

**IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS COMPENSATION APPEALS PANEL
AT KNOXVILLE**

FILED June 23, 1999 Cecil Crowson, Jr. Appellate Court Clerk

LANA R. WOODS)	ANDERSON COUNTY CIRCUIT
)	
Plaintiff-Appellee,)	
)	
vs.)	NO. 97LA0287
)	
MODINE MANUFACTURING)	THE HONORABLE
COMPANY,)	JAMES B. SCOTT, JR., JUDGE
)	
Defendant-Appellant.)	

For the Appellant:

George H. Buxton, III
31 East Tennessee Avenue
Oak Ridge, Tennessee 37830

For the Appellee:

Roger L. Ridenour
P.O. Box 530
Clinton, Tennessee 37717

MEMORANDUM OPINION

Members of Panel:

Justice William M. Barker
Special Judge Howell N. Peoples
Special Judge Joe C. Loser, Jr.

AFFIRMED and REMANDED

PEOPLES, Special Judge

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. ' 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The threshold issue in this appeal is whether the trial court erred in awarding the plaintiff a disability rating of 25 percent to the body as a whole.

Our review of findings of fact by the trial court is de novo upon the record of the trial court, accompanied by a presumption of the correctness of the findings, unless the evidence otherwise preponderates. Tenn. Code Ann. ' 50-6-225(e).

The trial court found that the plaintiff had sustained a 25 percent permanent partial disability to the body as a whole due to a work-related accident. The plaintiff, Lana Woods, was awarded total permanent partial disability benefits, future medical expenses and pretrial expenses. The defendant, Modine Manufacturing Company, appeals the judgment of the trial court on the ground that the evidence preponderates against the award of the trial court. Specifically, the defendant argues that the evidence does not support the percentage of disability awarded and requests that this panel reduce and amend the judgment of the trial court.

The plaintiff, on the other hand, contends that (1) the evidence supports the trial court award of 25 percent permanent partial disability, and (2) this appeal is frivolous and she should be awarded damages pursuant to Tenn. Code Ann. ' 50-6-225(i). After carefully examining the record before us and considering the relevant authorities, we affirm the trial court judgment and award the plaintiff interest, to be determined on remand, on accrued but unpaid benefits from the date of the trial court=s judgment. The panel is not persuaded that this appeal is frivolous or solely for delay, therefore, the plaintiffs= request for liquidated damages is denied.

On February 7, 1997, while working for Modine Manufacturing Company, the plaintiff injured her back while cleaning an ATI machine. The Plaintiff began working for defendant after graduating from high school and had been employed there for approximately 26 years. Although plaintiff has had several injuries at work over the past 26 years, this is

her first claim for workers= compensation benefits. Following her injury, the plaintiff was directed by her employer to see the company physician, Dr. Rice, a family physician. Dr. Rice sent the plaintiff to physical therapy. When the plaintiff did not experience a decrease in her pain, she asked to see a specialist and the defendant sent plaintiff to see Dr. Robert Finelli, a neurosurgeon.

Dr. Finelli saw the plaintiff on March 27, 1997 and on April 4, 1997. He testified, by deposition, that the plaintiff complained of lower back pain and pain in her left leg. Initially, Dr. Finelli treated her condition conservatively noting that the plaintiff had a positive straight leg raising at fifteen degrees. Subsequently, Dr. Finelli recommended that a MRI be performed. The MRI indicated that the plaintiff had a degenerative disc disease at L2-3 and L5-S1. On April 4, 1997, seeing no evidence of neural impingement, Dr. Finelli concluded that the plaintiff had mechanical back pain and recommended therapy, exercise and flexibility. He released the plaintiff to return to work without further treatment. After reviewing AMA guidelines, Dr. Finelli opined that plaintiff suffered from a five percent permanent partial impairment to the body as a whole.

