

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

AT KNOXVILLE
(November 19, 1997 Session)

FILED
February 24, 1998
Cecil Crowson, Jr.
Appellate Court Clerk

JAMES V. PEELER,) ROANE CHANCERY
)
Plaintiff-Appellee,) Hon. Frank V. Williams, III,
) Judge.
v.)
) No. 03S01-9704-CH-00045
METHODIST MEDICAL CENTER,)
)
Defendant-Appellant.)

For Appellant:

John T. Johnson, Jr.
Kramer, Rayson, Leake, Rodgers
& Morgan
Knoxville, Tennessee

For Appellee:

George H. Buxton, III
Buxton Law Office
Oak Ridge, Tennessee

MEMORANDUM OPINION

Members of Panel:

Frank F. Drowota, III, Associate Justice, Supreme Court
William H. Inman, Senior 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 appellant contends the trial court erred (1) in finding a causal relationship between the claimant's employment and his injury and (2) in finding the claimant will retain permanent partial disabilities of forty-five percent to the right arm and thirty percent to the left arm. As discussed below, the panel has concluded the judgment should be affirmed.

The claimant or employee is thirty years old with a GED. He is a certified nursing assistant and had, at the time of his injury, worked for the employer, Methodist Medical Center, since 1991 as an attendant. His duties included turning, bathing, weighing and walking patients and pushing stretchers and wheel chairs of patients. He gradually developed carpal tunnel syndrome.

Dr. Eugenio Vargas treated the claimant and ultimately performed bilateral carpal tunnel surgery. He testified the injuries were causally related to the claimant's job and that he would retain a ten percent permanent impairment to both arms.

Dr. Clifford Posman viewed the claimant's medical records, including the reports of Dr. Vargas, and opined that the claimant's injuries were not work-related. Rodney Caldwell, a vocational consultant, opined the claimant was forty-seven percent vocationally disabled.

The trial court found the injuries to be compensable and fixed the claimant's permanent partial disability at thirty-seven and one-half percent to both arms.¹ 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).

From a careful consideration of the medical and lay proof in this case, the panel is unable to say the evidence preponderates against the trial judge's finding that the injuries are work-related. The first issue is resolved in favor the employee.

¹ More precisely, the trial judge awarded benefits on the basis of 45% to the right arm and 30% to the left arm, which equates to 37 1/2% to both arms, a scheduled injury.

From a careful consideration of the expert and lay testimony as to the claimant's age, job skills, education, lack of training and anatomical impairment, the panel is unable to say the evidence preponderates against the award of permanent partial disability benefits based on thirty-seven and one-half percent to both arms. The second issue is resolved in favor of the employee.

The judgment of the trial court is affirmed and the cause remanded to the Chancery Court for Roane County. Costs are taxed to the defendant-appellant.

Joe C. Loser, Jr., Special Judge

CONCUR:

Frank F. Drowota, III, Associate Justice

William H. Inman, Senior Judge

IN THE SUPREME COURT OF TENNESSEE

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AT KNOXVILLE

JAMES V. PEELER,)	ROANE CHANCERY
)	No. 12,868
Plaintiff/Appellee,)	
)	
vs.)	Hon. Frank V. Williams
)	Judge
METHODIST MEDICAL CENTER,)	
)	No. 03S01-9704-CH-00045
Defendant/Appellant.)	

JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation 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 on appeal are taxed to the defendant/appellant, Methodist Medical Center and John T. Johnson, Jr., Surety, for which execution may issue if necessary.

This case is before the Court upon motion for review pursuant to Tenn. Code Ann. § 50-6-225 (e) (5) (B), 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 motion for review is not well taken and should be denied; 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 the plaintiff-appellant and sureties, for which execution may issue if necessary.

IT IS SO ORDERED this ____ day of June, 1997.

PER CURIAM

Anderson, J. - Not Participating

al to the Special Worker' Compensation 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 act and conclusions of law are adopted and affirmed, and the decision of the Panel is made the Judgment of the Court.

Costs on appeal are taxed to the plaintiff-appellant, Vernon Harris and Gilbert and Faulkner. surety, for which execution may issue if necessary.

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