

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
KNOXVILLE, MAY 1999 SESSION

FILED

August 4, 1999

Cecil Crowson, Jr.
Appellate Court
Clerk

DEBORAH Z. BARNES)	JEFFERSON CIRCUIT
)	
Plaintiff/Appellee)	
)	
VS.)	Hon. Rex Henry Ogle,
)	Circuit Judge
RITTENHOUSE, INC.)	
)	
Defendant/Appellant)	No. 03S01-9804-CV-00043

For the Appellant:

J. Eric Harrison
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For the Appellee:

James M. Davis
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MEMORANDUM OPINION

Members of Panel:

Frank F. Drowota III, Justice
John K. Byers, Senior Judge
Roger E. Thayer, Special Judge

AFFIRMED.

THAYER, Special 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.

The employer, Rittenhouse, Inc., has appealed from the trial court's award of permanent disability to each arm. The award was fixed at 75% to the right arm and 60% to the left arm.

The employee, Deborah Barnes, was 46 years of age and is a high school graduate. She had worked for Rittenhouse for a number of years when she began to develop numbness and tingling in her hands. She was diagnosed with bilateral carpal tunnel syndrome and had surgery on each hand. After some period of recovery, she returned to work and was working at the time of the trial.

She testified that surgery helped to some extent but she was still experiencing problems especially with her right hand. She said she still had a great deal of pain, finger numbness and trouble holding objects unless she used both hands. She said she could not do much housework and that co-workers assisted her in performing work duties. She also complained that her treating doctor (Dr. Ambrosia) did not want to listen to her about what her work duties required and that he released her to return to work without notifying her about the release and that he also released her to return to work without any physical restrictions.

The medical notes of Dr. John M. Ambrosia were filed in evidence. He performed the surgical procedures on each hand and gave a 4% medical impairment to each arm. His medical notes seem to support plaintiff's contention she was released to work without any restrictions on her work activity.

Dr. Wayne C. Page, a family practice doctor specializing in occupational medicine, examined plaintiff. He testified by deposition and gave a diagnosis of (1) bilateral carpal tunnel syndrome with residual symptoms and (2) tendinitis, hands and wrists. He opined she had 36% impairment to her right arm and 28% impairment to the left arm. He was also of the opinion she should not do any repetitive tasks with her hands and imposed restrictions of lifting, etc.

The C-32 written report to the Tennessee Department of Labor by Dr. Michael Bratton was filed in evidence. This document indicated the employee had 10% medical impairment to each arm.

Two vocational consultants testified. Dr. Rodney Caldwell opined the employee had 90% vocational disability based on Dr. Page's physical restrictions and no vocational disability based on Dr. Ambrosia's report. Michael T. Galloway opined the employee had 85% vocational disability based on Dr. Page's restrictions and no vocational disability based on the Ambrosia report.

The trial court also heard the oral testimony of plaintiff's husband and a personal friend concerning her inability to hold objects and do household work.

The case is to be reviewed de novo accompanied by a presumption of the correctness of the findings of fact unless we find the preponderance of the evidence is otherwise. T.C.A. § 50-6-225(e)(2).

The employer argues the trial court was in error in accepting the testimony of Dr. Page over the evidence of Dr. Ambrosia, who was the treating physician. In reaching a decision, the court noted that he had the testimony of Dr. Page but only evidence of medical records of Dr. Ambrosia, and that Dr. Page placed emphasis on the employee's lack of grip strength whereas there was no evidence to indicate Dr. Ambrosia considered this or did any grip strength testing.

The rule is that if there is conflicting medical testimony, the trial judge has discretion to conclude that the opinion of a particular expert should be accepted over that of another expert and that one expert's testimony contains a more probable explanation than another expert's testimony. *Thomas v. Aetna Life & Cas. Co.*, 812 S.W.2d 278 (Tenn. 1991).

In making this choice between conflicting opinions, the trial court is allowed 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 v. Williams-Sonoma, Inc.*, 803 S.W.2d 672, 676 (Tenn. 1991).

In our review of the record, we cannot say the evidence preponderates against the conclusion of the trial court. The judgment is affirmed. Costs of the appeal are taxed to the defendant.

Roger E. Thayer, Special Judge

CONCUR:

Frank F. Drowota III, Justice

John K. Byers, Senior Judge

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AT KNOXVILLE

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DEBORAH Z. BARNES,) JEFFERSON CIRCUIT
) No. 14,851
Plaintiff-Appellee,)
) No. 03S01-9804-CV-00043
v.)
)
RITTENHOUSE, INC.) Hon. Rex Henry Ogle
) 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 defendant, Rittenhouse, Inc. and J. Eric Harrison, surety, for which execution may issue if necessary.

08/04/99