

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

FILED

February 22, 1999

Cecil W. Crowson
Appellate Court Clerk

VIRGINIA N. TEMPLETON

}

DAVIDSON

}

No. Below ~~96-62-II~~

Plaintiff/Appellee

}

Hon. Carol L. McCoy

vs.

}

Chancellor

}

No. 01S01-9804-CH-00067

THE AEROSTRUCUTRES
CORPORATION

}

}

}

Defendant/Appellant

}

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 by defendant/appellant, for which execution may issue if necessary.

IT IS SO ORDERED on February 22, 1999.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE
(December 11, 1998 Session)

FILED
February 22, 1999
Cecil W. Crowson
Appellate Court Clerk

VIRGINIA N. TEMPLETON,)
)
Plaintiff-Appellee,)
)
v.)
)
THE AEROSTRUCTURES)
CORPORATION,)
)
Defendant-Appellant.)

DAVIDSON CHANCERY
Hon. Carol L. McCoy,
Chancellor.
No. 01S01-9804-CH-00067

For Appellant:

Frederick W. Hodge
Howell & Fisher
Nashville, Tennessee

For Appellee:

Joe P. Binkley, Jr.
Nashville, Tennessee

MEMORANDUM OPINION

Members of Panel:

William M. Barker, Associate Justice
William H. Inman, Senior Judge
Joe C. Loser, Jr., Special Judge

AFFIRMED
Judge

Loser,

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, Aerostructures, argues the trial court's award of permanent partial disability benefits is excessive. As discussed below, the panel has concluded the judgment should be affirmed.

The chancellor awarded, *inter alia*, permanent partial disability benefits based on fifty percent to the right arm. Appellate 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 employer contends the evidence preponderates against the above award and in favor of one based on less than twenty-five percent to the arm.

At the time of the trial, the claimant was 55 years old with a general education diploma and experience as a production worker. At Aerostructures, she worked in the production of aircraft wings. Her work involved repetitive use of the hands. She gradually developed pain, particularly in her right hand, and was referred to an orthopedic surgeon, who diagnosed overuse syndrome and osteoarthritis in her right arm and hand. He estimated her permanent medical impairment at ten percent to the right hand and restricted her from any repetitive firm gripping or pinching with the right hand. The restrictions prevented her from performing her regular duties at Aerostructures.

A board certified disability evaluator opined on December 11, 1996 that the employee could return to work with accommodations. However, on February 5, 1997, following the employee's involvement in a car wreck, he opined she was permanently and totally disabled from the wreck. The chancellor gave greater weight to the opinion of the treating orthopedist.

Once the causation and permanency of an injury have been established by expert testimony, the trial judge may consider many pertinent factors, including age, job skills, education, training, duration of disability, and job opportunities for the disabled, in addition to anatomical impairment, for the purpose of evaluating the extent of a claimant's permanent disability. Tenn. Code Ann. section 50-6-241(a)(2); McCaleb v. Satum Corp., 910 S.W.2d 412 (Tenn. 1995). The opinion of a qualified expert with respect to a claimant's clinical or physical impairment is a factor which the court will consider along with all other relevant facts and circumstances, but it is for the courts to determine the percentage of the claimant's industrial disability. Hinson v. Wal-Mart Stores, Inc., 654 S.W.2d 675 (Tenn. 1983).

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. Kellerman v. Food Lion, Inc., 929 S.W.2d 333 (Tenn. 1996). In addition, this panel is not at liberty to substitute its own opinion as to the extent of an injured worker's permanent disability for that of the trial court. *See* Collins v. Howmet Corp.,

970 S.W.2d 941 (Tenn. 1998).

Based on those principles, we do not find the evidence to preponderate against the findings of the chancellor. The judgment of the trial court is affirmed. Costs on appeal are taxed to the defendant-appellant.

Joe C. Loser, Jr., Special Judge

CONCUR:

William M. Barker, Associate Justice

William H. Inman, Senior Judge