IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE

FILED

June 5, 1998

Cecil W. Crowson
Appellate Court Clerk

RANDALL WAYNE MYERS, Plaintiff/Appellee	)	No. 01S01-9710-CH-00227
v.	)	SMITH COUNTY CHANCERY
ROYAL INSURANCE COMPANY, Defendant/Appellant	)	CHARLES K. SMITH, CHANCELLOR

FOR THE APPELLANT:

JAMES W. WHITE
MARK W. PETERS
WALLER, LANSDEN, DORTCH & DAVIS
Nashville City Center
511 Union Street, Suite 2100
Nashville, Tennessee 37219

FOR THE APPELLEE:

DEBBIE C. HOLLIMAN
WILLIAM JOSEPH BUTLER
FARRAR & HOLLIMAN
P. O. Box 488
Carthage, Tennessee 37030

MEMORANDUM OPINION

MEMBERS OF PANEL

JANICE M. HOLDER, ASSOCIATE JUSTICE, SUPREME COURT
WILLIAM H. INMAN, SENIOR JUDGE
WILLIAM S. RUSSELL, SPECIAL JUDGE

AFFIRMED, AS MODIFIED RUSSELL, SP. J.

This appeal in a workers' compensation case has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated Section 50-6-225 (e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

Randall Wayne Myers worked for Nissan for seven years doing repetitive, hand-intensive assembly with power tools. As a result he developed bilateral hand neuropathy. Surgical release of the right carpal tunnel was performed, but the employee chose not to have surgery on the left.

The employee has returned to his original assembly line job. He acknowledges that he can do the work. He experiences some numbness and tingling, and has changed some of his performance techniques. His supervisor verifies that he does his job well.

Dr. David Schmidt, the attending surgeon, testified that Mr. Myers retained an 11% anatomical impairment to his right upper extremity. The employee sought treatment for his left hand and arm from Dr. James Lanter, a factory approved physician. Dr. Lanter assessed no permanent impairment to the left upper extremity, but said that the moderate left carpal tunnel syndrome could be adversely affected by continued long term factory

production work. He admitted on cross-examination that the AMA Guides would permit the prescription of a 20% permanent partial impairment to the left upper extremity.

Dr. Robert P. Landsberg did an independent medical examination at the commission of the employee, and assigned a 16% anatomical impairment to the right arm and 20% to the left.

The trial court rendered judgment based upon a 50% vocational disability to each upper extremity. The sole issue before this court is the appropriateness of this numerical disability assessment. The appellant views it as too high and seeks a reduction.

Our review is de novo upon the record of the trial court, accompanied by a presumption of the correctness of the findings below, unless the preponderance of the evidence is otherwise. T.C.A. Section 50-6-225 (e)(2)(1991). This standard of review requires this court to weigh in depth the factual findings and conclusions of the trial court. Humphrey v. David Witherspoon, Inc., 734 S.W. 2d 315 (Tenn. 1987).

The extent of vocational disability is a question of fact to be determined from all of the evidence, including lay and expert testimony. Worthington v. Modine Mfg. Co., 798 S.W. 2d 232, 234 (Tenn. 1990).

A medical expert's rating of anatomical disability is one of the relevant factors, but the vocational disability is not restricted to the precise estimate of anatomical disability made

by a medical witness. Corcoran v. Foster Auto GMC, Inc., 746 S.W. 2d 452, 458 (Tenn. 1988).

When the medical testimony is presented by deposition, as it was in this case, this court is able to make its own independent assessment of the medical proof to determine where the preponderance of the evidence lies. Landers v. Fireman's Fund Ins. Co., 775 S.W. 2d 355, 356 (Tenn. 1989); Henson v. City of Lawrenceburg, 851 S.W. 2d. 809, 812 (Tenn. 1993).

The medical proof is that Mr. Myers could abate his symtoms of numbness and occasional pain by taking a different job. Obviously, he is not vocationally disabled from performing his present job, which he does well and desires to retain as a matter of choice. There is no evidence that he intends to give up the job or that his work is anyting but completely satisfactory to the employer. There is no proof that he is permanently disabled to function in the general employee market. In this context, it is difficult to quantify his vocational disability. The evidence preponderates against 50% to each arm. Our judgment is that the numbness and occasional bearable pain generated by his repetitive job functions can be evaluated at 30% permanent vocational disability to each arm. The judgment is affirmed as so modified.

Costs on appeal are assessed one-half to each party.

WILLIAM S. RUSSELL, SPECIAL JUDGE

CONCUR:

_____
JANICE M. HOLDER, ASSOCIATE JUSTICE

_____
WILLIAM H. INMAN, SENIOR JUDGE

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RANDALL WAYNE MYERS,	}	*SMITH CHANCERY*
	}	*No. 5926 & 5899 Below*
Plaintiff/Appellee	}	
	}	*Hon. Charles K. Smith,*
vs.	}	*Chancellor*
	}	
ROYAL INSURANCE COMPANY,	}	*No. 01S01-9710-CH-00227*
	}	
Defendant/Appellant	}	*AFFIRMED, AS MODIFIED.*

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 are assessed one-half to each party, which execution may issue if necessary.

IT IS SO ORDERED on June 5, 1998.

PER CURIAM