

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

**FILED**

March 3, 1998

Cecil Crowson, Jr.  
Appellate Court Clerk

JANET WYNN,	)	
	)	HENRY CIRCUIT
Plaintiff/Appellee	)	
	)	NO. 02S01-9709-CV-00081
v.	)	
	)	HON. CREED McGINLEY,
TECUMSEH PRODUCTS COMPANY,	)	JUDGE
	)	
Defendant/Appellant	)	

**For the Appellant:**

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

**For the Appellee:**

Gayden Drew, IV  
Drew & Martindale, P.C.  
470 North Parkway, Suite C  
Jackson, TN 38305

**MEMORANDUM OPINION**

**Members of Panel:**

Justice Janice Holder  
Senior Judge John K. Byers  
Senior Judge William H. Inman

AFFIRMED

BYERS, Senior Judge

## 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. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

Review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the findings, 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 548, 550 (Tenn. 1995). The application of this standard requires this Court to weigh in more depth the factual findings and conclusions of the trial court in a workers' compensation case. See *Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988).

The trial court awarded the plaintiff a 30 percent permanent partial disability to her right leg, a 40 percent permanent partial disability to each of her arms, and medical expenses in the amount of \$707.00. The trial court noted that the plaintiff is very bright and capable of expressing herself.

The defendant raises the following issues on appeal:

- “1. Does the evidence preponderate against the Trial Court's finding that Plaintiff sustained a thirty (30%) percent permanent partial disability to her right leg.
2. Does the evidence preponderate against the Trial Court's finding that Plaintiff's condition to each of Plaintiff's arms was caused by the work activities performed at Tecumseh Products Company.
3. Does the evidence preponderate against the Trial Court's finding that Plaintiff sustained a forty (40%) percent permanent partial disability to each of her arms.
4. Did the Trial Court err in finding that Tecumseh should pay Dr. James Spruill's medical charges in the amount of \$707.00.”

\_\_\_\_\_We affirm the judgment of the trial court.

## **FACTS**

The plaintiff, age 23 at the time of trial, graduated from high school and attended one year at Bethel College but was financially unable to continue her college education. Her work experience includes working as a cashier and clerk at Wal-Mart.

Beginning September 6, 1994, the plaintiff worked for the defendant as a wedge adjuster, a job she did for two months. She also performed duties as a clip

and gage worker. The plaintiff's permanent job, which she performed 99 percent of the time, was that of a capper. Working as a capper required the plaintiff to stand on her feet eight hours a day. The plaintiff testified that all of these jobs required the repetitive use of her hands and arms.

On January 16, 1995, the plaintiff fractured her right ankle when she got her foot caught in some open steps. She underwent two surgeries on her foot and missed a total of 11 weeks of work. The plaintiff returned to work without any restrictions, but she testified that she continued to have swelling, pain, and stiffness in her ankle and that her ankle gave her problems when she stood for long periods of time.

Beginning the first of 1996, the plaintiff experienced problems with her hands, feeling numbness in the third and fourth fingers of her left hand and in the thumb and index finger of her right hand. During an annual examination for epilepsy in October 1996, the plaintiff complained to Dr. James Spruill of numbness in her hands. On October 14, 1996, she learned from Dr. Spruill that she had developed bilateral carpal tunnel syndrome. Dr. Spruill offered to refer the plaintiff to a surgeon, but she did not seek any medical treatment at that time.

On October 17, 1996, the plaintiff notified Cindy Morris, Benefits Coordinator for the defendant, that she began experiencing numbness, burning, stiffness, and cramping in her hands on March 15, 1996. However, this claim for workers' compensation benefits was denied for lack of notice and because the functional requirements of a capper were not at risk for a cumulative trauma disorder.

The plaintiff still works for the defendant as a capper and maintains a good work record. She testified that she walks 30 minutes to one hour every day before going to work. She also testified that she can work, cook, clean, drive, and do laundry but that her hands get tired when doing these activities.

#### **MEDICAL EVIDENCE: LEG INJURY**

Dr. Eugene Gulish, an orthopedic surgeon, treated the plaintiff for the injury to her ankle. On February 5, 1996, Dr. Gulish removed five screws and a plate that he had inserted to stabilize the plaintiff's fracture during the first surgery. Dr. Gulish released the plaintiff with no work restrictions on March 29, 1996. Dr. Gulish is

ambiguous about whether there is any permanent impairment to the plaintiff's right leg as a result of her injury at work.

