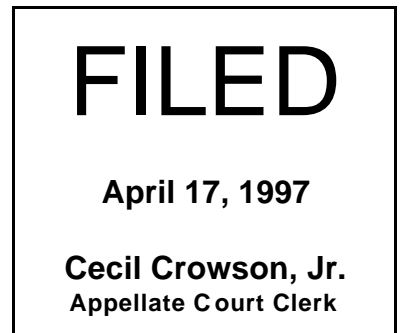


IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT JACKSON
(February 6, 1997 Session)

ANITA GARDNER,)
)
Plaintiff-Appellee,)
)
)
Vs.)
)
No. 02S01-9609-CH-00081
)
WORLD COLOR PRESS, INC.,)
)
)
Defendant-Appellant.)

DYER CHANCERY
)
Hon. Joe G. Riley,
Chancellor



For Appellant:

Mr. R. Lee Moore, Jr.
Farmer, Moore, Jones,
Hamilton & Lay
P. O. Box 763
Dyersburg, TN 38025-0763

For Appellee:

Mr. George L. Morrison, III
Attorney-at-Law
P. O. Box 182
Jackson, TN 38302

MEMORANDUM OPINION

Members of Panel:

Lyle Reid, Associate Justice, Supreme Court
Joe C. Loser, Jr., Special Judge
Leonard W. Martin, Special Judge

AFFIRMED

Martin, 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 to the Supreme Court of findings of fact and conclusions of law.

The issue presented is whether the trial court erred in finding that the plaintiff sustained a 20 per cent (20%) permanent partial disability to both arms.

The standard of review 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. R. App. P. 13(d); T.C.A. Section 50-6-225(e)(2).

The panel finds that the evidence does not preponderate against the finding of the trial court and concludes that the judgment of the trial court should be affirmed.

The employee, Anita Gardner, is thirty (30) years old and has a tenth (10th) grade education. She has obtained her GED and is currently enrolled in Dyersburg State Community College intending to become a nurse. She has worked for McDonalds Restaurant, Taco Casa Restaurant, Roseoco Gas Station and Doubleday Book Company. She went to work for World Color Press, Inc., in 1987. World Color Press prints, assembles and ships magazines. During much of her employment, she worked twelve (12) hours per day, seven (7) days a week. Her duties involved the use of her hands and wrists in a constant, fast paced, repetitive manner for long periods of time.

In May of 1994, the plaintiff injured her left wrist (she is left handed), while using a manual banding device in the shipping department. In August of 1994, she began having trouble with her right wrist while working in the quality control

department. Due to her previous problem with her left wrist, she was favoring it and primarily using her right hand in a repetitive manner. In February 1995, she aggravated or reinjured her left wrist while straightening a dock plate. Since early 1994, she has been seen by a number of doctors. Her primary treating physician was Doctor Michael Heck, an orthopaedic surgeon, whom she first saw on July 20, 1994. Doctor Ronald Bingham performed nerve conduction studies. Doctor Lowell Stonecipher, an orthopaedic surgeon, saw her for evaluation. Doctor William Bourland, an orthopaedic surgeon, saw her for evaluation in connection with the dock plate injury. Doctor Carl Huff, an orthopaedic physician, saw her on three (3) occasions, and Doctor Joseph Boals, III, an orthopaedic surgeon, saw her for evaluation. While recognizing that her subjective complaints were carpal tunnel syndrome complaints, the doctors, for lack of objective findings, concluded that she had no impairment. Doctor Boals, to whom she had been referred by plaintiff's attorney, diagnosed her as having carpal tunnel syndrome, chronic. Doctor Boals was of the opinion that she had a permanent physical impairment of 10 per cent (10%) to both hands and that she should avoid repetitive work if at all possible. He also felt that the cause was the work done at World Color Press over a period of eight (8) years, doing repetitive work with both hands. From all of the material evidence and the testimony of the plaintiff, the trial judge awarded the plaintiff 20 per cent (20%) permanent partial vocational disability to both arms.

The trial judge may, when there is a difference in opinion between medical experts, accept the opinion of one or more over the opinion of another or others. **Johnson v. Midwesco, Inc., 801 S.W.2d 804 (Tenn. 1990).** When the medical testimony is presented by deposition this Court is able to make its own independent assessment of the medical proof to determine where the preponderance of the evidence lies. **Landers v. Fireman's Fund Ins. Co., 775 S.W. 2d 355, 356 (Tenn. 1989).**

Where the issue for decision depends on the determination of the credibility of witnesses, the trial court is the best judge of their credibility and its findings of credibility are entitled to great weight. This is true because the trial court alone has the opportunity to observe the appearance and demeanor of witnesses. **Tenn-Tex Properties v. Brownell-Electro, Inc., 778 S.W.2d 423.**

In this case, the plaintiff's work duties have involved fast paced, repetitive motions of the hands and wrists for long periods of time. The plaintiff's subjective complaints are classic carpal tunnel syndrome complaints. The trial court found the plaintiff to be "quite credible". The trial court chose to rely upon Doctor Boals' in finding that the plaintiff does indeed have a permanent partial injury. If the plaintiff is credible, then certainly Doctor Boals' opinion makes more sense than that of the other doctors.

The trial court awarded permanent partial disability benefits on the basis of 20 per cent (20%) to both arms, finding that the plaintiff has several possible job skills, which make her more readily adaptable to the job market and finding her degree of disability to be less than a person who would not have those job skills. 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).

We are unable to find that the evidence preponderates against the findings of the trial court and the judgment is therefore affirmed.

Costs on appeal are taxed to the appellant.

Leonard W. Martin, Judge

CONCUR:

Lyle Reid, Associate Justice

Joe C. Loser, Jr., Judge

IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

ANITA GARDNER,

Plaintiff/Appellee,

vs.

WORLD COLOR PRESS, INC.,

Defendant/Appellant.

) DYER CHANCERY

) NO. 94-511

)

) Hon. Joe G. Riley,

) Chancellor

)

) NO. 02S01-9609-CH-00081

)

) 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)

