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

FILED

March 25, 1998

Cecil Crowson, Jr.
Appellate Court Clerk

ROBERT E. EDWARDS,	)	LAUDERDALE CHANCERY
	)	
Plaintiff/Appellee	)	NO. 02S01-9703-CH-00022
	)	
v.	)	HON. JOHN HILL CHISOLM,
	)	CHANCELLOR
ANDERSON HICKEY COMPANY,	)	
	)	
Defendant/Appellant	)	

For the Appellant:

S. Newton Anderson
Thomas F. Preston
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For the Appellee:

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

Members of Panel:

Justice Janice Holder
Senior Judge John K. Byers
Judge Robert L. Childers

AFFIRMED BYERS, Senior 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 employee, Robert E. Edwards, fell 14 to 18 feet to the ground at work, injuring his right ankle. The trial court awarded 95 percent permanent partial disability to the right lower extremity.

We affirm the judgment of the trial court.

The employee is 65 years old with a high school education and work experience in general labor and welding. He has a non-work-related below the knee amputation of his left leg.

On July 7, 1994, the employee fell from a forklift a distance of about 18 feet and landed on his left foot, crushing his right ankle.

He was treated by Dr. Carl W. Huff, a board-certified orthopedic surgeon who is also certified by the American Board of Preventive Medicine, Certified Occupational Medicine. Dr. Huff first saw the employee on July 8, 1994. An x-ray at that time revealed a fracture of the calcaneus. He placed Mr. Edwards in a cast and on modified weight bearing. In September 1994, he placed the patient in a brace. During this time, Mr. Edwards required significant analgesics for pain and used a cane to help with relieving weight on the ankle and for balance. He developed post-traumatic arthritis in the talocalcaneal joint of the right foot as a result of the injury and now has limited mobility and pain with walking and weight bearing.

Dr. Huff opined that plaintiff reached maximum medical improvement as of February 8, 1995. He assessed ten percent anatomic impairment to the lower extremity, with functional impairment greater due to the below the knee prosthesis on the other leg. He is limited to standing and walking about four hours a day, carrying objects lighter than ten to 15 pounds, and he cannot climb. He can go up and down steps but would have a decreased ability and more risk in doing so. He is capable of doing full-time light work, including machine operation, light lifting, or working with his upper extremities only. A job that would allow intermittent standing, sitting, and walking would be feasible.

Mr. Edwards testified that he has "never known a day since [the accident] that it hadn't hurt." He has trouble sleeping, the foot swells, and he is not able to do his former job since the injury. Walking more than thirty minutes causes pain and walking on rough surfaces causes sharp pain or may cause him to stagger and fall.

Our review of the findings of fact made by the trial court is *de novo* upon the record, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise. TENN. CODE ANN. § 50-6-225(e)(2). *Stone v. City of McMinnville,* 896 S.W.2d 584 (Tenn. 1991).

Where, as in this case, the medical testimony is presented by deposition, this Court is able to make its own independent assessment of the medical proof to determine where the preponderance of the evidence lies. *Cooper v. INA,* 884 S.W.2d 446 (Tenn. 1994). Our review of the deposition of Dr. Huff, which is the only medical evidence in the record, reveals that Dr. Huff opined Mr. Edwards was able to do full-time light work as of November 16, 1994. However, Mr. Edwards testified at trial that when he returned to work after his injury he was given work to do sitting down, such as making racks for the paint department. After working during the day, he had pain "like having a constant toothache" and had to soak his leg every night. He was given work within his restrictions, including riding a tow motor to different departments to see if he could help somebody. He stated that even though he was doing work within his restrictions, he finally quit his job in February 1995. When asked to explain why, he said:

> "Part of it was my own peace of mind that I would go to work, but I wasn't able to do my job. Somebody else had to do it. . . . I'd go home and I couldn't rest [due to] pain, hurt."

He further testified that he could only stand or walk for 30 minutes without having pain, and that he would then have to rest for ten or 15 minutes. His leg continues to swell and he continues to have "a normal day of hurting." When asked whether he was "trained for any sit-down jobs" he answered, "Yeah. I'm a good TV switcher. That's about all."

We find no vocational evidence in the record to support the employer's

assertion that Mr. Edwards has any education, experience, or skills to do full-time light work.

In making determinations, the court shall consider all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's disabled condition. TENN. CODE ANN. § 50-6-241(a)(1).

We have considered these factors, including the plaintiff's age, high school education, and work experience, all of which is in heavy labor.

We find the preponderance of the evidence supports the judgment of the trial court, which is affirmed. Costs are assessed to the employer.

_____
John K. Byers, Senior Judge

CONCUR:

_____
Janice Holder, Justice

_____
Robert L. Childers, Judge

IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

ROBERT E. EDWARDS,	)	LAUDERDALE CHANCERY
	)	NO. 9912
Plaintiff/Appellee,	)	
	)	Hon. John Hill Chisolm,
vs.	)	Chancellor
	)	
ANDERSON HICKEY COMPANY,	)	NO. 02S01-9703-CH-00022
	)	
Defendant/Appellant.	)	AFFIRMED.

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 Appellant, and surety, for which execution may issue if necessary.

IT IS SO ORDERED this 25th day of March, 1998.

PER CURIAM

(Holder, J., not participating)