

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT JACKSON
(November 27, 1996 Session)

FILED

January 23, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

VICKIE L. PARKS ,	)	SHELBY CHANCERY
)	
Plaintiff-Appellant,	)	Hon. Neal Small,
	)	Judge.
v.)	
	)	No. 02S01-9605-CH-00046
BROTHER INDUSTRIES, USA, INC.,))	
)	
Defendant-Appellee.)	

For Appellant:

James F. Schaeffer, Jr.
Memphis, Tennessee

For Appellee:

Betty Ann Milligan
Angela Merideth Jones
Memphis, Tennessee

MEMORANDUM OPINION

Members of Panel:

Lyle Reid, Associate Justice, Supreme Court
Joe C. Loser, Jr., Special Judge
Cornelia A. Clark, Special Judge

AFFIRMED

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 injured employee or claimant, Parks, contends the evidence preponderates against the trial court's award of permanent partial disability benefits based on fifteen percent to the right arm for her repetitive trauma injury, and in favor of one based on seventy-five percent to the right arm. The panel has concluded that the judgment of the trial court should be affirmed.

The claimant is forty-one years old and has a tenth grade education and a General Education Diploma. She gradually developed right carpal tunnel syndrome from repetitive use of her right hand and wrist in a typewriter production line.

After being treated or examined by six different doctors, none of whom satisfactorily diagnosed and treated her condition, she saw Dr. James T. Galyon, who surgically repaired her right wrist, returned her to work after a period of recovery, and estimated her permanent impairment at five percent to the right hand and wrist or four percent to the right upper extremity. The claimant returned to work for the employer for a year and a half, but has since quit because of another injury to another member.

She later saw Dr. Joseph Boals for an evaluation. Dr. Boals assigned a permanent impairment rating of ten percent to the right upper extremity and restricted her from any work which would require repetitive use of or heavy lifting with the right arm, but otherwise encouraged her to work.

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

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. section 50-6-241(a)(2). From our independent examination of the record and a consideration of those factors, to the extent they were established by the proof at trial, we do not find the evidence to preponderate against the findings of the trial judge.

The judgment of the trial court is accordingly affirmed. Costs on appeal are taxed to the plaintiff-appellant.

Joe C. Loser, Jr., Judge

CONCUR:

Lyle Reid, Associate Justice

Cornelia A. Clark, Judge

IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

VICKIE L. PARKS,	)	SHELBY CHANCERY
	)	NO. 102722-1
Plaintiff/Appellant,)	
	)	Hon. Neal Small,
vs.	)	Judge
)	
BROTHER INDUSTRIES, USA, INC.,	)	NO. 02S01-9605-CH-00046
)	
Defendant/Appellee.	)	AFFIRMED.

<p>FILED</p> <p>January 23, 1997</p> <p>Cecil Crowson, Jr. Appellate Court Clerk</p>

JUDGMENT ORDER

This case is before the Court upon 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 Memorandum Opinion of the Panel should be accepted and approved; 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 Appellant, and surety, for which execution may issue if necessary.

IT IS SO ORDERED this 23rd day of January, 1997.

PER CURIAM

(Reid, J., not participating)

