

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE  
(December 3, 1997 Session)

**FILED**  
  
March 18, 1998  
  
Cecil W. Crowson  
Appellate Court Clerk

BELINDA DUNLAP,	)	HOUSTON	CIRCUIT
	)		
Plaintiff-Appellee,	)	Hon. Robert E. Burch,	
	)	Judge.	
v.	)		
	)	No. 01S01-9707-CV-00153	
NAGLE INDUSTRIES,	)		
	)		
Defendant-Appellant.	)		

For Appellant:

William G. McCaskill  
Taylor, Philbin, Pigue, Marchetti  
& Bennett  
Nashville, Tennessee

For Appellee:

Stacy A. Turner  
Clarksville, Tennessee

MEMORANDUM OPINION

Members of Panel:

Lyle Reid, Associate Justice, Supreme Court  
William H. Inman, Senior Judge  
Joe C. Loser, Jr., Special Judge

AFFIRMED AS MODIFIED

Loser, Judge

MEMORANDUM OPINION

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. section 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. The appellant contends the evidence preponderates against the trial court's award of permanent partial disability benefits based on twenty-five percent to the body as a whole. As discussed below, the panel has concluded the judgment should be modified and affirmed.

At the time of the trial, the employee or claimant, Belinda Dunlap, was forty-one years old and a high school graduate. She worked for the employer, Nagle Industries, on its production line from approximately July, 1991 until September 11, 1992, when she reported to the employer that she was experiencing pain in her right hand after operating a drill press. She was sent to see Dr. Dave Alexander on September 14, 1992.

Dr. Alexander initially excused her from work for approximately two and one-half weeks. Three days later, the doctor released her to return to light duty, but she did not return until September 22. Upon her return, she continued to complain of wrist pain and asked to be referred to another doctor. She was allowed to leave work and referred to Dr. Cooper Beazley, who released her to return to left hand work only. There is a factual dispute as to her reason for not performing the work offered. She has since begun working for, apparently, another employer.

At the trial, Dr. Beazley testified that he found no abnormality and no permanent impairment. Dr. Larry Laughlin, who examined her at the employer's request, found a normal range of motion and function in the claimant's right elbow, wrist, hand and fingers.

Additionally, the claimant was treated by Dr. Winston Griner and evaluated by Dr. Lloyd Walwyn. Dr. Griner diagnosed right carpal tunnel syndrome from repetitive use of the right hand and assessed a permanent impairment rating of fifteen to twenty percent to the right upper extremity. Dr. Walwyn made a similar diagnosis and assessed twenty percent to the right upper extremity, from loss of grip strength in her dominant hand. Both assessments were based on appropriate guidelines.

The trial court awarded, inter alia, permanent partial disability benefits based on twenty-five percent to the body as a whole. Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. section 50-6-225(e)(2).

Under the Tennessee Workers' Compensation Law, injuries by accident arising out of and in the course of employment which cause either disablement or death of the employee are compensable. Reeser v. Yellow Freight Systems, Inc., 938 S.W.2d 690 (Tenn. 1997). Compensation benefits are payable for the number of weeks established by a statutory schedule of the

various members of the body. Tenn. Code Ann. section 50-6-207(3)(a)(II). If the injury causes a permanent loss of part but not all of the use of a scheduled member, and if such loss is not specifically provided for in the schedule, benefits are computed by applying the percentage of loss to the total loss benefit contained in the schedule. Where a worker's only injury is to a scheduled member, he may receive only the amount of compensation provided by the schedule for his permanent disability. Genesco, Inc. v. Creamer, 584 S.W.2d 191 (Tenn. 1979). The extent of an injured worker's disability is an issue of fact. Jaske v. Murray Ohio Mfg. Co., 750 S.W.2d 150 (Tenn. 1988). Ms. Dunlap's only injury was to her right arm.

Once the causation and permanency of an injury have been established by expert testimony, the trial judge may consider many pertinent factors, including age, job skills, education, training, duration of disability, and job opportunities for the disabled, in addition to anatomical impairment, for the purpose of evaluating the extent of a claimant's permanent disability. Hill v. Royal Ins. Co., 937 S.W.2d 873 (Tenn. 1996). From a deliberate consideration of the above principles of law and those factors, to the extent they were established by the proof, the panel finds the evidence preponderates against an award of benefits to the body as a whole and in favor of one based on the economic equivalent, fifty percent to the right arm. The judgment is modified accordingly.

As modified, the judgment of the trial court is affirmed and the case remanded to the Circuit Court for Houston County. Costs are taxed to the defendant-appellant.

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Joe C. Loser, Jr., Special Judge

CONCUR:

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Lyle Reid, Associate Justice

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William H. Inman, Senior Judge

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

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Appellate Court Clerk**

<i>BELINDA DUNLAP,</i>	}	<i>HOUSTON CIRCUIT</i>
	}	<i>No. 1106 Below</i>
<i>Plaintiff/Appellee</i>	}	
	}	<i>Hon. Robert E. Burch,</i>
<i>vs.</i>	}	<i>Judge</i>
	}	
<i>NAGLE INDUSTRIES,</i>	}	<i>No. 01S01-9707-CV-00153</i>
	}	
<i>Defendant/Appellant</i>	}	<i>AFFIRMED AS MODIFIED.</i>

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 Defendant/Appellant and Surety, for which execution may issue if necessary.*

*IT IS SO ORDERED on March 18, 1998.*

*PER CURIAM*