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

FILED

August 23, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

MICHAEL PAUL WATSON,	)	
	)	
Plaintiff/Appellee,	)	HENRY CIRCUIT
	)	
v.	)	No. 02S01-9807-CV-00067
	)	
PLUMLEY RUBBER COMPANY, INC. and ITT HARTFORD INSURANCE GROUP,	)	HONORABLE JULIAN P. GUINN, JUDGE
	)	
Defendants/Appellants.	)	

For the Appellants:

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For the Appellee:

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

Members of Panel:

Justice Janice M. Holder
Senior Judge John K. Byers
Senior Judge F. Lloyd Tatum

AFFIRMED

TATUM, Senior Judge

O P I N I O N

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 defendant, Plumley Rubber Company, Inc., and its workers' compensation insurance carrier, ITT Hartford Insurance Company, have appealed from a judgment of the trial court awarding plaintiff workers' compensation on the basis of twenty-five percent permanent partial vocational disability to both arms. On this appeal, the defendants present three issues: (1) whether the plaintiff sustained a compensable injury; (2) whether the trial court erred in ordering the employer to pay for unauthorized medical expenses when the plaintiff refused a panel of physicians offered him; and (3) whether the trial court's award is excessive. After a careful review of the record, we find that we must affirm the judgment of the trial court.

The plaintiff testified that he was born August 20, 1955 and was the father of two minor children living at home. He had a high school education and, through Army training, was qualified as a biomedical repairman and in aircraft maintenance. He worked in maintenance for Plumley on two occasions: from 1987 to 1990 and then from 1993 to June 12, 1996. He testified that, while working for Plumley, he did various types of work. He changed molds, as well as working on machines and setting up machines. He worked with lasers and robots. He testified that he worked "ten, twelve, sixteen hours" each day. He testified that he used wrenches constantly, loosened and tightened bolts. He tightened small bolts and large bolts, and much of this work was strenuous.

He testified that he had no difficulty with his hands before he went to work for Plumley in 1993. Around June 15, 1995, while breaking a bolt loose, he felt his right wrist "give." The plaintiff testified that he reported this incident to his supervisor, and the supervisor sent him to Dr. Terry O. Harrison, a panel doctor for the defendant. Dr. Harrison diagnosed the plaintiff's condition as carpal tunnel syndrome and told him to use his left hand to perform his job. The plaintiff testified that he complied with Dr. Harrison's

instructions and after "a couple of days," he began having shooting pains in his left arm and swelling and knots in his left wrist, which he also reported to the supervisor. Dr. Harrison referred the plaintiff to Dr. Lowell F. Stonecipher, who took X-rays and discovered a cyst in the plaintiff's right wrist. The plaintiff was put on light duty, which involved going through odd machine parts. The plaintiff stated that he refused to again see Dr. Stonecipher, because Dr. Stonecipher had prescribed medicine for him to which he was allergic, and Dr. Stonecipher was aware of his allergy to this medicine. Keith Clark, Plumley's safety director, offered a panel of physicians to the plaintiff and warned the plaintiff that the company would not pay for medical bills if he went to see his own doctor. The plaintiff testified that he went to see Dr. Eugene Gulish on his own, but also stated that he was referred to Dr. Gulish by Dr. Harrison. The plaintiff was terminated on June 12, 1996, for falsely stating to Plumley's officials that he had attended three physical therapy programs prescribed by Dr. Gulish when, in fact, he had not attended these work hardening physical therapy programs. The plaintiff explained that his three absences from the program were due to a family emergency and his father's surgery. He has not worked since leaving Plumley.

The plaintiff testified that he had a nervous breakdown and was manic depressive, for which he was taking medication at the time of trial. He testified that, at the time of trial, he could not lift anything heavy or do any kind of repetitive work. He could not carry a sack of groceries if it contained anything as heavy as a gallon of milk. He could not twist the top off of a soda bottle. He has numbness and tingling every day. He had these problems prior to the time of his nervous breakdown. The difficulties began in 1995, and his nervous breakdown was in 1997.

Cross-examination revealed that the plaintiff is a very gifted and intelligent person. He is especially capable in trigonometry and mathematics in general. He made a very high score on an aptitude test in the Army and, while working for Plumley, he was able to make valuable improvements on the machinery, for which he was commended.

