*IN THE SUPREME COURT OF TENNESSEE*

*AT NASHVILLE*



| | | |
|---|---|---|
| *ALVIN RALPH MANN* | } | *FRANKLIN CHANCERY* |
| | } | *No. Below 15,084* |
| *Plaintiff/Appellee* | } | |
| *vs.* | } | |
| | } | |
| | } | *Hon. Jeffrey F. Stewart* |
| *CKR INDUSTRIES, INC.* | } | *Chancellor* |
| | } | |
| *Defendants/Appellant* | } | *No. 01S01-9805-CH-00085* |
| | } | |
| | } | |
| | } | *AFFIRMED* |

*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 equally by plaintiff/appellee and defendant/appellant, for which execution may issue if necessary.*

*IT IS SO ORDERED on December 3, 1998.*

*PER CURIAM*

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE
(September 16, 1998 Session)



| | | |
|---|---|---|
| ALVIN RALPH MANN | ) | FRANKLIN CHANCERY |
| | ) | |
| Plaintiff-Appellee, | ) | Hon. Jeffrey F. Stewart, |
| | ) | Chancellor. |
| v. | ) | |
| | ) | No. 01S01-9805-CH-00085 |
| CKR INDUSTRIES, INC., | ) | |
| | ) | |
| Defendant-Appellant | ) | |

For Appellant:

A. Gregory Ramos
North, Pursell & Ramos
Nashville, Tennessee

For Appellee:

Floyd Don Davis
Patrick J. McHale
Winchester, Tennessee

M E M O R A N D U M  O P I N I O N

Members of Panel:

Frank F. Drowota, III, Associate Justice, Supreme Court
William H. Inman, Senior Judge
Joe C. Loser, Jr., Special Judge

AFFIRMED

L o s e r,
Judge

## MEMORANDUM 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. section 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. The employer has appealed insisting the award of permanent partial disability based on thirty-three percent to both arms is excessive. The employee or claimant, Mann, insists the award is inadequate. As discussed below, the panel has concluded the judgment should be affirmed.

Our review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. section 50-6-225(e)(2). The extent of an injured worker's disability is an issue of fact. Jaske v. Murray Ohio Mfg. Co., 750 S.W.2d 150 (Tenn. 1988). Where the trial judge has seen and heard the witnesses, especially if issues of credibility and weight to be given oral testimony are involved, considerable deference must be accorded those circumstances on review. Collins v. Howmet Corp., 970 S.W.2d 941 (Tenn. 1998).

The claimant is fifty-eight years old with a high school education, some junior college courses and experience as a police officer, factory assembler and supervisor and, for the employer, as a maintenance group leader, molder, batch bonder and clip insert operator. He has had one work related and two non-work related hand injuries. On January 10, 1996, he reported "swelling and hurting" in both wrists, more severe on the right side, from loading and unloading of a machine over a period of time.

On January 25, 1996, he saw Dr. Richard A. Bagby, Jr., a board certified orthopedic surgeon, who diagnosed deQuervain's stenosing tenosynovitis and wrist tendinitis. The doctor treated the injury surgically and returned the claimant to light duty on August 23, 1996. One month later tests confirmed mild left carpal tunnel syndrome. Dr. Bagby assessed three percent permanent medical impairment to each "upper extremity," from appropriate guidelines.

At the request of the employer's insurer, the claimant saw Dr. Michael A. Milek, another board certified orthopedic surgeon, for an opinion as to whether the surgery performed by Dr. Bagby was necessary. Dr. Milek diagnosed inflammation of the tendons in both hands, cause undetermined, but probably aggravated by the claimant's work. He assessed the claimant's permanent impairment at eight percent to both upper extremities, without corrective surgery.

The employer contends the award is excessive because Dr. Bagby's estimate of impairment after surgery was only three percent and Dr. Milek's opinion of eight percent assumed no surgery. The employee contends the award should be based on elements other than medical impairment. The chancellor based his award of thirty-five percent to both arms on the claimant's own

testimony as to his age, education, working experience and lack of vocational skills in addition to the medical impairment rating.

In making determinations of the extent of an injured worker's permanent disability, the courts are to consider all pertinent factors, including lay and expert testimony, the employee's age, education, skills and training, local job opportunities for the disabled, and capacity to work at types of employment available in the claimant's disabled condition. Tenn. Code Ann. section 50-6-241(a). Upon consideration of those factors, we cannot say the evidence preponderates against the chancellor's award.

For the above reasons, the judgment of the trial court is affirmed. Costs on appeal are taxed to the parties, one-half each.

_____

Joe C. Loser, Jr., Special Judge

CONCUR:

_____

Frank F. Drowota, III, Associate Justice

_____

William H. Inman, Senior Judge