

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

FILED

May 15, 1998

Cecil Crowson, Jr.
Appellate Court Clerk

LINDA G. CATHEY,)	
)	HENRY CIRCUIT
Plaintiff/Appellee)	
)	
v.)	NO. 02S01-9707-CV-00069
)	
LIBERTY MUTUAL INSURANCE)	
COMPANY,)	HON. C. CREED McGINLEY,
)	JUDGE
Defendant/Appellant)	

For the Appellant:

Spragins, Barnett, Cobb & Butler
Lewis L. Cobb
Teresa G. Cobb
Elks Building, P.O. Box 2004
Jackson, TN 38302

For The Appellee:

Larry C. Sanders
Sanders Law Office
42 South Main Street
Lexington, TN 38351

MEMORANDUM OPINION

Members of Panel:

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

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.

The trial judge found the plaintiff had suffered a 50 percent impairment to each of her arms as a result of carpal tunnel syndrome which arose out of her employment with United Postal Service ("UPS").

We find the evidence in this case preponderates against an award of 50 percent to each arm and find the evidence preponderates in favor of an award of 25 percent to each arm.

At the time of the trial of this case, the plaintiff was 45 years of age. She has a twelfth grade education and had worked for UPS for 18 years as a truck driver. The plaintiff's work history included operating an antique store and working as a sales clerk, a loan officer for a bank, and an executive secretary.

The only issue before us is whether the trial court's award of 50 percent to each arm is supported by the evidence.

The evidence concerning the extent of the plaintiff's disability is supplied by the plaintiff's testimony; by the medical report and records of Dr. Lowell Stonecipher, an orthopedic surgeon and the treating physician who was furnished by the defendant; by the report of Dr. Robert J. Barnett, an orthopedic surgeon, who evaluated the plaintiff at her request; and by the report of Dr. Ronald C. Bingham, who conducted nerve conduction tests on the plaintiff at the request of Dr. Stonecipher -- these tests showed mild residual median neuropathy.

The plaintiff began to experience difficulty with her arms and hands in June 1996. Dr. Stonecipher diagnosed the condition as carpal tunnel syndrome and did surgery to relieve the condition in her left arm on February 21, 1996. On April 2, 1996, Dr. Stonecipher did surgery on the plaintiff's right arm.

The plaintiff returned to work in June 1996 doing the same work she had done prior to having surgery. The plaintiff testified the work caused her hands and

arms to hurt as before and that she was unable to continue working. She resigned from UPS on November 19, 1996.

Dr. Stonecipher found the plaintiff had sustained a three percent permanent medical impairment to each of her arms as a result of the carpal tunnel syndrome. Dr. Stonecipher conducted grip strength tests on the plaintiff on the last visit which showed a 55 pound limit on the left arm and a 50 pound limit on the right arm. This was in the normal range for the plaintiff's age.

Dr. Barnett found the plaintiff had sustained a ten percent permanent medical impairment to each of her arms.

In reaching a conclusion on the extent of vocational impairment, the trial judge may rely upon the employee's assessment of her physical condition and disability. *Clark v. National Union Fire Ins. Co.*, 774 S.W.2d 586, 589; *Tom Still Transfer Co. v. Way*, 482 S.W.2d 775, 777 (Tenn. 1972). And in doing so, the credibility of the plaintiff who testified to this is left to the trial judge. See *Humphrey v. David Witherspoon, Inc.*, 734 S.W.2d 315 (Tenn. 1987).

When the medical evidence is presented by deposition, the appellate court may make its own assessment of the medical proof to determine where the preponderance of the evidence lies. *Cooper v. Insurance Co. of N. Am.*, 884 S.W.2d 446, 451 (Tenn. 1994). Where, as here, the medical evidence is presented only by the records and reports of the physicians, the same rule applies.

We have examined the record in depth as we are required to do to determine where the preponderance of the evidence lies. We have given deference to the trial judge's findings of the credibility of the plaintiff who testified before the trial judge. We view the facts about which she testified as established in this case based upon the finding of her credibility by the trial judge. We have weighed those facts established by the plaintiff's testimony, along with the expert medical evidence in this case, in order to find where the preponderance of the evidence lies. We have made our own assessment of the medical evidence as presented by various reports of the physicians.

We conclude from all of the record that the evidence preponderates against an award of 50 percent to each of the plaintiff's arms. We conclude the evidence preponderates in favor of an award of 25 percent to each of the plaintiff's arms and we fix that amount as the proper award in this case.

John K. Byers, Senior Judge

CONCUR:

Janice Holder, Justice

William H. Inman, Senior Judge

IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

FILED
May 15, 1998
Cecil Crowson, Jr.
Appellate Court Clerk

LINDA G. CATHEY,)	Henry Circuit
)	No. 663
Plaintiff-Appellee,)	
)	
v.)	Hon. C. Creed McGinley, Judge
)	
LIBERTY MUTUAL INSURANCE)	
COMPANY,)	NO. 02S01-9707-CV-00069
)	
Defendant-Appellant,)	Modified

JUDGMENT ORDER

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 are taxed to the defendant-appellant and its surety, for which execution may issue if necessary.

It is so ordered this _____ day of May, 1998.

PER CURIAM

Holder, J., Not Participating