpal tunnel syndrome. Carpal tunnel surgery was performed but failed to relieve her symptoms. Disc surgery was performed on her neck.

The doctor assigned a permanent impairment rating of ten percent to the whole body from the cervical injury and an additional ten percent to the upper extremity from the carpal tunnel syndrome. The claimant is permanently restricted from any work requiring repetitive use of the hands and arms or heavy lifting. A vocational expert estimated her vocational disability at eighty to ninety percent.

The trial judge found insufficient medical proof of any causal connection between the claimant's carpal tunnel syndrome and her work, but awarded permanent partial disability benefits based on twenty-five percent to the body as a whole for the cervical injury. 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 50-6-224(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). We are as well situated to gauge the weight, worth and significance of deposition testimony as the trial judge. Seiber v. Greenbrier Industries, Inc., 906 S.W.2d 444 (Tenn. 1995).

The only medical proof of causation found in the record is the deposition of Dr. Burns, which contains the following question and answer, after the doctor has stated his diagnoses and impairment ratings:

Q. Do you have an opinion, within a reasonable degree of medical certainty, based on the history which you got from Ms. Chesney as well as you diagnostic findings, as to what may have caused this condition?

A. By history her condition was related to her work. There were some underlying abnormalities that were aggravated by her work, to be more specific.

We are persuaded by the above testimony and the undisputed proof of the nature of the claimant's work and the period of time during which she was subjected to repetitive trauma to her hand and wrist that the proof is sufficient to establish the required causal connection between that work and her carpal tunnel syndrome, there being no countervailing medical proof. Absolute

certainty on the part of a medical expert is not necessary to support a workers' compensation award. McCaleb v. Saturn Corp., 910 S.W.2d 412 (Tenn. 1995).

The opinions of qualified experts with respect to a claimant's medical impairment and vocational disability are factors to be considered along with other factors, including the employee's age, education and job skills, in determining the extent of the claimant's permanent industrial disability. Id. Moreover, it is well established in Tennessee law that an employer takes an employee as she is and assumes the risk of having a weakened condition aggravated by an injury which might not affect a normal person. Fink v. Caudle, 856 S.W.2d 952 (Tenn. 1993).

From our independent examination of the record and a consideration of the pertinent factors established by the proof, we find the evidence to preponderate against an award based on twenty-five percent to the body as a whole and in favor of one based on fifty percent to the body as a whole. The judgment is modified accordingly.

As modified, 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 necessary. Costs on appeal are taxed to the defendants-appellees.

Joe C. Loser, Jr., Judge

CONCUR:

E. Riley Anderson, Associate Justice

Roger E. Thayer, Judge

IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE

GWENDOLYN CHESNEY,)	KNOX CIRCUIT
)	No. 3-461-94
Plaintiff/Appellant)	
)	
vs.)	Hon. Wheeler Rosenbalm,
)	Judge
)	
)	
)	03S01-9602-CV-00014
KNOXVILLE GLOVE CO. and,)	
CIGNA INSURANCE CO.,)	
)	
Defendants/Appellees.)	

JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Worker' Compensation 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 act 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 defendants/appellees, for which execution may issue if necessary.

