IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE JANUARY 1997 SESSION

JAMES K. RINGROSE,	)	WILLIAMSON CHANCERY
	)	
Plaintiff/Appellant	)	NO. 01S01-9607-CH-00141
	)	
v.	)	HON. DONALD P. HARRIS,
	)	CHANCELLOR
SATURN CORPORATION,	)	
	)	
Defendant/Appellee	)	

For the Appellant:

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For the Appellee:

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M E M O R A N D U M O P I N I O N

Members of Panel:

Frank F. Drowota, III, Justice
John K. Byers, Senior Judge
William H. Inman, Senior Judge

AFFIRMED
AND REMANDED

BYERS, Senior 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. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

Plaintiff sustained deQuervain's disease, an inflammatory condition which first manifested itself in November, 1992, while doing repetitive factory work for defendant. The trial court awarded 10 percent permanent partial disability to the right upper extremity for his right wrist injury. The plaintiff also developed an impingement injury to his right shoulder in August 1993. The trial court awarded 10 percent permanent partial disability to the body as a whole for this injury.

We affirm the judgment of the trial court.

Plaintiff first reported severe pain in his right wrist to the medical department of the employer on November 9, 1992. He was given an over-the-counter anti-inflammatory medication and a wrist splint. He went back to work. He returned to the medical department on January 28, 1993 with continuing complaints of pain. He was given a wrist splint and placed on work restrictions. Soon thereafter, the employer referred plaintiff to Franklin Bone and Joint Clinic, where he was given a corticosteroid injection in his right hand. He was told to wear a thumb splint and to temporarily avoid gripping with his right hand.

On August 26, 1993 Plaintiff sustained an injury to his right shoulder, while pushing and pulling auto doors. The employer's medical department provided pain medication, ice packs and on-site physical therapy, then referred him to Dr. Jeffrey Cook, a board-certified orthopedic surgeon.

Dr. Cook treated plaintiff from November 18, 1993 until April 11, 1995. He surgically removed the end of plaintiff's collar bone, bone spurs and scar tissue. On April 11, 1995, plaintiff told Dr. Cook that he was transferring to a position which would not require repetitive motion. Dr. Cook assessed no permanent disability, although he also opined that Dr. Gaw had seen plaintiff more recently, and therefore if Dr. Gaw thought plaintiff had 5 percent disability he would not disagree.

Plaintiff has continued in the employ of the defendant and subsequently became a journeyman apprentice, which is considered a promotion.

Dr. David Gaw, board-certified orthopedic surgeon, conducted an independent medical examination of plaintiff on July 28, 1995, at the request of plaintiff's counsel. Plaintiff still had pain in the right arm and difficulty gripping with his thumb, writing excessively, or performing twisting motions such as in opening jars. Dr. Gaw opined that he should have permanent work restrictions against repetitive outstretched or overhead use of the right upper extremity. Wrist restrictions include no repetitive gripping, squeezing or constant manipulation requiring use of the thumb. He assessed nine percent whole body impairment for the shoulder and wrist injuries combined.

The trial judge awarded plaintiff ten percent permanent partial disability to the right upper extremity for plaintiff's wrist injury and ten percent permanent partial disability to the body as a whole for his shoulder injury. On appeal, plaintiff contends the award is extremely inadequate given all pertinent factors.

Our review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise. TENN. CODE ANN. § 50-6-225(3)(2). *Stone v. City of McMinnville,* 896 S.W.2d 584 (Tenn. 1991). However, where the trial judge has made a determination based upon the testimony of witnesses whom he has seen and heard, great deference must be given to that finding in determining whether the evidence preponderates against the trial judge's determination. *See Humphrey v. David Witherspoon, Inc.,* 734 S.W.2d 315 (Tenn. 1987).

In making determinations of vocational disability, the court shall consider all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job opportunities and capacity to work at types of employment available in claimant's disabled condition. TENN. CODE ANN. § 50-6-241(a)(1).

Plaintiff is 39 years old and has a high school education. He has vocational training in welding, drafting, and automotive mechanics. He is also licensed in Tennessee to sell mutual funds, but his attempt to do so was unsuccessful. He has worked most of his life on an auto assembly line and as an auto mechanic.

The expert medical testimony by Drs. Wade and Gaw as to plaintiff's medical impairment does not substantially differ. Dr. Gaw, plaintiff's expert, opined plaintiff would have permanent disability, and Dr. Wade, on cross-examination, agreed that Dr. Gaw's opinion could be credible since he had seen plaintiff more recently.

Plaintiff argues that his job opportunities in the open labor market are significantly impaired, despite his promotion to apprentice journeyman, and therefore his vocational impairment rating should be higher than the trial court awarded.

Vocational disability is not based upon the work an employee had at the time of his injury, but rather on his ability to compete for employment in the open labor market in his disabled condition. *Corcoran v. Foster Auto GMC, Inc.,* 746 S.W.2d 452 (Tenn. 1988). However, job opportunities in the open labor market is just one factor the trial court is to consider in determining vocational disability. The trial court's memorandum opinion and order do not indicate that plaintiff's promotion was considered in determining vocational disability. The preponderance of the evidence supports the trial court's award, which we affirm.

We affirm the judgment of the trial court and remand the case thereto for the assessment of costs of appeal which are taxed to the appellant.

_____
John K. Byers, Senior Judge

CONCUR:

_____
Frank F. Drowota, Justice

_____
William H. Inman, Senior Judge

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

FILED

March 24, 1997

Cecil W. Crowson
Appellate Court Clerk

JAMES K. RINGROSE,	}	*WILLIAMSON CHANCERY*
	}	*No. 23585 Below*
Plaintiff/Appellant	}	
	}	*Hon. Donald P. Harris,*
vs.	}	*Chancellor*
	}	
SATURN CORPORATION	}	*No. 01S01-9607-CH-00141*
	}	
Defendant/Appellee	}	*AFFIRMED AND REMANDED.*

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 Plaintiff/Appellant and Surety for which execution may issue if necessary.

IT IS SO ORDERED on March 24, 1997.

PER CURIAM