

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

FILED

September 19, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

PAMELA CARDEN,)	ANDERSON CIRCUIT
)	C.A. NO. 03S01-9701-CV-00013
Plaintiff-Appellee)	
)	
)	
)	
)	
v.)	HON. JAMES B. SCOTT, JR.
)	JUDGE
)	
)	
)	
)	
MODINE MANUFACTURING CO.,)	
INC., a non-resident)	
corporation conducting)	
business in Anderson County,)	
Tennessee, and SENTRY)	
INSURANCE COMPANY, an)	
insurance corporation)	
conducting business in)	
Anderson County, Tennessee,)	
)	
Defendants-Appellants)	

GEORGE H. BUXTON, III, Buxton & Wilkinson, Oak Ridge, for the appellants.

ROGER L. RIDENOUR, Ridenour, Ridenour & Fox, Clinton, for appellees.

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

Members of Panel:

Hon. E. Riley Anderson, Justice
Hon. William H. Inman, Senior Judge
Hon. Don T. McMurray, Special Judge

AFFIRMED

McMurray, Special Judge

_____This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with T.C.A. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

On this appeal, the appellants assert that the evidence preponderates against the findings of the trial court and that the award is excessive. The trial court awarded forty-five percent (45%) permanent partial disability to the plaintiff's left arm and twenty-five percent (25%) permanent partial disability to the right arm.

The underlying facts are not in dispute on this appeal. At the time of her injury, plaintiff was an employee of the defendant, Modine Manufacturing Company. She began to experience pain in her hands and was diagnosed as having Bilateral Carpal Tunnel Syndrome resulting from repetitive activity during her employment. She came under the care of Dr. Joseph C. DeFiore, Jr. Dr. DeFiore performed surgery on plaintiff's right wrist on April 10, 1995. Surgery was performed on her left wrist on July 26, 1995. Dr. DeFiore released the plaintiff from his care and advised her to return on an "as needed" basis. Dr. DeFiore assigned no permanent physical impairment to the plaintiff as a result of the Carpal Tunnel Syndrome and the resultant surgery although he did feel that she should have some job restrictions. His assessment of permanent

physical impairment was based upon the reports of a physical therapist and interpreted by a computer.

The plaintiff was also examined by Dr. Gilbert L. Hyde, a board certified orthopedic surgeon and also board certified by the American Academy of Disability Evaluating Physicians. Dr. Hyde first saw the plaintiff on January 31, 1996, for the purpose of making an independent medical examination. After his examination of the plaintiff, Dr. Hyde rated the plaintiff as having a permanent impairment of ten percent (10%) to each upper extremity.¹ He testified that he used the most recent edition of the AMA guidelines to assist him in determining the permanent physical impairment rating. He further testified that the plaintiff should avoid lifting activities over twenty-five to thirty pounds and avoid repetitive motion activities with regard to her hands and wrists.

The plaintiff was also examined by a court-appointed orthopedic surgeon, Dr. Geron Brown, Jr. Dr. Brown testified that the plaintiff had Bilateral Carpal Tunnel Syndrome that had been successfully treated surgically. He further stated that at the time of his examination, she had reached her maximum medical

¹While the terms "upper extremity" are used on several occasions by the physicians and the trial court, it is clear from the context of the usage that the terms while not synonymous were being used interchangeably with "arm."

improvement. He evaluated the plaintiff's impairment as five percent (5%) to each of her upper extremities.

The trial court's opinion, as set out in the final judgment, suggests that the trial court was unimpressed with the medical testimony which was based upon the findings of a physical therapist. The appellant argues that since the testimony was presented by deposition, we are in as good a position as the trial court to review and weigh the testimony and determine the credibility questions and questions concerning the weight of expert testimony, citing Landers v. Fireman's Fund, Inc., 775 S.W.2d 335 (Tenn. 1989). While this may be true in some cases, we find no cause to substitute our judgment, relating to credibility, for that of the trial court in this case. We should also note that there was testimony from witnesses testifying in person which touched upon the credibility of some of the medical evidence which may have affected the judgment of the trial court in weighing the medical evidence.

The plaintiff in her testimony, related her work history and other personal information. She testified that she was 37 years old and a high school graduate. Her work history consisted of employment at fast food establishments, manual labor, including sewing at a manufacturing facility, and employment as a cashier at a grocery store. She subsequently was employed by Modine on

September 8, 1981, and has continued as an employee of Modine. Mrs. Carden further testified that she still suffers from swelling and numbness and has problems doing her work at Modine.

Craig Colvin, an associate professor and rehabilitation counselor at the University of Tennessee, testified on behalf of the plaintiff. (Mr. Colvin's qualifications were stipulated.) Mr. Colvin testified that he had interviewed the plaintiff relative to her physical complaints, education and work background; reviewed the depositions of Dr. Hyde, Dr. Brown, Dr. DeFiore, and Larry Stark; and, the discovery deposition of the plaintiff, Mrs. Carden. After his interviews with the plaintiff and consideration of the depositions, he was of the opinion that the plaintiff had an occupational disability "in the range of 50 to 60 percent, 60 being worst case scenario and 50 percent being the best case scenario."

Larry Stark, human resources manager, of Modine's Clinton plant testified on behalf of the defendant. He related that the plaintiff was presently working and that he had made no special arrangements for her to perform her work. He stated that she was able to do her work on a competent basis and had made no complaints after her return to work. He estimated that the plaintiff could perform "roughly 85 percent of the jobs in our facility" within the restrictions that he had been made aware of.

Jane Colvin Roberson, (whose qualifications to testify as a vocational expert were stipulated), testified on behalf of the defendants. Ms. Roberson interviewed the plaintiff; reviewed her medical records; the depositions of Mrs. Carden, Dr. Brown, Dr. DeFiore and Dr. Hyde. In Ms. Roberson's opinion, the plaintiff has a vocational disability "in the 30 to 35 percent range."

The standard of review in cases of this nature is de novo upon the record of the trial court, accompanied by a presumption of the correctness of the findings below, unless the preponderance of the evidence is otherwise. T.C.A. § 50-6-225(e)(2). Under this standard, we are of the opinion and find that the evidence does not preponderate against the findings of the trial court.

The appellee has asked that we impose sanctions upon the appellant for taking a frivolous appeal pursuant to T.C.A. § 50-6-225(i). She also asks that interest be awarded on the unpaid benefits from the date of the trial court's judgment pursuant to T.C.A. § 50-6-225(h)(1). Upon consideration, we are of the opinion that this is not an appropriate case for the imposition of sanctions. The matter of interest is controlled by statute and it is not necessary for us address the issue.

We affirm the judgment of the trial court in all respects. Costs are assessed to the appellant and this case is remanded to the trial court.

Don T. McMurray, Judge

CONCUR:

E. Riley Anderson, Justice

William H. Inman, Senior Judge

IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE

FILED
September 18, 1997
Cecil Crowson, Jr.
Appellate Court Clerk

PAMELA CARDEN,)	ANDERSON CIRCUIT
)	No. 96LA0050
Plaintiff/Appellee,)	
)	
)	
vs.)	Hon. James B. Scott, Jr.
)	Judge
)	
MODINE MANUFACTURING CO.,)	
ETAL)	
)	03S01-9701 -CV-00013
Defendants/Appellants.)	

JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation 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 on appeal are taxed to the appellant, Modine Manufacturing Company and surety, Buxton & Wilkinson, for which execution may issue if necessary.

09/18/97

