

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

AT JACKSON
(February 6, 1997 Session)

NORMA GAIL FLOWERS,	)	GIBSON CHANCERY
)	
Plaintiff-Appellee,	)	Hon. George R. Ellis,
	)	Chancellor.
v.)	
	)	No. 12S01-9609-CH-00083
EMERSON MOTOR COMPANY,)	
)	
Defendant-Appellant.)	

FILED

April 17, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

For Appellant:

P. Allen Phillips
Waldrop & Hall
Jackson, Tennessee

For Appellee:

T. J. Emison, Jr.
Alamo, Tennessee

MEMORANDUM OPINION

Members of Panel:

Lyle Reid, Associate Justice, Supreme Court
Joe C. Loser, Jr., Special Judge
Leonard Watson Martin, 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 employer, Emerson Motor Company, contends the award of permanent partial disability benefits is excessive. The panel has concluded the judgment should be affirmed.

The claimant, Flowers, is 43 years old and a high school graduate. She has a certificate as a nursing assistant, but no other vocational training or education. She has worked continuously for the employer since 1972, in a variety of jobs requiring repetitive use of her hands.

On December 6, 1993, the claimant slipped and fell at work, landing on the palms of her hands. Although her wrists and hands had bothered her before the fall, she was not disabled and had not seen a doctor.

Following the fall, she saw Dr. Ronald Bingham, who ordered NCS/EMG studies and diagnosed bilateral carpal tunnel syndrome, moderate on the left and moderate to moderately severe on the right. Another doctor diagnosed, in addition to bilateral carpal tunnel syndrome, carpometacarpal subluxation and arthritis of the right thumb. Her carpal tunnel syndrome was found to be caused by repetitive use of her hands and wrists at work and the subluxation caused and the arthritis aggravated by the fall at work.

Dr. Bourland assigned a permanent impairment rating of 15.8% to the claimant's right arm and none to the left. Dr. Joseph Boals assigned permanent impairment ratings of 20% to each arm. She is unable to perform her former duties for the employer and has pain and numbness in both hands. She cannot operate a keyboard. One vocational expert estimated her industrial disability at 60-65%; another opined she would be eligible for fewer than 25% of all available jobs.

The chancellor awarded permanent partial disability benefits based on 50% 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). The extent of an injured worker's disability is an issue of fact. Jaske v. Murray Ohio Mfg. Co., 750 S.W.2d 150 (Tenn. 1988).

The extent of an injured worker's vocational disability is a factual

question measured by the trial court's assessment of many factors, including age, education, skills and training, local job opportunities, capacity to work at the kinds of employment available in her disabled condition and extent of medical impairment. Clarendon v. Baptist Memorial Hospital, 796 S.W.2d 685 (Tenn. 1990).

From our independent examination of the record and a consideration of the above principles of law, we cannot say the evidence preponderates against the finding of the chancellor. The judgment of the trial court is consequently affirmed. Costs on appeal are taxed to Emerson Motor Company.

Joe C. Loser, Jr., Judge

CONCUR:

Lyle Reid, Associate Justice

Leonard Watson Martin, Judge

IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

NORMA GAIL FLOWERS,	)	GIBSON CHANCERY
	)	NO. H-3549
Plaintiff/Appellee,)	
	)	Hon. George R. Ellis,
vs.	)	Chancellor
)	
EMERSON MOTOR COMPANY,	)	NO. 02S01-9609-CH-00083
)	
Defendant/Appellant.	)	AFFIRMED.

<p>FILED</p> <p>April 17, 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 17th day of April, 1997.

PER CURIAM

(Reid, J., not participating)