\_\_\_\_\_ Dr. Robert J. Barnett, an orthopedic surgeon, performed an independent medical examination of the plaintiff's leg at her attorney's request on January 29, 1997. Dr. Barnett found arthritic changes, limited range of motion, a one-half inch atrophy of the right calf, and a one-fourth enlargement of the right ankle. He opined that the plaintiff sustained a 15 percent anatomical impairment to her right leg based upon the *AMA Guides* and recommended that the plaintiff not stand more than six hours a day.

The defendant asserts that the trial court erroneously awarded the plaintiff a 30 percent impairment to the right leg because: (1) the plaintiff is very bright and attended college; (2) the plaintiff's treating physician, whose testimony should be given more weight because he saw her for 15 months, found no anatomical impairment to the right ankle and placed no work restrictions on her; (3) the plaintiff's evaluating physician, who saw her only once, made no comparisons concerning her ankle's range of motion; and (4) the plaintiff is able to walk 30 minutes to one hour before work each day and is able to work as a capper while standing for eight hours.

\_\_\_\_\_ The plaintiff states that there is a conflict in the medical evidence in that Dr. Gulish found no anatomical impairment to her leg while Dr. Barnett found a 15 percent anatomical impairment to her leg. Thus, the plaintiff argues that the trial court exercised its discretion in choosing to accept the testimony of Dr. Barnett over that of Dr. Gulish. Aside from the anatomical impairment rating found by Dr. Barnett, the plaintiff points out that the trial court could not disregard her own testimony about the pain and stiffness she still feels in her ankle from standing eight hours a day at work.

#### **MEDICAL EVIDENCE: CARPAL TUNNEL SYNDROME**

\_\_\_\_\_ Dr. James Spruill, a neurologist, saw the plaintiff on October 7, 1996 for an annual examination for epilepsy. At that time, the plaintiff complained to Dr. Spruill of numbness in her hands. Dr. Spruill ordered a nerve conduction study and determined that the results were compatible with bilateral carpal tunnel syndrome.

\_\_\_\_\_ Dr. Joseph C. Boals, an orthopedic surgeon, performed an independent medical examination of the plaintiff's hands and arms at her attorney's request on

December 30, 1996. Dr. Boals found a negative Phalen's examination bilaterally and no definite numbness in either hand. Dr. Boals opined that the plaintiff had bilateral carpal tunnel syndrome, that she needed surgery, and that she had sustained a ten percent anatomical impairment to each arm based upon the *AMA Guides*.

The defendant claims there is no evidence to support the trial court's finding that the carpal tunnel syndrome which the plaintiff suffers was caused by her work as a capper. In support of this claim, the defendant presented the testimony of Kenneth Springer, a physical therapist. Mr. Springer testified that he had done a job analysis of the job performed by the plaintiff and found no significant risk factor of cumulative trauma to the shoulder, elbow, or wrists of an employee performing this task.

The plaintiff testified that she continues to have problems with her hands while doing her work as a capper.

### **ANALYSIS**

In order to be eligible for workers' compensation benefits, an employee must suffer "an injury by accident arising out of and in the course of employment which causes either disablement or death." Tenn. Code Ann. § 50-6-102(a)(5). The phrase "arising out of" refers to causation. The causation requirement is satisfied if the injury has a rational, causal connection to the work. *Reeser v. Yellow Freight Sys., Inc.*, 938 S.W.2d 690, 692 (Tenn. 1997) (citations omitted).

Although causation cannot be based upon merely speculative or conjectural proof, absolute certainty is not required. Any reasonable doubt in this regard is to be construed in favor of the employee. We have consistently held that an award may be properly based upon medical testimony to the effect that a given incident "could be" the cause of the employee's injury, provided that there is also lay testimony from which it reasonably may be inferred that the incident was in fact the cause of the injury. *Id.*

On the injury to the plaintiff's leg, there is no dispute on causation. The only dispute is whether there is any permanent injury. In reaching a judgment on the extent, if any, of permanent vocational impairment to the plaintiff's leg, the trial judge had medical testimony from two physicians which was in conflict as to whether there was any impairment or not. In addition, the trial judge had the plaintiff's testimony about how the injury affects her now.

