FILED

August 13, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

IN THE SUPREME COURT OF TENNESSEE
WORKERS' COMPENSATION APPEALS PANEL
KNOXVILLE, APRIL 1997 SESSION,

ALMA JOYCE HAYES,	)	
	)	HAMBLEN CIRCUIT
Plaintiff/Appellee	)	
	)	NO. 03S01-9609-CV-00093
v.	)	
	)	Hon. William L. Jenkins,
SCHOOL CALENDAR COMPANY,	)	Circuit Judge
	)	
Defendant/Appellant	)	

For the Appellant:

James T. Shea, IV
507 Market Street, 11th Floor
P.O. Box 1708
Knoxville, Tenn. 37901-1708

For the Appellee:

James M. Davis
214 North Jackson Street
Morristown, Tenn. 37814

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

Members of Panel:

E. Riley Anderson, Justice
John K. Byers, Senior Judge
Roger E. Thayer, Special Judge

AFFIRMED **THAYER, Special 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 employer, School Calendar Company, has perfected this appeal from a decision of the trial court to award the employee, Alma Joyce Hayes, 20% permanent partial disability benefits to each arm.

The employer insists the employee's injury was not work-related and that the claim was not filed within the one year statute of limitations period. The employee contends the award is not adequate and should be increased.

Alma Joyce Hayes began working for School Calendar Company in 1988 and was employed as a proofreader. She testified her duties required her to use her hands and wrists repetitively. She first began experiencing problems with her hands and arms during July, 1994, thinking her condition was due to arthritis. She continued working until about February 17, 1995, when she was laid-off due to a reduction in the company's workload.

While on lay-off status, she decided to see a doctor about her condition. On about June 28, 1995, Dr. Hovis examined her and told her she had bilateral carpal tunnel syndrome and that he was of the opinion her condition was work-related. She immediately notified her employer and a company representative told her the company did not feel responsible for her condition since she no longer worked for them. This suit for workers' compensation benefits was filed on August 3, 1995. Dr. Hovis performed surgery on the right hand on August 4, 1995, and surgery on the left hand on August 11, 1995.

The circuit judge was faced with conflicting evidence on the causation question. The only expert medical testimony was presented by deposition from two orthopedic surgeons, Dr. William M. Hovis and Dr. M.J. Gutch.

Dr. Hovis originally was of the opinion her condition was the result of her work duties based upon the history given. He later changed his opinion when he was shown a videotape depicting the nature and type of work she usually performed.

After seeing the videotape, he was of the opinion her work was not sufficiently repetitive to cause her injuries. He did express the opinion there was a 10% medical impairment to each arm.

Dr. Gutch saw and examined Mrs. Hayes on November 25, 1995, for the purpose of an evaluation of impairment. He was of the opinion her injuries were work-related and gave a 13% impairment to the right arm and a 11% impairment to the left arm.

The employee testified she felt she worked at a faster pace than shown on the videotape, and she said Dr. Hovis suggested she find other type work when he released her. At trial she said she was still having difficulty with her hands and arms.

The review of the case is *de novo* accompanied by a presumption of the correctness of the findings of fact unless we find the preponderance is otherwise. T.C.A. § 50-6-225(e)(2).

In choosing which medical testimony to accept, the trial court may consider the qualifications of the experts, the circumstances of their examination, the information available to them, and the evaluation of the importance of that information by other experts. *Orman v. Williams-Sonoma, Inc.*, 803 S.W.2d 672, 676 (Tenn. 1991).

It is true that a treating physician's testimony is entitled to considerable weight. However, we are not aware of any rule of law that requires a court to accept the testimony of a treating physician over any other conflicting medical testimony.

The trial court found plaintiff's injury was work-related, and we cannot say the evidence preponderates against this conclusion.

Defendant also contends the action was not timely filed within the one year period of time as set forth in T.C.A. § 50-6-203. This contention is based on the fact plaintiff admits she began having problems with her hands and arms during July, 1994, and her suit was not filed until August 3, 1995.

We cannot agree with this contention. The injury involved is classified as a "gradual injury," and it is difficult to pinpoint when an accidental injury occurs when the injury results from repetitive work-related movements over a long period of time.

Thus, the rule has developed that in this type of case the accidental injury is considered to have occurred when the employee becomes disabled to work. *Lawson v. Lear Seating Corp.*, ____ S.W.2d ____ (Tenn. 1997) (opinion filed April 21, 1997, at Knoxville); *Barker v. Home-Crest Corp.*, 805 S.W.2d 373, 375 (Tenn. 1991); *Brown Shoe Co. v. Reed*, 350 S.W.2D 65, 70-71 (Tenn. 1961).

Plaintiff stopped working during February, 1995 but this termination of work was because of a lay-off related to the company's business. She testified that she would have continued to work if the lay-off had not occurred. Although it is difficult to say when, if at all, she was disabled to work, her institution of the action within two months after being made aware her condition was work-related constitutes a timely filing under the one year statute of limitations.

The circuit judge fixed the award at 20% disability to each arm. Plaintiff argues the award is not adequate and should be higher. We do not find the evidence preponderates against this conclusion.

The judgment is affirmed. Costs of the appeal are taxed to the defendant and sureties.

_____
Roger E. Thayer, Special Judge

CONCUR:

_____
E. Riley Anderson, Justice

_____
John K. Byers, Senior Judge

IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE

ALMA JOYCE HAYES,	)	Hamblen Circuit
	)	No. 95--CV-333
Plaintiff/Appellee,	)	
vs.	)	Hon. William L. Jenkins
	)	Judge
SCHOOL CALENDAR COMPANY, INC.,	)	
	)	
	)	03S01-9609--CV-00093
Defendant/Appellant.	)	
	)	

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 defendant/appellant, School Calendar Company and, surety, James T. Shea, IV, for which execution may issue if necessary.

08/13/97

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 will be paid by the plaintiff-appellant and sureties, for which execution may issue if necessary.

IT IS SO ORDERED this ____ day of June, 1997.

PER CURIAM

Anderson, J. - Not Participating

al to the Special Worker' 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 act 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 plaintiff-appellant, Vernon Harris and Gilbert and Faulkner. surety, for which execution may issue if necessary.

06/03//97

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 defendant/appellant, Baptist Hospital of East Tennessees and Barry K. Maxwell, surety, for which execution may issue if necessary.

07/11/97

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 will be paid by the plaintiff-appellant and sureties, for which execution may issue if necessary.

IT IS SO ORDERED this ____ day of June, 1997.

PER CURIAM

Anderson, J. - Not Participating

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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 act 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 plaintiff-appellant, Vernon Harris and Gilbert and Faulkner. surety, for which execution may issue if necessary.

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