Norma Jean Watson, the plaintiff's wife, generally corroborated the testimony of the plaintiff. She stated that the plaintiff had ongoing problems with pain and swelling in both arms.

Ms. Jennifer Paschall, human resources manager for Plumley, testified that she was the plaintiff's superior. She testified that plaintiff and the other maintenance man used wrenches when changing out a mold on a press, which was done not more than two or three times a day. The maintenance employees "did not use them [wrenches and bolts] a full eight hours a day." Ms. Paschall, using the plaintiff's service record, testified that plaintiff was demoted from maintenance on October 2, 1995, and that he should have been inspecting grommets and gaskets at the time he went to Dr. Gulish in late March, 1996. She testified that employees at the plant never worked over ten hours per day.

The defendant introduced David Reasons as a witness. Mr. Reasons testified that he and the plaintiff were the only two maintenance employees at the plant since it opened in 1994. He testified that plaintiff was required to do mold changes and setups and whatever plant requirements that fell into general maintenance. When asked whether plaintiff's job required "constant pulling and twisting," the witness testified "Well, not constant." The witness was also asked whether plaintiff's job "required constant use of wrenches and constant tightening and untightening of bolts." His response was "I wouldn't say constant, no." The witness also testified that he "wouldn't really say that [his job] was repetitive," explaining that they did other things other than just mold changes. The plaintiff also performed all of the work on a piece of equipment known as an extruder, which was about forty feet long and in two separate units. When the plaintiff went on light duty, he came to work with "braces or something on his arms."

Dr. Terry O. Harrison, an internist, testified on behalf of plaintiff by deposition. Dr. Harrison was the plaintiff's family doctor, but he was designated by Plumley to treat the plaintiff for the injuries to plaintiff's hands and wrists. Dr. Harrison first saw the plaintiff on September 25, 1995, with complaints of pain and discomfort in the right wrist extending down into his fingers. His wrist showed tenderness and decreased range of motion, and Dr. Harrison's diagnosis was carpal tunnel syndrome. The plaintiff gave a history of doing repetitive type work with a lot of flexion and extension with his wrists. On February 8, 1996, the plaintiff had similar complaints with his left hand and wrist. Dr. Harrison was of the opinion that the plaintiff suffered from carpal tunnel syndrome in both arms, but that he could have tendonitis or an overuse syndrome. Dr. Harrison testified that an affected part

of the body should recover from overuse tendonitis when it is rested.

Dr. Harrison was continuing to treat the plaintiff for increasing symptoms of panic disorder and other complaints stemming from his mental illness. Dr. Harrison testified that a patient with panic disorder can experience numbness and tingling in the extremities when the patient has a panic attack.

Dr. Harrison testified that he referred the plaintiff to both Dr. Stonecipher and Dr. Gulish. He disagreed with the conclusions reached by Dr. Stonecipher. He concurred with Dr. Gulish that the plaintiff required physical therapy. The witness testified that the plaintiff's panic disorder and emotional disorder complicate the diagnosis, but he was of the opinion that the plaintiff had carpal tunnel syndrome and overuse syndrome and that these syndromes were not related to the plaintiff's mental illness. Dr. Harrison testified that the plaintiff had permanent decreased range of motion in the arm, pain with use of arms and hands while lifting, and that the plaintiff cannot do repetitive type work. Dr. Harrison deferred the percentage of the plaintiff's impairment rating to the opinion of Dr. Robert Barnett. Dr. Harrison testified that carpal tunnel syndrome is caused by repetitive type movements. He testified "it doesn't have to be all day long but repetitive type movement during the course of a day's work." He stated that carpal tunnel syndrome can develop with people who do repetitive type work for short periods every day.

The medical records of Dr. Lowell Stonecipher, an orthopedic surgeon, were presented by the defendants. Dr. Stonecipher first saw the plaintiff on September 28, 1995, upon referral by Dr. Terry Harrison, with complaints of right wrist pain. The plaintiff gave Dr. Stonecipher a history of having developed the pain gradually over a period of time. The plaintiff had questionable positive Tinel and Phalen's tests, and Dr. Stonecipher diagnosed him with possible carpal tunnel syndrome and possible sprained wrist. The plaintiff was put on light duty, and an EMG, nerve conduction study, and MRI were done on the right hand. Dr. Stonecipher found nothing abnormal in any of these studies and found no permanent impairment. He noted that plaintiff was wearing his splint too tight, which could cause swelling. On November 21, 1995, he released the plaintiff to return to full duty with no restrictions.

