

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
NOVEMBER 1998 SESSION

**FILED**

February 25, 1999

Cecil Crowson, Jr.  
Appellate Court Clerk

**JERRY WAYNE ADAMS,**

Plaintiff/Appellee,

v.

**JIMMY DEAN FOODS and  
THE TRAVELERS INSURANCE  
COMPANY,**

Defendants/Appellants.

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Gibson Chancery No. 13270

No. 02S01-9804-CH-00037

Honorable George R. Ellis, Chancellor

**For the Appellants:**

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**For the Appellee:**

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**MEMORANDUM OPINION**

**Members of Panel:**

Justice Janice M. Holder  
Senior Judge John K. Byers  
Senior Judge F. Lloyd Tatum

**AFFIRMED**

**TATUM, Senior Judge**

## O P I N I O N

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.

This is an appeal by the plaintiff's employer, Jimmy Dean Foods, and its insurance carrier, The Travelers Insurance Company, presenting the sole issue as to whether the preponderance of the evidence supports the trial court's award to the plaintiff, based on a finding of 50 percent permanent partial disability to both arms. After a careful review of the record, we conclude that the findings and judgment of the trial court must be affirmed.

We first summarize the evidence.

The plaintiff testified in open court. He stated that he was 37 years of age with a high school education. He attended Lane College for six months. The only other education he had was vocational training as an automobile mechanic while in high school. The plaintiff's history includes three years employment at Brown Shoe Company operating a machine in the manufacture of shoes. He worked for ten years at Kellwood Plant using a mechanical press to press coats. He then went to work for the defendant, Jimmy Dean Foods, as a "blocker," which is a worker who takes the shoulders and the blade out of a hog using both hands and arms. He was terminated in January of 1997 because he was frequently absent from work.

The plaintiff testified that in 1996, he began having swelling, throbbing, and tingling in his hands and arms and felt like little pins were sticking in them. He reported his difficulty to his employer and was ultimately seen by Dr. William Bourland, an orthopedic surgeon.

When the plaintiff went to Dr. Bourland, in addition to the difficulty he was having with his hands and arms, his long finger and ring finger on the left hand were locking. He testified that Dr. Bourland operated on his right wrist and "did something" to the two fingers on his left hand. After his surgery, he returned to work at Jimmy Dean, earning a wage equal to the wage he earned before the accident.

Since being terminated from Jimmy Dean, plaintiff testified that he has worked at

A. O. Smith in Milan, Tennessee, and at Foamex. He testified that he was laid off at the time of trial, because his employer, A. O. Smith, was putting in a new line, but that he would be contacted later to resume employment. He testified that he was able to do his work at A. O. Smith and Foamex, as well as the work he formerly did at Brown Shoe Company and Kellwood Plant. He testified that he could not resume the work as a blocker at Jimmy Dean.

The plaintiff testified that, at the time of trial, his ring finger and long finger on his left hand “clicked,” and that he had swelling, numbness, tingling, and pain in his left hand and left arm. He said he did not have the grip strength in either of his hands that he had before the accident. He testified that although there is no activity, hobby, or event that he cannot do now that he could do before the accident, “there are things I can’t do as well as I used to do.” For example, the plaintiff testified that he did not have enough strength to open jars and has difficulty picking up glasses and drops things. He has difficulty with a stick gearshift on his car as well. When he presses the gear lever against the palm of his hand, pain runs up his right arm. He testified that he has trouble lifting heavy objects or working on machinery or anything that “affects” his arm and wrist. He cannot grip and hold a knife, hammer, or screwdriver or turn a wrench. His fingers are no longer locking, but “they’ll click every now and then.” In addition, he has sharp pain in his left arm that awakens him at 2:30 or 3:00 on some mornings. Both hands swell about three times each week.

Dr. William L. Bourland, an orthopedic and hand surgeon, testified by deposition. He first examined the plaintiff on September 4, 1996, at which time the plaintiff complained of pain in both hands. The plaintiff gave a history of having a problem with numbness and tingling in both hands for about one year while employed at Jimmy Dean. He also gave a history of having a problem with numbness and clicking in the ring finger on both hands<sup>1</sup> and had been taking Advil and Oridus, which are anti-inflammatory drugs.

