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

FILED

April 25, 1997

Cecil W. Crowson
Appellate Court Clerk

AGATHA LAWRENCE,	)	WARREN GENERAL SESSIONS
	)	
Plaintiff/Appellee	)	NO. 01S01-9605-GS-00086
	)	
v.	)	HON. J. RICHARD McGREGOR,
	)	SPECIAL JUDGE
FINDLAY INDUSTRIES, a division of GARDNER MANUFACTURING COMPANY,	)	
	)	
Defendant/Appellant	)	

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

MODIFIED and REMANDED

INMAN, 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.

I

The plaintiff alleged that she suffered a series of injuries in April, June and August 1992 which aggravated an undescribed condition, and as of January 13, 1993 suffers from bilateral hand pain and numbness with cervical radiculopathy and carpal tunnel syndrome with specific thumb involvement.

This case was filed in the General Sessions Court of Warren County, and was, by agreement, heard by the Clerk and Master, "acting as Judge of the General Sessions Court," on October 4, 1995.

The trial court found that the plaintiff had a 40 percent permanent partial disability to her left arm, and a 24 percent permanent partial disability to her whole body as a result of a cervical injury. The employer appeals, (1) questioning the finding of a cervical injury, and (2) whether the award of benefits is excessive.

II

The plaintiff testified that she was, at trial date, "a young 65," who entered the labor market at age 15 or 16 as a sewing machine operator, where she remained 25 years.

She obtained another job in the textile industry which required repetitive hand movements, following which she became an entrepreneur, operating a small grocery for three years. She testified that the grocery business also required repetitive movements.

After her entreprenurial stint was over, she obtained a job as a school bus driver for ten years, followed by a series of three jobs in the textile industry, the final of which was with the defendant which, we infer, was of short duration.

While employed by Easyware (the second of these employers after her bus-driver job) she had a successful carpal tunnel release performed on her right hand.

While employed by the defendant she "pulled this thumb out of socket," requiring surgical correction. Some time later, she was treated by a neurosurgeon "regarding an incident on the job whereby [she] injured or aggravated [her] neck." There was little or no further explication of this "incident."

On cross-examination, she testified that she had another carpal tunnel release during employment at Rockford Mills, which we may infer was her first employer. She later had back surgery to correct an injury suffered by falling at a "little market" where she worked during an unspecified period, and for which she was awarded workers' compensation benefits. This was followed by an automobile accident which caused a shoulder and ankle injury. Thereafter, she developed extensive knee problems requiring arthroscopic surgery, apparently unrelated to employment.

III

Dr. Gregory P. Lanford, a neurosurgeon, testified, by deposition, that he initially saw the plaintiff, who, on September 3, 1992 complained of bilateral hand and neck pain. The usual testing revealed cervical arthritis, with a pinched nerve, for which she was treated conservatively. He last saw her on April 1, 1993 and recommended that she return to work.

Dr. Lanford testified that she had no objective symptoms, but because of her complaints of pain for more than six months and in accordance with the AMA Guides, he assigned her a soft-tissue impairment of four percent.

IV

Dr. David S. Jones, an orthopedic specialist, testified by deposition, that he initially saw the plaintiff on November 5, 1992, at which time she complained of pain and swelling in her left thumb. He performed corrective surgery by removing the trapezium at the base of the thumb. The surgery was successful and follow-up was uneventful. Dr. Jones released her to return to work on March 22, 1993. Thereafter, she developed tendinitis which was successfully corrected. He testified that she retained a two percent permanent partial impairment of her left arm.

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).

We have carefully studied the testimony of the plaintiff and the depositional testimony of the treating specialists, and conclude that while the evidence of compensable cervical injury is not overpowering, we cannot find that it preponderates otherwise. However, we find that the evidence preponderates against a finding of 24 percent permanent partial disability to her whole body, and preponderates in favor of a finding of ten percent to the whole body. The same is true of the finding of forty percent permanent partial disability to her left arm; we find the evidence otherwise preponderates, and that a finding of ten percent permanent partial disability to her left arm adequately secures to the plaintiff the benefits of the workers' compensation laws. It should be noted that both physicians recommended that the plaintiff return to work, if she chose; that their diagnoses and impairment ratings were essentially based on subjective symptoms, and that each physician assigned only a minimal impairment rating.

As modified, the judgment is affirmed and the case is remanded to the trial court for assessment of costs of appeal, which are apportioned evenly.

William H. Inman, Senior Judge

CONCUR:

Frank F. Drowota, III, Justice

John K. Byers, Senior Judge

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

AGATHA LAWRENCE,	)	Warren General Sessions
	)	No. 5548-GSWC Below
Plaintiff/Appellee,	)	
	)	Hon. J. Richard McGregor, Sp. J.
V.	)	
	)	
	)	S. Ct. No. 01-S-01-9605-GS-00086
FINDLAY INDUSTRIES, a division of GARDNER MANUFACTURING COMPANY,	)	
	)	
Defendant/Appellant.	)	Modified and Remanded.

JUDGMENT ORDER

This case is before the Court upon motion for review pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), 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 motion for review is not well-taken and should be denied; 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 are apportioned evenly between the parties. One half of the costs are assessed against the appellant, one half against the appellee, and execution may issue if necessary.

It is so ordered this 25th day of April, 1997.

PER CURIAM

Drowota, J., not participating