FILED

August 13, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

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

MAYTAG COOKING PRODUCTS,	)	
	)	BRADLEY CIRCUIT
Plaintiff/Appellant	)	
	)	Hon. Earle G. Murphy,.
v.	)	Circuit Judge
	)	
CAROLYN D. ELLIOTT,	)	
	)	NO. 03S01-9611-CV-00112
Defendant/Appellee	)	

For the Appellant:

Denny E. Mobbs
P.O. Box 192
Cleveland, Tenn. 37364-0192

For the Appellees:

Jeffrey W. Rufolo
500 Lindsay Street
Chattanooga, Tenn. 37402

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, Maytag Cooking Products, has appealed from the action of the trial court in awarding the employee permanent partial disability benefits of 40% to her left arm. The only issue on appeal is whether the expert medical testimony is sufficient to support the award of permanent disability.

Carolyn D. Elliott was 50 years of age at the time of the trial and was a high school graduate. She had been employed by Maytag Cooking Products and a prior company for about 25 years. For some period of time, she was on a production line using an air gun to put screws through switches on a panel. Although she had some problems several years earlier, her left elbow began hurting so much she had to seek medical treatment during June 1993.

This gradual injury resulted in her seeing several doctors and eventually in her seeing Dr. Richard B. Donaldson, the only expert medical witness to testify. At the trial below, which was about three years later, she told the court she still had pain in her arm; swelling of the arm frequently occurred and she did not feel her condition had improved very much. She had returned to work and was earning an amount equal to or greater than her previous wage. Her employer had reassigned her to lighter duty work but she did not feel she was performing her work satisfactorily. She testified she still could not iron, mow the yard, use a hair dryer or lift anything with her left arm. She is left-handed. She expressed the opinion that she had about an 80% loss of use of her left arm.

Dr. Richardson, an orthopedic surgeon, testified by deposition. He said he saw her in connection with her obtaining a second opinion as to her medical condition. He testified she had a lateral and medial epicondylitis of the left elbow and this was a condition commonly known as tendinitis or tennis elbow. He recommended surgery which he felt would improve her condition but this had not

occurred before the trial of this case. She testified she would eventually have the surgery.

The doctor testified the 4th Edition, A.M.A. GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT did not provide for or cover an impairment rating for this condition; that she had a permanent impairment and from his experience and her past history of pain, he was of the opinion she had a 10% impairment of the lateral epicondyle and a 10% impairment to the medial epicondyle for a total of 20% to the arm which would be a 12% impairment to the body as a whole.

Our review is *de novo* upon the record, accompanied by the presumption that the trial judge's findings of fact are correct unless the preponderance of the evidence is otherwise. T.C.A. § 50-6-225(e)(2).

The employer argues that since the A.M.A. Guidelines did not provide an impairment rating, and the doctor did not establish he was using another appropriate method, accepted by the medical community as required by the provisions of T.C.A. § 50-6-241(a)(1); his opinion as to impairment was arbitrary and would not support an award of permanent disability.

Counsel does not cite any authority for this contention , and we do not find any merit to the argument.

First, we note that the injury involved in this case is a scheduled injury and not one to the body as a whole. The multiplier statute, T.C.A. § 50-6-241, explicitly applies to injuries to the body as a whole and does not apply to cases involving injuries to scheduled members. *Atchley v. Life Care Ctr.*, 906 S.W.2d 428, 430-31 (Tenn. 1995).

T.C.A. § 50-6-204(d)(3) is frequently cited as requiring physicians to use one of two methods in giving impairment ratings. In the case of *Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452 (Tenn. 1988), the Supreme Court held that the statute merely sought to standardize the method of rendering anatomical impairment ratings and that when the medical evidence establishes permanency, the failure of a medical expert to attribute a percentage of anatomical disability cannot justify a

denial of compensation if the other evidence demonstrates that an award of benefits is appropriate.

In the present case the doctor did give an impairment rating based upon his experience and the history of pain of his patient. Since the Guidelines did not provide for a rating for this medical condition, we find his method to be appropriate for supporting an opinion as to medical impairment.

Although the trial court applied the multiplier statute in reaching an award of 40%, we find, from our independent examination of the evidence, the award to be reasonable and proper for this scheduled injury.

The judgment is affirmed. Costs of the appeal are taxed to the plaintiff employer 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

MAYTAG COOKING PRODUCTS	) Bradley Circuit
	) No. V-95-534
Plaintiff/Appellant,,	)
vs.	) Hon. Earle G. Murphy
	) Judge
CAROLYN D. ELLIOTT	)
INC.,	)
	) 03S01-9611-CV-00112
Defendant/Appellee.	)
	)

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 plaintiff/appellant, Maytag Cooking Products and, surety, Denny E. Mobbs, for which execution may issue if necessary.

08/12/97

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

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.

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