Dr. Bourland testified that from his physical examination and tests, he reached the conclusion that the plaintiff was suffering with bilateral carpal tunnel syndrome. Testing

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<sup>1</sup>We note here that Dr. Bourland had obviously made an error in his records as to what fingers were involved, according to his own testimony. His records were conflicting, resulting in conflicting testimony. We accept the plaintiff’s testimony that the two fingers that were triggering and locking were the plaintiff’s long finger and ring finger on the left hand.

revealed no weakness or atrophy in the Thenar muscle group. He had a good sweat pattern indicating that there was no permanent damage to the nerves, and he had no decrease sensitivity to light touch.

Dr. Bourland testified that he first treated the plaintiff conservatively, injecting both wrists with Cortisone and Xylocaine. He returned plaintiff to work, but took him off his regular job for three weeks. Dr. Bourland testified that he examined Mr. Adams again on November 6, 1996, for recurring problems with numbness in his hands. The plaintiff did well after the injections until he went back to his regular job, where his trouble continued. Dr. Bourland testified that a nerve conduction study showed significant nerve compression on the right side. The plaintiff was also continuing to have trigger finger release in the two fingers on his left hand. Dr. Bourland concluded that a carpal tunnel release on the right side and a finger trigger release on the left side was indicated. Dr. Bourland testified that he had no notation regarding carpal tunnel syndrome or symptoms on the left side on the November 6 visit, and that his impression was that plaintiff was having more trouble with his trigger fingers on the left side than with carpal tunnel.

Dr. Bourland testified that on November 15, 1996, he performed an endoscopic carpal tunnel release on the right hand and released the right arm trigger finger, as well as the left arm trigger finger. Dr. Bourland examined plaintiff again on November 19, 1996, and testified that plaintiff was doing well with both hands and was no longer having any numbness on the right side. Dr. Bourland released plaintiff to return to light duty work and requested him to return in three weeks.

The plaintiff returned to Dr. Bourland on December 17, 1996. Dr. Bourland testified that the plaintiff at that time was still having numbness on his left side. He had slight tingling in the hands a few days before and a slight click in the left long finger. Dr. Bourland released the plaintiff to light duty work on this date and allowed him to return to full work on January 2, 1997. He returned on January 15, 1997 doing well. He gave a history of some swelling in the right hand since returning to regular duty, but there was no swelling at that time. There was some tightness in the flexor tendons on both sides. On February 17, 1997, the plaintiff returned, stating that he still had numbness and tingling at night.

The plaintiff returned to Dr. Bourland on May 28, 1997 for a final evaluation. Dr. Bourland testified that, at that time, the plaintiff was still complaining of numbness in his right hand, but this hand had improved after surgery. He no longer had a problem with triggering of fingers except he was still having problems with his left ring finger. Dr. Bourland reinjected the left ring finger with Marcaine and Celestone.

Dr. Bourland testified that on May 28, 1997, the plaintiff reached maximum medical improvement, and he discharged plaintiff on that date with a five percent permanent impairment of the right arm according to the AMA Guidelines, secondary to persistent carpal tunnel symptoms. This was based on persistent symptoms of decreased sensitivity in the hand. Dr. Bourland testified that if he had used "Table 16, Upper Extremity Impairment Due to Entrapment Neuropathy," the impairment rating of the right arm would have been 10 percent. Dr. Bourland testified that he discharged plaintiff from his care with no restrictions and allowed him to resume normal activities as tolerated with instructions to return if he had further problems with either hand. Dr. Bourland also testified that he did not give the plaintiff an impairment rating for his left arm, because the last time plaintiff complained of any problems with his left side (other than his fingers) was on December 17, 1996.

Dr. Bourland was of the opinion that the AMA Guidelines allow no additional impairment for loss of grip strength in reference to carpal tunnel syndrome. Dr. Bourland's professional opinion was that no patient loses true grip strength with carpal tunnel release.

