

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT JACKSON  
September 29, 1997

**FILED**

**January 7, 1998**

**Cecil Crowson, Jr.**  
Appellate Court Clerk

JEANETTE WILSON,

Plaintiff,

v.

TECUMSEH PRODUCTS  
COMPANY,

Defendant.

) Henry County Circuit Court

) No. 561

)

) Hon. C. Creed McGinley, Judge

)

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) No. 02S01-9704-CV-00031

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For Plaintiff:

Gayden Drew, IV  
Drew & Martindale, P.C.  
470 N. Parkway, Suite C  
Jackson, TN 3830

For Defendant:

David F. Hessing  
105 E. Wood Street  
Paris, TN 38242

MEMORANDUM OPINION

Members of Panel:

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

AFFIRMED

TOMLIN, SENIOR JUDGE

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with T.C.A. § 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. Tecumseh Products Company ("defendant") has raised the following issues by this appeal: Did the trial court err (1) in finding that plaintiff's vocational disability arose out of and in the course of her employment, (2) in awarding plaintiff temporary total disability and ordering defendant to pay certain medical expenses, (3) in finding that plaintiff sustained a forty percent permanent partial disability to her right arm and thirty percent permanent partial disability to her left arm, and (4) in charging certain discretionary costs incurred by plaintiff to defendant. We find no error and affirm.

Jeanette Wilson ("plaintiff") was an employee of defendant, working on a production line. Her duties involved using a screwdriver to adjust wedges on motors that came down the assembly line. She was required to make adjustments on one side of the motor, turn the motor over and make adjustments on the other side. It is undisputed that these functions required plaintiff to use both of her hands and to lift motors which could weigh up to forty pounds.

Plaintiff had no difficulty with her hands and arms prior to coming to work for defendant. She began to experience problems in both arms, specifically her right wrist, in November, 1995. She continued to work until the condition worsened to the point where she felt obliged to see a doctor. Upon notifying the defendant of her condition, defendant provided her with a choice of three physicians who could treat her. Plaintiff chose Dr. John Holancin. Dr. Holancin, after examining plaintiff, placed her on light duty and referred her to Dr. Ronald Bingham for a diagnostic test called an EMG. This test revealed that plaintiff had no median sensory slowing in either wrist, but did have severe median motor conduction slowing across both wrists. He concluded that plaintiff was suffering from severe carpal tunnel syndrome in both hands.

Plaintiff continued to work until such time as her hands swelled so much that she was unable to perform her work. In the note that was written by her supervisor to the

security guard authorizing her to leave the factory the supervisor wrote: "Swollen hands, unable to perform her job." This was plaintiff's last day of employment by defendant.

On her own initiative, plaintiff went to see Dr. Anup Satpathy, who referred her to Dr. Joseph Rowland, a neurosurgeon in Jackson. Dr. Rowland performed surgery on plaintiff's right wrist in July, 1996. He determined that plaintiff had reached maximum medical improvement as of August 30, 1996 and assigned her a ten percent permanent partial impairment to her right arm.

Plaintiff also saw Dr. Joseph Boals twice at the request of her attorney; two months prior to Dr. Rowland's surgery and two months after this surgery. Following his first examination, Dr. Boals diagnosed plaintiff as suffering from severe carpal tunnel syndrome in both wrists, chronic biceps tendinitis of the right shoulder and de Quervain's tenosynovitis of the right wrist. He attributed plaintiff's injuries to the work she was performing for defendant.

Although Dr. Boals testified by deposition that he did not conduct grip strength tests during this first evaluation, he later discovered his notes which indicated that he had conducted such tests during the initial examination. These tests revealed below normal grip strength for plaintiff's right hand. He testified that plaintiff suffered a thirty percent impairment to each arm based upon his diagnosis of carpal tunnel, which was supported by the results of Dr. Bingham's EMG. Dr. Boals further testified that he arrived at this disability rating using the neuropathy tables in the AMA guidelines and did not rely on the grip strength tests for his initial rating.

In his second examination of plaintiff, Dr. Boals primarily evaluated the effect of plaintiff's surgery on her right arm. He stated that he did not reevaluate plaintiff's left arm because there had been no surgery or subsequent EMG on that arm. Dr. Boals stated that plaintiff's right arm had improved since the surgery, and although the grip strength test scores for the right hand were lower than what they had been prior to surgery, Dr. Boals stated that this was an expected consequence of the surgery and that all other signs showed improvement. As a result, Dr. Boals lowered the impairment rating he had given earlier for plaintiff's right arm from thirty percent impairment to twenty percent. The grip strength test for the left side was unchanged and the impairment of the left arm remained

the same as before at thirty percent.

The trial court found plaintiff to be a credible witness and placed substantial weight on the testimony of Dr. Boals. The court also awarded plaintiff the medical and travel expenses associated with her visits to Dr. Rowland as well as the deposition costs of Dr. Boals.

### **I. Causation.**

Our scope of review is *de novo* upon the record in the trial court, accompanied by a presumption of correctness of the findings of fact made therein, unless we find the preponderance of evidence to be otherwise. T.C.A. § 50-6-225(e)(2) (Supp. 1997). In addition, 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, 922 (Tenn. 1995).

