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

DORIS HENSLEY,	)	
	)	
Plaintiff/Appellee,	)	**HARDEMAN CHANCERY**
	)	
VS.	)	**HON. DEWEY C. WHITENTON,**
	)	**CHANCELLOR**
LIBERTY NATIONAL LIFE	)	
INSURANCE COMPANY	)	**No. 02S01-9705-CH-00044**
	)	
Defendant/Appellant.	)	

FOR APPELLANT:
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FOR APPELLEE:
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MEMORANDUM OPINION

MEMBERS OF PANEL:

JANICE M. HOLDER, JUSTICE
HEWLITT P. TOMLIN, JR., SENIOR JUDGE
CORNELIA A. CLARK, SPECIAL JUDGE

AFFIRMED **CLARK, SPECIAL JUDGE**

This worker's compensation appeal has been referred to the special worker's 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. Defendant employer presents only one issue on appeal: whether the Chancellor erred in attributing the impairment from plaintiff's injury to the body as a whole rather than to a scheduled member (the foot). For the reasons set forth below, we affirm the judgment of the trial court.

From 1991 to July 6, 1994, plaintiff was employed by defendant as an insurance collector and debit salesman. Her job duties included going door to door in several counties to sell insurance and collect premiums. She made approximately $60,000.00 per year. On July 6, 1994, while in the course and scope of her employment, plaintiff was involved in a motor vehicle accident. She sustained a serious crush type injury to her right foot. Defendant was timely provided with notice and has paid all temporary total disability benefits to which plaintiff was entitled. Defendant has also paid for the extensive medical treatment received by plaintiff. No dispute exists about the compensability of the injury, but only about its extent.

Plaintiff reached maximum medical improvement on October 4, 1995. Her treating physician, Dr. E. Greer Richardson, gave her a permanent partial impairment rating of thirty-five (35%) percent to the right foot. He specifically found no permanent impairment to other parts of her body. However, Dr. Richardson agreed on cross-examination that plaintiff did walk with a limp due to the injury to her foot. The limp continued through July 1996, the last time he saw her before his deposition was taken. Dr. Richardson admitted that he "suspected" she would retain the limp for the rest of her life and admitted that it "could" cause back symptoms either now or in the future. He could not state to a reasonable degree of medical certainty that plaintiff would experience back problems caused by the foot injury. He did prescribe the use of a shoe insert or orthotic to give extra support

to the arch.

At the request of plaintiff's counsel, Dr. Robert J. Barnett performed an independent medical examination on December 6, 1995. He saw plaintiff for approximately thirty to forty minutes on that occasion. He also reviewed her medical records. Dr. Barnett testified by deposition and to a reasonable degree of medical certainty that her limp would be permanent. He also testified that it was not unusual to see such limps causing back problems in the future. Dr. Barnett assigned a twenty (20%) percent permanent partial impairment to the body as a whole as a result of plaintiff's injury. On cross-examination he said he could not specifically disagree with Dr. Richardson's impairment rating of thirty-five (35%) percent to the right foot. When asked specifically about the discrepancy between the two opinions, Dr. Barnett stated "His [Dr. Richardson's] guess is as good as mine."

At trial, plaintiff testified on direct examination that prior to her accident she had no physical problems with her leg or back. Since the accident, she has had pain in her right leg and hip. She also has had pain in her back. She can reduce this pain to some extent by curtailing her walking and going to bed. She cannot walk without a special orthotic in her shoe. She continues to limp. Plaintiff also admitted that she did not mention her hip pain to her treating physicians or any representatives of the defendant because of personal embarrassment. She expressed concern that they would think she was so old that she could not properly recover. She also stated that she did not advise them because "I didn't figure workmen's compensation would go along with it."

After considering all the medical and lay testimony, including personal observation of plaintiff and an inspection of her right foot, the trial court found that she was experiencing or would continue to experience serious problems as a result of the unnatural gait that impaired her ability to walk. The court therefore found that

plaintiff was entitled to an impairment rating of forty (40%) percent to the body as a whole.

Appellate review is de novo upon the record of the trial court, accompanied by a presumption of the correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. §50-6-225(e)(2). This tribunal is required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. Wingert v. Government of Sumner County, 908 S.W.2d 921 (Tenn. 1995).

The general rule concerning the relationship of an injury to a scheduled member and a finding of impairment to the body as a whole is set forth in Thompson v. Leon Russell Enterprises, 834 S.W.2d 927, 928 (Tenn. 1992):

> As a general rule, permanent partial disability benefits based on an injury to a "scheduled member" are exclusively controlled by the schedule established by the General Assembly for that member and may not properly be apportioned to the body as a whole. See T.C.A. § 50-6-207(3)(F) (1991); **Lock v. National Union Fire Ins. Co.**, 809 S.W.2d 483, 486 (Tenn. 1991); **Reagan v. Tennessee Mun. League,** 751 S.W.2d 842, 843 (Tenn. 1988). However, for purposes of this rule, the term "scheduled member" is limited to only those members, and combinations of members, provided for in the statutory framework at T.C.A.§ 50-6-207(3)(A)(ii)(a) to (ff) (1991). Thus, where an injury is to a portion of the body not statutorily "scheduled," . . . where an injury affects a particular combination of members not statutorily provided for, . . . or where a scheduled injury causes a permanent injury to an unscheduled portion of the body, see, e.g., **Kerr v. Magic Chef, Inc.**, 793 S.W.2d 927 (Tenn. 1990) (hand injury caused permanent psychological injury); **Riley v. Aetna Cas. & Sur**., 729 S.W.2d 81 (Tenn. 1987) (foot injury caused permanent back injury), disability is properly assigned to the body as a whole. See T.C.A. § 50-6-207(3)(F) (1991).

In Riley v. Aetna Casualty & Surety, 729 S.W.2d 81, 83 (Tenn. 1987), the Supreme Court clarified that if an injury to a specific member does not stop with the injury to or loss of that member, but for any reason continues as an injury affecting the body to such extent as to result in permanent disability, a recovery may be had therefor.

Here there is credible testimony that plaintiff does, in addition to her foot problem, suffer back and hip problems as a result of her work-related accident. Under the facts of this case the combination of lay and expert testimony is sufficient to establish a causal relationship between plaintiff's foot injury, her limp, and her back problems. Plaintiff's award was properly assigned to the body as a whole.

Accordingly, the judgment of the trial court, awarding plaintiff forty (40%) percent permanent partial disability to the body as a whole, is affirmed. Costs of this appeal are taxed to defendant.

_____
CORNELIA A. CLARK, SPECIAL JUDGE

CONCUR:

_____
JANICE M. HOLDER, JUSTICE

_____
HEWLITT P. TOMLIN, JR., SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

DORIS HENSLEY,	)	HARDEMAN CHANCERY
	)	NO. 10739
Plaintiff/Appellee,	)	
	)	Hon. Dewey C. Whitenton,
vs.	)	Chancellor
	)	
LIBERTY NATIONAL LIFE	)	
INSRANCE COMPANY,	)	NO. 02S01-9705-CH-00044
	)	
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 15th day of January, 1998.

PER CURIAM

(Holder, J., not participating)