The defendant says the evidence does not support a finding that the plaintiff suffers a 30 percent permanent impairment to her right leg because the evidence submitted by the treating physician Dr. Gulish showed that the plaintiff suffered no permanent impairment. The defendant insists that Dr. Gulish's testimony should be given greater weight than the testimony of Dr. Barnett, who only saw the plaintiff for purposes of evaluation and found that she retained a 15 percent impairment to her right leg.

The Supreme Court has said that the trial court may properly give more weight to the testimony of a treating physician than that of a physician who sees an employee only for purposes of evaluation. See *Crossno v. Publix Shirt Factory*, 814 S.W.2d 730, 732 (Tenn. 1991); *Orman v. Williams Sonoma, Inc.*, 803 S.W.2d 672, 677 (Tenn. 1991). However, this case does not compel the trial judge to give more weight to the treating physician's testimony. To do so would mean there would be no need for an employer or an employee to have an independent medical examination done in a workers' compensation case.

As we understand this issue, each case must be decided upon its own medical evidence. The trial judge must make a decision on the medical evidence and, when there are conflicting opinions by the experts, the trial judge may accept the opinion of one medical expert over another. *Johnson v. Midwesco, Inc.*, 801 S.W.2d 804, 806 (Tenn. 1990).

We may make our own independent assessment of the medical evidence when it is presented by deposition or written reports, as it is in this case. *Cooper v. Insurance Co. of N. Am.*, 884 S.W.2d 446, 451 (Tenn. 1994); *Landers v. Fireman's Fund Ins. Co.*, 775 S.W.2d 355, 356 (Tenn. 1989). In doing so, we should not ignore the conclusion reached by the trial judge upon the assessment of the conflicting medical opinions. Unless there is some reason in the record to demonstrate the unreliability of the testimony or written reports of an examining physician, we should exercise great discretion in rejecting the trial judge's findings and not reject them without some obvious reason to do so.

We have made an independent assessment of the medical evidence regarding the plaintiff's leg injury, and we find the evidence does not preponderate

against the findings of the trial judge that the plaintiff suffers from a 30 percent permanent partial disability to her right leg.

On the plaintiff's carpal tunnel syndrome, there is a dispute on causation and whether there is any permanent impairment. There is medical evidence in this record showing that the plaintiff developed carpal tunnel syndrome. Dr. Boals' written report concludes that the plaintiff's carpal tunnel syndrome resulted from the work done by her as a capper.

We conclude the evidence does not preponderate against the findings of the trial court that the carpal tunnel syndrome suffered by the plaintiff was caused by her work for the defendant. Furthermore, we have weighed the medical evidence regarding the injury to the plaintiff's arms, and we find the evidence does not preponderate against the findings of the trial judge that the plaintiff suffers from a 40 percent permanent partial disability to each of her arms.

### **CONCLUSION**

We do not find that the evidence preponderates against the findings of the trial judge as to the extent of the injury to the plaintiff's leg or to the cause and extent of the injury to her arms, and we affirm the judgment.

We further find the trial judge did not err in ordering the defendant to pay the medical bill of \$707.00. The defendant asserts that it should not be responsible for any medical bills to Dr. Spruill which were incurred prior to informing the defendant that the plaintiff had carpal tunnel syndrome.

An employer is liable for medical treatments which are found to be work related when they are incurred prior to the time an employee knows she has a work related injury. *Bishop v. United States Steel Corp.*, 593 S.W.2d 920 (Tenn. 1980). The plaintiff is entitled to any medical costs of Dr. Spruill after she reported the injury because the defendant denied that the plaintiff's claim was compensable and did not furnish her any medical care for her arms. *See Whitson v. Liberty Mut. Ins. Co.*, 556 S.W.2d 756 (Tenn. 1977).

The cost of this appeal is taxed to the defendant.

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John K. Byers, Senior Judge

CONCUR:

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Janice Holder, Justice

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William H. Inman, Senior Judge



IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

JANET WYNN,	)	HENRY CIRCUIT
	)	NO. 717 & 718
Plaintiff/Appellee,	)	
	)	Hon. Creed McGinley,
vs.	)	Judge
	)	
TECUMSEH PRODUCTS COMPANY,	)	NO. 02S01-9709-CV-00081
	)	
Defendant/Appellant.	)	AFFIRMED.

<p><b>FILED</b></p> <p><b>March 3, 1998</b></p> <p><b>Cecil Crowson, Jr.</b> Appellate Court Clerk</p>
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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 3rd day of March, 1998.

PER CURIAM

(Holder, J., not participating)