Defendant contends that plaintiff has failed to prove that her injury was causally connected to her employment. “Except in the most obvious and routine cases, the claimant in a workers’ compensation action must establish causation by expert medical evidence.” Hill v. Eagle Bend Mfg., Inc., 942 S.W.2d 483, 487 (Tenn. 1997). Initially Dr. Holancin stated that plaintiff “has been off of work for about a month and has had no improvement which doesn’t favor being a repetitive motion type injury.” On the other hand, Dr. Boals stated to a reasonable degree of medical certainty that “the causation is the work done at Tecumseh Products on a rather heavy production line for ten months’ duration.” It is well-settled in Tennessee that when faced with conflicting medical testimony, a trial court may, in its discretion, accept the opinion of one medical expert over that of another. Johnson v. Midwesco, Inc., 801 S.W.2d 804, 806 (Tenn. 1990). It is apparent that the trial court weighed Dr. Boals’ firmly stated opinion more heavily than the ambivalent statement of Dr. Holancin. This issue is without merit.

### **II. Temporary Total Disability.**

Next, defendant contends that the trial court was in error in awarding temporary total disability benefits from April 25, 1996 through August 30, 1996. In Simpson v.

Satterfield, 564 S.W.2d 953, 955 (Tenn. 1978), our supreme court had this to say about how to prove temporary total disability:

[T]o make out a prima facie case of entitlement to temporary total disability, an employee must prove that he was (1) totally disabled to work by a compensable injury; (2) that there was a causal connection between the injury and his inability to work; and (3) the duration of that period of disability. Temporary total disability benefits are terminated either by the ability to return to work or attainment of maximum recovery.

The record established that plaintiff was forced to leave work by her condition on April 24, 1996 and there is nothing to contradict the opinion of Dr. Rowland that she had reached maximum recovery on August 30, 1996. This issue is also without merit.

### **III. Permanent Partial Disability.**

Defendant contends that the evidence preponderates against the trial court's findings of permanent partial disability to plaintiff's right and left arms. Dr. Rowland was of the opinion that plaintiff had suffered a ten percent permanent partial disability to her right arm, but he expressed no opinion as to her left arm. Dr. Boals attributed thirty percent permanent partial disability to both of plaintiff's arms in his first examination, but reduced the permanent partial disability in plaintiff's right arm to twenty percent in his second examination, reflecting that it had showed some improvement following plaintiff's surgery.

Once causation and permanency have been established by expert medical testimony, the trial judge may consider many pertinent factors, including age, job skills, education, training, duration of disability, anatomical disabilities established by medical experts, and job opportunities available to a worker with those anatomical disabilities, to determine the extent of the worker's industrial disability.

Hill v. Royal Ins. Co., 937 S.W.2d 873, 877 (Tenn. 1996).

We find nothing in the record to indicate that the trial court did not properly consider all the pertinent factors in regard to this issue. The evidence does not preponderate against this award by the trial court as to either arm.

As an ancillary matter to this issue, defendant contends that plaintiff in this case was not a credible witness, citing several inconsistencies in her testimony at trial as

compared to her deposition testimony. The trial court specifically addressed this issue in its findings. The law is clear that “[w]here the trial judge has seen and heard witnesses, especially where issues of credibility and weight of oral testimony are involved, on review considerable deference must still be accorded to those circumstances.” Clarendon v. Baptist Mem’l Hosp., 796 S.W.2d 685, 689 (Tenn. 1990). This issue is without merit, as well.

#### **IV. Discretionary Costs.**

The trial court charged against defendant as the employer plaintiff’s medical expenses relative to her treatment by Dr. Rowland and Jackson-Madison County General Hospital, as well as mileage in traveling to and from her home to Jackson. In addition, defendant was taxed with plaintiff’s costs pertaining to the taking and preparation of the deposition of Dr. Boals. T.C.A. § 50-6-204(a)(1) provides in essence that the injured employees medical expenses will be paid directly to the health care provider by the employer. Where medical expenses are contested and the employee prevails, the expenses are a part of the award of benefits. See Langford v. Liberty Mutual Ins. Co., Inc., 854 S.W.2d 100 (Tenn. 1993). In addition, the deposition costs were properly awarded under these circumstances, pursuant to both statute and case law. See T.C.A. § 50-6-226(c)(1) (Supp. 1997), Miles v. Marshall C. Voss Health Care Ctr., 896 S.W.2d 773, 775 (Tenn. 1995).

The judgment of the trial court is affirmed. Costs in this cause on appeal are assessed to defendant, for which execution may issue if necessary.

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HEWITT P. TOMLIN, JR., SENIOR JUDGE

CONCUR:

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JANICE M. HOLDER, JUSTICE



IN THE SUPREME COURT OF TENNESSEE  
AT JACKSON

JEANETTE WILSON, ) HENRY CIRCUIT  
 ) NO. 561  
 )  
 ) Plaintiff/Appellee, )  
 ) Hon. C. Creed McGinley,  
 vs. ) Judge  
 )  
 ) TECUMSEH PRODUCTS COMPANY, ) NO. 02S01-9704-CV-00031  
 )  
 ) Defendant/Appellant. ) AFFIRMED.

JUDGMENT ORDER

**FILED**  
January 7, 1998  
Cecil Crowson, Jr.  
Appellate Court Clerk

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 7th day of January, 1998.

PER CURIAM

(Holder, J., not participating)



