

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT NASHVILLE  
(September 25, 1997 Session)

TIMOTHY PAUL MULLINAX, ) HUMPHREYS CIRCUIT  
)  
Plaintiff-Appellee, ) Hon. Allen Wallace,  
) Judge.  
v. )  
) No. 01S01-9702-CV-00034  
WABASH ALLOYS, CONNELL )  
LIMITED PARTNERSHIP and )  
CIGNA INSURANCE COMPANY, )  
)  
Defendant-Appellant. )

**FILED**  
**December 31, 1997**  
**Cecil W. Crowson**  
**Appellate Court Clerk**

For Appellant:

Kitty Boyte  
Gracey, Ruth, Howard, Tate & Sowell  
Nashville, Tennessee

For Appellee:

Charles L. Hicks  
Camden, Tennessee

MEMORANDUM OPINION

Members of Panel:

Lyle Reid, Associate Justice, Supreme Court  
William S. Russell, Special Judge  
Joe C. Loser, Jr., Special Judge

AFFIRMED AND REMANDED

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 employer and its insurer contend the evidence preponderates against the trial court's finding that the employee has a ten percent permanent medical impairment and in favor of a finding that the employee has a five percent medical impairment rating. As discussed below, the panel has concluded the judgment should be affirmed.

The employee or claimant, Mullinax, suffered a compensable low back injury on August 30, 1995, when he was hit in the head by a steel beam and knocked ten or fifteen feet onto his back. He was referred by the employer to a chiropractor, who referred him to Dr. Verne Allen for treatment of pain in his left shoulder and arm, low back pain and problems with his hips and legs. The doctor ordered an MRI and myelogram, restricted him from lifting more than forty pounds occasionally or twenty pounds repetitively, and assessed his permanent medical impairment at five percent to the whole body, without performing any range of motion tests. He told the claimant there was nothing anybody could do for him.

The claimant was referred, apparently by his attorney, to Dr. Robert Barnett, for examination and evaluation. After considering the claimant's history, results of scientific tests and range of motion tests, Dr. Barnett restricted the claimant from any heavy lifting, repetitive lifting, bending, stooping, bending or squatting, and assessed his permanent impairment at ten percent to the whole body.

Both doctors based their opinions on appropriate guidelines and both are eminently qualified experts in their fields of specialty. Dr. Allen is board certified in neurological surgery, Dr. Barnett in orthopedic surgery.

The trial judge accepted the opinion of Dr. Barnett and rejected that of Dr. Allen. Appellate review of a finding of fact in a workers' compensation case is de novo upon the record of the trial court, accompanied by a presumption of correctness of the finding, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. section 50-6-225(e)(2).

Accordingly, we have conducted an independent examination of the record to determine where the preponderance of the evidence lies. From that examination, we are persuaded that the evidence fails to preponderate against the finding of the trial judge.

The judgment is affirmed and the cause remanded to the Circuit Court for Humphreys County. Costs are taxed to the defendants-appellants.

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Joe C. Loser, Jr., Special Judge

CONCUR:

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Lyle Reid, Associate Justice

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William S. Russell, Senior Judge

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

TIMOTHY PAUL MULLINAX,	}	HUMPHREYS CIRCUIT
	}	No. 8535 Below
Plaintiff/Appellee	}	December 31, 1997
	}	Hon. Allen Wallace,
vs.	}	Judge
	}	Cecil W. Crowson
	}	Appellate Court Clerk
WABASH ALLOYS, CONNELL	}	
LIMITED PARTNERSHIP and	}	
CIGNA INSURANCE COMPANY	}	No. 01S01-9702-CV-00034
	}	
Defendants/Appellants	}	AFFIRMED AND REMANDED.

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 Defendants/Appellants, Wabash Alloys, Connell Limited Partnership and Cigna Insurance Company, and their Surety, for which execution may issue if necessary.*

*IT IS SO ORDERED on December 31, 1997.*

PER CURIAM