The plaintiff=s pain persisted so she requested to see an orthopedic physician. The defendant sent the plaintiff to see Dr. James Maguire, Jr. on April 22, 1997. Based on the plaintiff=s medical history and a physical examination, Dr. Maguire recommended an epidural steroid block and a myelogram. He opined that plaintiff had a bulging disc at the L2-3 level, and concluded that there was no evidence of definite nerve root impingement. He recommended more aggressive conservative therapy in the form of a work-hardening type program. After receiving three epidural blocks, plaintiff experienced a decrease in her pain for about six (6) months. Dr. Maquire released her and opined that she had a nonverifiable radicular syndrome that would give her five percent impairment to the body as a whole. After release by Dr. Maquire, the pain returned with the same intensity as before and plaintiff requested an independent medical evaluation from a physician not chosen by the defendant. The plaintiff was instructed by the court to see Dr. Geron Brown, Jr., an orthopedic surgeon, for a one-time independent medical evaluation. As a result of the medical history and a physical examination, Dr. Brown opined that plaintiff had an acute lumbar strain, which

resulted in a ten percent impairment rating to the body as a whole under AMA guidelines. He testified she had a restriction of light work, and that he considered her regular job at Modine Manufacturing Company to fit that restriction. Dr. Brown also testified that he relied on the symptoms related by the plaintiff in addition to the objective physical examination findings in assessing a permanent impairment rating.

The defendant asserts that the medical proof offered at trial fails to support the 25 percent permanent partial disability awarded. Specifically, the defendant contends that the award is excessive because the trial court disregarded the testimony of the two treating physicians and relied solely upon the testimony of an examining physician. Additionally, the defendant asserts that the trial court failed to provide a reasonable explanation as to why the opinions of the two treating physicians were disregarded. The defendant avers that when there is no reason to disregard the testimony of a treating physician, such testimony is entitled to serious consideration. To support this contention, defendant relies on Orman v. Williams-Sonoma, Inc., 803 S.W.2d 672 (Tenn. 1991). However, the facts in that case substantially differ from the present case and there is no reason in this record to question the reliability of the testimony of the evaluating physician.

The defendant contends that more weight should be given to the treating physician and argues that it would be illogical to rely upon the treating physician's opinions. However, it is well-settled law in Tennessee that when the opinions of medical experts differ in workers' compensation cases, the trial court has discretion to accept the opinion of one medical expert over another. Johnson v. Midwesco, Inc., 801 S.W.2d 804, 806 (Tenn. 1990). In doing so, the court is allowed, among other things, to consider the qualifications of the experts, the circumstances of their examination, the information available to them, and the evaluation of the importance of that information by other experts. Orman at 677.

Viewing the medical proof in combination with the testimony of the plaintiff and finding no reason in the record to question the testimony of the evaluating physician appointed by the trial court, we find that the evidence does not preponderate against the findings of the trial judge.

The plaintiff avers that she should be awarded frivolous appeal damages because

there was no reason for this appeal. When it appears that an appeal in a workers= compensation case is frivolous or taken solely for delay, the reviewing court may, upon motion of either party or on its own initiative, award damages against the appellant and in favor of the appellee without remand, for a liquidated amount. Tenn. Code Ann. ' 50-6-225(i).

An appeal is frivolous if it is devoid of merit and if it has little chance of success. Liberty Mut. Ins. Co. v. Taylor, 590 S.W.2d 920, 922-23 (Tenn. 1979); Industrial Dev. Bd. V. Hancock, 901 S.W.2d 382, 385 (Tenn. 1995). An appeal has no reasonable chance of success when reversal of the trial court decision would require revolutionary changes in the established standard of review. Davis v. Gulf Ins. Group, 546 S.W.2d 583, 586 (Tenn. 1997). We do not find the appeal to be frivolous.

The judgment of the trial court is affirmed and the case is remanded for all appropriate purposes. Costs are assessed to the Appellant.

Howell N. Peoples, Special Judge

Concur:

William M. Barker, Justice

Joe C. Loser, Special Judge

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)	No. 97LA0287
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)	No.03S01-9810-CV -00110
v.)	
)	
MODINE MANUFACTURING)	Hon. James B. Scott, Jr.
COMPANY,)	Judge
)	
Defendant/Appellant,)	

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 Appellant, Modine Manufacturing Company and George H. Buxton, III , surety, for which execution may issue if necessary.

06/23/99