

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

**FILED**

April 12, 1999

Cecil W. Crowson  
Appellate Court Clerk

AT NASHVILLE  
(January 19, 1999 Session)

VALERIE PARHAM,	)	ROBERTSON CIRCUIT
	)	
Plaintiff-Appellant,	)	Hon. James E. Walton,
	)	Judge.
v.	)	
	)	No. 01S01-9804-CV-00069
CONWOOD COMPANY, L. P.,	)	
	)	
Defendant-Appellee.	)	

For Appellant:

William L. Underhill  
Madison, Tennessee

For Appellee:

Randolph A. Veazey  
James R. Tomkins  
Glasgow & Veazey  
Nashville, Tennessee

MEMORANDUM OPINION

Members of Panel:

Adolpho A. Birch, Jr., Associate Justice  
James L. Weatherford, 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 employee or claimant, Parham, argues that the evidence preponderates against the trial court's finding that she did not suffer a compensable permanent injury.

The employee initiated this action for benefits for claimed carpal tunnel syndrome. After a trial on the merits, the trial judge dismissed the claim upon a finding that she did not suffer a compensable injury. 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); Henson v. City of Lawrenceburg, 851 S.W.2d 809 (Tenn. 1993).

The claimant's duties at Conwood included monitoring a small conveyor carrying loose tobacco used in producing chewing tobacco and removing stems and foreign material from loose tobacco. Although the work does involve continuously watching the material pass by on the conveyor, it does not involve continuous or repetitive use of the hands. The majority of the stems are removed in an earlier process.

The claimant has seen a number of physicians. Dr. Douglas Weikert treated her for complaints of pain in both hands, but opined she did not have carpal tunnel syndrome or any permanent medical impairment. The doctor was equivocal as to whether her pain was causally connected to her employment. Dr. Stephen Pratt diagnosed mild tendonitis but prescribed no restrictions and found no permanent medical impairment. She saw two or three other approved physicians, who did not testify.

The claimant also saw three nonapproved physicians. One of them performed carpal tunnel release surgery. Another, Dr. Richard Fishbein, who evaluated but did not treat her, testified he would not have recommended the surgery. Dr. Fishbein, being under the impression that the claimant engaged in repetitive use of her hands at work, opined her injury was work related, as did the operating surgeon, Dr. McCluskey, whose testimony was, at best, equivocal.

The trial judge, after evaluating the credibility of the claimant and studying the conflicting medical evidence, found the medical testimony of Drs. Weikert and Pratt to be more reliable. The trial judge, as the trier of fact in workers' compensation cases, has the discretion to determine which expert testimony to accept or reject. Moreover where the trial judge has seen and heard witnesses, especially where issues of credibility and weight of oral testimony are involved, considerable deference must be accorded the trial court's actual findings. Hill v. Eagle Bend Mfg., Inc., 942 S.W.2d 483, 487 (Tenn. 1997).

The party claiming the benefits of the Act has the burden of proof to establish his claim by a preponderance of all the evidence. An award may not be based on conjecture; it must be based on material evidence and the rules of

evidence are applicable. Testimony of witnesses is evaluated on the basis of reasonableness and unreasonableness of the testimony given, the interest, bias, prejudice or lack thereof on the part of the witnesses, their general credibility, their opportunity to see and observe, and all of the other standards and criteria applicable to factual decisions in a nonjury civil action. Parker v. Ryder Truck Lines, Inc., 591 S.W.2d 755 (Tenn. 1979). Unless admitted by the employer, the employee or claimant has the burden of proving, by competent evidence, every essential element of his claim. Oster v. Yates, 845 S.W.2d 215 (Tenn. 1992). The claimant must prove that he is an employee, that he suffered an injury by accident, and that such injury by accident arose out of and in the course of his employment by the employer.

In order to establish that an injury was one arising out of the employment, the cause of the death or injury must be proved; and if the claim is for permanent disability benefits, permanency must be proved. Hill v. Royal Ins. Co., 937 S.W.2d 873 (Tenn. 1996). In all but the most obvious cases, causation and permanency may only be established through expert medical testimony. Thomas v. Aetna Life and Cas. Ins. Co., 812 S.W.2d 278 (Tenn. 1991). Trial courts are not required to accept the opinion of a treating physician over any other conflicting expert medical testimony, but may do so. Harbin v. St. Mary's Medical Center, Inc., 23 TAM 3-1 (WC Knoxville 9/12/97).

For the above reasons, the evidence fails to preponderate against the findings of the trial court. The judgment is affirmed. Costs on appeal are taxed to the plaintiff-appellant.

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Joe C. Loser, Jr., Special Judge

CONCUR:

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Adolpho A. Birch, Jr., Associate Justice

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James L. Weatherford, Senior Judge

IN THE SUPREME OF TENNESSEE

AT NASHVILLE

<p><b>FILED</b></p> <p>April 12, 1999</p> <p>ROBERTSON CIRCUIT Cecil W. Crowson Appellate Court Clerk</p>
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VALERIE PARHAM	}	ROBERTSON CIRCUIT
	}	No. Below 8802
Plaintiff/Appellant	}	Hon. James E. Walton
vs.	}	
	}	No. 01S01-9804-CV-00069
CONWOOD COMPANY, L.P.	}	
	}	AFFIRMED
Defendant/Appellee	}	

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 plaintiff/appellant, for which execution may issue if necessary.*

*IT IS SO ORDERED on April 12, 1999.*

*PER CURIAM*