IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE

(June 9, 1997 Session)

ANDREA NICHOLS,	)	
	)	GILES COUNTY CHANCERY
Plaintiff/Appellee,	)	
	)	Hon. Jim T. Hamilton,
VS.	)	Chancellor
	)	
SQUARE D COMPANY,	)	NO. 01S01-9611-CH-00226
	)	
Defendant/Appellant.	)	

For the Appellant:

John Thomas Feeney
Lee Anne Murray
FEENEY & ASSOCIATES, P.C.
Nashville, Tennessee

For the Appellee:

Raymond W. Fraley, Jr.
Fayetteville, Tennessee

MEMORANDUM OPINION

Members of Panel:

Adolpho A. Birch, Chief Justice, Supreme Court
Robert S. Brandt, Senior Judge
Joe C. Loser, Jr., Special Judge

MODIFIED

Brandt, Senior Judge

MEMORANDUM OPINION

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel for the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law.

The sole issue on appeal is whether the trial court's award of 65% permanent partial disability to the plaintiff's left hand is excessive. The panel concludes that it is and reduces it to 50%.

While working in an assembly line job in August 1994,, the plaintiff developed a repetitive motion injury to her left hand. She is right handed. The initial conservative medical treatment consisted of restricting the repetitive use of the plaintiff's left hand. She tried one job, but said she couldn't do it, then was given a job she could perform with only one hand. She said she couldn't do that, either.

The employer informed the plaintiff that no more jobs were available for her that day, but made an appointment for her to see an orthopedic surgeon. The first available appointment was fairly far in the future, so the employer told the plaintiff that it would attempt to accommodate her restriction until the appointment. The plaintiff responded by quitting her job. She never returned to work for the employer.
And she has not sought any other employment.

Dr. Howard Miller performed outpatient surgery on the plaintiff in January 1995 and released her to light duty work shortly thereafter. He released her to return to her former job at the end of February. The doctor reported in June 1995 that the plaintiff had full motion in her wrist and digits and that she was largely asymptomatic. Dr. Miller did not give the plaintiff any permanent restrictions and did not give her any permanent impairment.

The plaintiff's attorney sent her to see another doctor, Earl Jeffres, in September 1995. He assessed a 22% permanent partial impairment to the plaintiff's left hand. He acknowledged that the plaintiff's complaints of pain exceeded his objective findings.

The plaintiff's complaints of pain in her left hand and the probability that she should avoid repetitive use of it does limit her employability. But she is certainly employable. She completed two years of business school and worked as assistant manager at a restaurant for a number of years.

Given the treating physician's finding of no permanent impairment, the other physician's finding of 22% impairment to the non-dominant hand, and the plaintiff's acknowledged refusal to even attempt to find any other work, the panel concludes that the award of 65% to the left hand is excessive and reduces it to 50%. Costs are taxed to the

plaintiff.

_____
Robert S. Brandt, Senior Judge

CONCUR:

_____
Adolpho A. Birch, Jr., Chief Justice

_____
Joe C. Loser, Jr., Special Judge

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

FILED

September 24, 1997

Cecil W. Crowson
Appellate Court Clerk

ANDREA NICHOLS,	}	*GILES CHANCERY*
	}	*No. 9111 Below*
Plaintiff/Appellee	}	
	}	*Hon. Jim T. Hamilton,*
vs.	}	*Chancellor*
	}	
SQUARE D COMPANY	}	*No. 01S01-9611-CH-00226*
	}	
Defendant/Appellant	}	*MODIFIED.*

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/Appellee, for which execution may issue if necessary.

IT IS SO ORDERED on September 24, 1997.

PER CURIAM