IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE JANUARY 1999

MELISSA HATCHER,	)	
	)	BLOUNT
CIRCUIT		
Plaintiff/Appellee	)	
	)	
v.	)	NO. 03S01-9804-CV-00041
	)	
RUBBERMAID, et al.,	)	
	)	HON. D. KELLY THOMAS, JR.,
Defendants/Appellants	)	JUDGE

For the Appellant:	**For the Appellee:**
Michael J. Mollenhour	Gerald C. Russell
P. O. Box 9299	125 E. Broadway Avenue
Knoxville, TN 37940	Maryville, TN 37804

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

Members of Panel:

Justice Frank F. Drowota, III
Senior Judge John K. Byers
Senior Judge William H. Inman

AFFIRMED. INMAN, Senior Judge

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.

At the outset we think it pardonable to observe that the briefs in this case are exceptional and worthy of emulation.

The plaintiff is a 26-year-old high school graduate whose right arm was crushed in an industrial accident on September 12, 1994. The arm was surgically amputated at the elbow area.

Responding to the complaint for workers' compensation benefits, the defendant admitted the occurrence and compensability of the injury, and filed a Rule 68 Offer of Judgment for 100 percent loss of her arm together with all medical expenses.

The trial judge awarded 75 percent permanent, partial disability benefits to the body as a whole. The defendant appeals, insisting that recovery is limited to 200 weeks because the statutory schedule controls.

Our review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2); *Stone v. City of McMinnville,* 896 S.W.2d 548, 550 (Tenn. 1995).

T.C.A. § 50-6-207 prescribes benefits for the loss of a scheduled member. The loss of an arm is worth only 200 weeks. The Code does not address the loss of an upper extremity.

But the *AMA Guidelines,* which are contained in the Code by reference, do not assess impairment to the arm, but only to the upper extremity. The anomaly thereby posed, as the appellant observes, is frustrating.

In *Reagan v. Tenn. Mun. League*, 751 S.W.2d 842 (Tenn. 1988), the Supreme Court squarely held the mere fact a medical impairment may translate for the purpose of the *Guides* into a disability rating to the body as a whole does not alter the rule that if an injury is to a scheduled member only, the statutory schedules must control the disability award.

The operative language in *Reagan* is "if an injury is to a scheduled member only."

The medical proof consists only of the testimony of Dr. Edward Jeffries, an orthopedic surgeon of 20 years' experience. He testified that the plaintiff's injury was to her "entire upper extremity . . . to the upper part of her arm, above her elbow, up into her shoulder region, apparently from the stretching or pulling portion of this type of crushing injury . . . she has weakness around her shoulder and upper extremity that are (sic) probably a part of that stretching injury . . . her shoulder is weaker than I would expect it to be had she not had the amputation."

Dr. Jeffries then opined that, based on the *Guidelines*, the plaintiff had a 96 percent impairment to her right upper extremity, which, using the Comparison Guide, translates to 58 percent whole body impairment.

He testified that the *Guides* do not provide a rating to the arm, but only to the upper extremity, and that the impairment rating took into consideration the weakness attributable to the lack of use of her right shoulder. The nature of the questions propounded to Dr. Jeffries was clear on the point: that "arm" and "upper extremity" are not interchangeable terms, but each has reference to a different anatomical portion of the human body. In 1976 the Supreme Court, in *Continental Ins. Co. v. Pruitt*, 541 S.W.2d 594 (Tenn. 1976), held that injuries to the upper extremity which included the shoulder were not equatable to the arm, with concomitant benefits restricted to the loss of an arm. This ruling has been

consistently applied in a legion of cases holding that an injury may be apportioned to the body as a whole *if the injury extends beyond the scheduled member*. *See*, *Wells v. Sentry Ins. Co.*, 834 S.W.2d 935 (Tenn. 1992).

We have reviewed the depositional testimony of each rehabilitation expert and conclude that neither has significant probative value.

Given the prerogative of the trial judge to make an independent assessment of disability based on diverse factors, *see: Hill v. Royal Ins. Co.*, 937 S.W.2d 873 (Tenn. 1996), we cannot find that the evidence preponderates against the judgment.

Discretionary costs in a minimal amount were awarded to the plaintiff. The defendant complains of this because it made an Offer of Judgment for 200 weeks and should not be onerated with discretionary costs. We cannot say, because the record only reveals "that $511.00 would be the correct amount of allowable costs," which are not further identified.

Affirmed, with costs assessed to the appellant.

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William H. Inman, Senior Judge

CONCUR:

_____

Frank F. Drowota, III, Justice

_____

John K. Byers, Senior Judge

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

MELISSA HATCHER,	)	BLOUNT CIRCUIT
	)	No. L-10931
Plaintiff-Appellee,	)	
	)	No.03S01-9804-CV -00041
v.	)	
	)	Hon D. Kelly Thomas, Jr.
	)	Judge
RUBBERMAID, et al.	)	
	)	
Defendants/Appellants,	)	

FILED

June 28, 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 facts and conclusions of law are adopted and affirmed, and the decision of the Panel is made the Judgment of the Court.

Costs on appeal are taxed to the Appellants, Rubbermaid, et al and Michael J. Mollenhour, surety, for which execution may issue if necessary.

06/28/99