

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

**FILED**

**July 1, 1998**

**Cecil W. Crowson  
Appellate Court Clerk**

MARTHA MAI EDEN, )  
Plaintiff/Appellee ) No. 01S01-9710-CV-00210  
)  
)  
v. ) TROUSDALE COUNTY CIRCUIT  
)  
)  
EMPLOYERS INSURANCE OF ) HON. BOBBY CAPERS, JUDGE  
WAUSAU MUTUAL COMPANY )  
and WESTERN RESERVE PRODUCTS, )  
Defendants/Appellants )  
\_\_\_\_\_)

FOR THE APPELLANTS:

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FOR THE APPELLEE:

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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.

The appellee, Martha Mai Eden, had been working five days for Western Reserve Products when she fell from a platform and suffered a minimally displaced left fibula fracture. Her left foot was placed in a cast and she was taken off from work for six weeks. About two months after the initial injury she twisted her same ankle on the job, causing a visible fracture at the old fracture site, and a slight change in the alignment. Another cast was fitted. The fracture did not heal properly and surgery was performed on an out-patient basis, and plates were attached by screws. She returned to work on March 6, 1996.

The employee only worked twelve hours a week when she first returned to work, but this was increased to full time by May 20, 1996. She suffered occasional swelling in the injured ankle. Her attending surgeon, Dr. H.C. Jao, released her from treatment in November of 1996, to return as needed. She was terminated in January of 1997 for absenteeism.

The trial judge awarded 20% permanent partial vocational disability to the body as a whole. All other benefits had been paid. The trial judge made an alternative finding that in the event that the disability should have been restricted to the left leg that he set that figure at 40%. By agreement of counsel the judgment should be for disability to the leg, and the only issue before this court is the appropriateness of the judgment of 40% permanent partial vocational disability to the left leg.

Dr. Jao testified by deposition that the A.M.A. Guidelines do not provided a permanent impairment rating for a broken bone, and he has assigned no permanent impairment.

Dr. S.M. Smith, an orthopaedic surgeon who examined the employee's ankle for purposes of evaluation, testified by deposition that the A.M.A. Guidelines do not properly address an injury of this nature. He opined that based upon his experience that she had a 2% medical impairment, but that if the plate and screws were taken out that this impairment could diminish or go away entirely. He testified that he would not place any restrictions on her.

Addressing the issue of vocational disability, this 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. Hensen v. City of Lawrenceburg, 851 S.W. 2d 809, 812 (Tenn. 1993).

We believe that the evidence preponderates against a judgment of 40% permanent partial disability to the left leg. Ms. Eden worked more than six months full time before she was terminated for reasons unrelated to her injury. Her anatomical impairment of 2% testified to by Dr. Smith is not enhanced by his statement that the removal of the surgical hardware from her foot would most likely abate all or most of her residual discomfort. She has some discomfort that has not as yet been abated by the removal of the metal plate and screws. We hold that a judgment of 20% vocational disability to the left leg is supported by a preponderance of the evidence, and we modify the judgment accordingly.

We remand the case for entry of a judgment in accordance with this opinion.

Costs on appeal are assessed to the appellant.

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WILLIAM S. RUSSELL, SPECIAL JUDGE

CONCUR :

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JANICE M. HOLDER, ASSOCIATE JUSTICE

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WILLIAM H. INMAN, SENIOR JUDGE

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MARTHA MAI EDEN,	}	TROUSDALE CIRCUIT	
	}	No. 3202-01132	BELOW
Plaintiff/Appellee	}		
	}	Hon. Bobby Capers,	
vs.	}	Judge	
	}		
EMPLOYERS INSURANCE OF	}		
WASAU MUTUAL COMPANY and	}		
WESTERN RESERVE PRODUCTS,	}	No. 01S01-9710-CV-00210	
	}		
Defendants/Appellants	}	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 will be paid by Defendants/Appellants and Surety, for which execution may issue if necessary.*

*IT IS SO ORDERED on July 1, 1998.*

PER CURIAM