

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE MARCH 1997 SESSION

FILED

May 21, 1997

Cecil W. Crowson
Appellate Court Clerk

BRENDA JOYCE DURHAM)
KONYNDYK,)

Plaintiff/Appellant)

v.)

EAGLE DISPLAYS, INC.)

Defendant/Appellee)

COFFEE CHANCERY

NO. 01S01-9609-CH-00188

HON. JOHN W. ROLLINS,
CHANCELLOR

For the Appellant:

Clinton H. Swafford
Swafford, Peters & Priest
100 First Ave. SW
Winchester, TN 37398

For the Appellee:

Robert R. Davies
Davies, Cantrell & Humphreys
150 Second Ave., N, Ste. 225
P.O. Box 190609
Nashville, TN 37219-0609

MEMORANDUM OPINION

Members of Panel:

Chief Justice Adolpho A. Birch, Jr.
Senior Judge John K. Byers
Special Judge Joe C. Loser, Jr.

AFFIRMED

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.

The plaintiff appeals the trial court's finding that she did not retain any permanent partial disability as a result of her work-related injury.

We affirm the trial court's judgment.

On July 24, 1993, plaintiff was hit by a forklift from behind while she was squatting to take plastic wrap off supplies for the work she was performing. She injured her left shoulder when she fell as a result of this accident. She continued to work after her injury except for a few breaks to rest her shoulder, either at her doctor's request or her own, until March 31, 1995, when she voluntarily quit or retired. She testified that she quit because of her continued shoulder pain, but it is not clear from the transcript whether she gave this reason to her employer. She testified that she continues to experience pain in her shoulder which limits her ability to reach, especially overhead, and lift. She testified that she has difficulty cleaning showers and overhead cabinets, working in her garden and swimming.

Plaintiff has mostly received her treatment from her family practitioner, Dr. J. Richard Thomasson. He diagnosed tendinitis of the left shoulder. He also diagnosed tenosynovitis in her right thumb after it began to bother her in the late fall of November 1994; however, he could not testify with any certainty as to the cause of her right thumb tenosynovitis. He opined that she had a medical impairment rating of 27% to the whole body, which he broke down to 7% whole body impairment due to her left shoulder tendinitis and 22% whole body impairment due to her right thumb tenosynovitis. Dr. Thomason testified the plaintiff's thumb problem was due either to overuse or trauma. Dr. Thomason's testimony was uncertain and not persuasive in establishing plaintiff's disability, if any, from her work-related injury.

Plaintiff was also evaluated by three orthopedic surgeons. Dr. Robert E. Stein ordered an MRI, which showed mild degenerative disc disease from the C5 through the C7 disks, but was within normal limits. He opined that it was "an MRI that would be

consistent with any number of 50-year-olds.” He opined that plaintiff had no permanent impairment as a result of her work-related injury.

Dr. Richard Bagby diagnosed fibrositis, which he described as a chronic condition of pain in the muscles. He ordered a bone scan, the results of which were normal. He opined that plaintiff had no permanent impairment as a result of her work-related injury.

Dr. E. Ray Lowery diagnosed a trapezius muscle strain. He was not asked about permanent impairment.

Our review is *de novo*, accompanied by the presumption that the trial court’s findings of fact are correct unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2).

The medical evidence in this case is in conflict. Only Dr. Thomason found a work-related permanent impairment. His testimony is, however, uncertain, which renders his testimony speculative as we view the deposition.

Where there is a difference in opinion between the experts, the trial judge may accept one opinion over other opinions in reaching a judgment. *Johnson v. Midwesco, Inc.*, 801 S.W.2d 804, 806 (Tenn. 1990). The trial judge accepted the testimony of those doctors who testified that plaintiff had no permanent injury as the result of a work-related accident and rejected Dr. Thomason’s testimony.

We have evaluated the deposition testimony of the experts, as we may, *Seiber v. Greenbrier Ind.*, 906 S.W.2d 444, 446 (Tenn. 1995), and concur in the finding of the trial judge.

We affirm the trial court’s ruling at the cost of the appellant.

John K. Byers, Senior Judge

CONCUR:

Adolpho A. Birch, Jr., Chief Justice

Joe C. Loser, Jr., Special Judge

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

<p>FILED</p> <p>May 21, 1997</p> <p>Cecil W. Crowson Appellate Court Clerk</p>

<p>BRENDA JOYCE DURHAM KONYNDYK,</p> <p style="padding-left: 40px;"><i>Plaintiff/Appellant</i></p> <p>vs.</p> <p>EAGLE DISPLAYS, INC.,</p> <p style="padding-left: 40px;"><i>Defendant/Appellee</i></p>	<p>} } } } } } } } } }</p>	<p>COFFEE CHANCERY No. 94-240 Below</p> <p>Hon. John W. Rollins, Chancellor</p> <p>No. 01S01-9609-CH-00188</p> <p>AFFIRMED.</p>
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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 May 21, 1997.

PER CURIAM