Dr. Joseph Boals, an orthopedic surgeon, examined the plaintiff on July 17, 1997, at the request of plaintiff's attorney and testified by deposition. Dr. Boals testified that in his opinion, there is impairment of both upper extremities of approximately 20 percent. He based this on the fact that plaintiff's strength index, as calculated according to Page 65 of the AMA Guidelines, shows a strength index in the forties. He used a table to determine that each of plaintiff's arms was disabled by 20 percent. Dr. Boals's diagnoses were: residual from right carpal tunnel release and carpal tunnel syndrome on the left, with ongoing weakness. Dr. Boals's grip strength testing showed an average grip strength for the plaintiff to be 58 pounds on the right and 56 pounds on the left. According to the doctor's testimony, a person of plaintiff's age would be expected to have a grip strength of

about 115 pounds.

Dr. Boals stated that plaintiff was employable, but suggested that he get a lighter job that does not involve heavy gripping or repetitive use of the hands. He advised against the plaintiff returning to his former job as a butcher. Keyboard work, factory assembly work, chain saw operation, jackhammer use, and use of hand tools, such as pliers, cutters, and screwdrivers, are eliminated for the plaintiff.

The plaintiff gave Dr. Boals a history that he initially developed pain and numbness in both hands. This complaint was the only notation in Dr. Boals's record or in his recollection concerning the left hand. Therefore, Dr. Boals testified that he did not know whether the plaintiff was suffering with pain or difficulty in the left hand at the time of his one visit to him.

Dr. Boals testified that losses of grip strength are not related to the impairment of "the median nerve, but the release of the ligament that holds the carpal tunnel together hence, strength loss comes after surgery and not before." He testified that in this case, he could not explain why the left arm and hand, which had not been operated on, would have the weakness demonstrated in the tests given to the plaintiff. Dr. Boals further testified that, if the plaintiff had a normal grip strength on the left, he "would only be about five to ten percent<sup>2</sup> [impaired] based on his EMG, which did show some changes. . . ."

The standard of appellate review of findings of fact of a trial court is de novo, accompanied by a presumption of correctness of findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2); Henson v. City of Lawrenceburg, 851 S.W.2d 809, 812 (Tenn. 1993). We are not bound by the findings of the trial court in workers' compensation cases; rather, this Court now determines where the preponderance of the evidence lies. Keen v. Jones Truck Lines, 814 S.W.2d 23, 25 (Tenn. 1991). Plaintiff has the burden of proof to establish his claim by a preponderance of the evidence. Roark v. Liberty Mutual Ins. Co., 793 S.W.2d 932, 934 (Tenn. 1990). 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 given those circumstances on review. Townsend v. State, 826 S.W.2d 434, 437 (Tenn. 1992). When

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<sup>2</sup>The record does not show whether this estimate was based on appropriate guidelines.

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. Henson v. City of Lawrenceburg, 851 S.W.2d 809, 812 (Tenn. 1993).

Once the causation and permanency of an injury have been established by an expert witness, the courts may consider many pertinent factors, including age, job skills, education, training, duration of disability, and job opportunities, in addition to anatomical impairment for the purpose of evaluating the extent of a claimant's permanent disability. McCaleb v. Saturn Corp., 910 S.W.2d 412, 416 (Tenn. 1995).

From the entire record, we find that the evidence does not preponderate against the finding that the plaintiff sustained a 50 percent permanent partial disability to both arms. The judgment of the trial court is therefore affirmed.

Costs are adjudged against the defendants.

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F. LLOYD TATUM, SENIOR JUDGE

CONCUR:

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JANICE M. HOLDER, JUSTICE

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JOHN K. BYERS, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

JERRY WAYNE ADAMS,  
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vs.

JIMMY DEAN FOODS and  
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COMPANY,

Defendant/Appellants.

) GIBSON CHANCERY  
) NO. 13270

) Hon. George R. Ellis,  
) Chancellor

) NO. 02S01-9804-CH-00037

) AFFIRMED.

**FILED**

**February 25, 1999**

**Cecil Crowson, Jr.**  
Appellate Court Clerk

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 Appellants and their surety, for which execution may issue if necessary.

IT IS SO ORDERED this 25th day of February, 1999.

PER CURIAM