The medical records of Dr. Eugene F. Gulish, an orthopedic surgeon, were

introduced into evidence. Dr. Gulish saw the plaintiff on March 22, 1996, upon referral from Dr. Terry Harrison for right forearm and left elbow pain. The plaintiff gave Dr. Gulish a history of developing numbness and tingling in his right hand from overuse of his arms at work. Dr. Gulish diagnosed the plaintiff with overuse syndrome of the right forearm, a small symptomatic ganglion cyst on the right forearm, a small osseous spur on the right dorsal forearm, and epicondylitis of the left elbow. He did not think that the plaintiff had carpal tunnel syndrome. The doctor prescribed anti-inflammatories and physical therapy and put the plaintiff on limited duty. Dr. Gulish ordered a new tennis elbow strap for the plaintiff as well as a removable cast for the plaintiff's arm. Dr. Gulish prescribed physical therapy and recommended that the plaintiff go to a pain management clinic because of the pain plaintiff was experiencing in both arms and wrists. He also prescribed a TENS unit for the plaintiff. Dr. Gulish noted that he could not explain much of the plaintiff's symptoms and stated that the symptoms seemed remarkably greater than one would expect with his clinical findings.

A medical report and C-32 form of Dr. Robert J. Barnett was offered by the plaintiff. Dr. Barnett saw the plaintiff on October 16, 1996, with a history of "constantly pulling and twisting" in both hands and arms. Dr. Barnett observed that the plaintiff had nerve conduction studies and MRI, all of which were reported by Dr. Ron Bingham as normal. Dr. Barnett noted that the plaintiff's SED rate was abnormal. The plaintiff was wearing TENS unit and an elbow strap. He had been given a wrist splint for carpal tunnel syndrome. He also wore a glove on the right hand. Dr. Gulish had put a cast on his left arm. The plaintiff was taking Prozac, Xanax, and high blood pressure medication and could not fully straighten out the left elbow. He had swelling in the fingers, but had good motion of his wrists. He could only squeeze the Jaymar dynomometer to about fifteen pounds in each wrist. Dr. Barnett concluded:

> This patient certainly has mild nerve root entrapment with numbness, weakness, swelling, and tendonitis of his arm, and I estimate he has 10% loss to each arm. This is in accordance with the AMA Guidelines. This is due to his on the job injury. Objectively, he does have some swelling about the wrists and fingers which is inflammatory.

The deposition of Dr. Abel A. Corral, the plaintiff's psychiatrist, was offered by the defendants. Dr. Corral began treating the plaintiff in March, 1997. At that time, the plaintiff

was wearing arm braces and told Dr. Corral that he was suffering carpal tunnel syndrome. Dr. Corral's diagnosis was that plaintiff was suffering from panic attack disorder and had been suffering from this since 1989. The doctor testified that patients with this condition can have numbness and tingling in their arms as a result of a panic attack but that the numbness and tingling subsides immediately upon medication for the panic attack. Dr. Corral testified that the plaintiff complained of wrist pain only at the time of his first examination. He testified that the medications that he had prescribed for the plaintiff's mental problems can cause weakness, tingling, or numbness in the arms or hands.

Dr. Corral testified that he could not say whether the plaintiff had carpal tunnel syndrome or not. He had recommended that the plaintiff loosen his brace to relieve swelling in his fingers. He testified that a person with overuse syndrome or carpal tunnel syndrome would return to normal when removed from repetitive activity.

In considering the first issue, we must review the factual issues de novo upon the record with a presumption of correctness of the trial court's findings, unless the evidence preponderates otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (Supp. 1998); Henson v. City of Lawrenceburg, 851 S.W.2d 809, 812 (Tenn. 1993). Under this standard of review, we are required to conduct an in-depth examination of the trial court's findings of fact and conclusions of law to determine where the preponderance of the evidence lies. See Thomas v. Aetna Life & Cas. Co., 812 S.W.2d 278, 282 (Tenn. 1991). Considerable deference is given to the trial court's findings regarding the weight and credibility of oral testimony received, but this Court may draw its own conclusions about the weight, credibility, and significance of the deposition medical testimony. Seiber v. Greenbrier Indus., Inc., 906 S.W.2d 444, 446 (Tenn. 1995). The plaintiff in a workers' compensation case has the burden of proving causation and permanency of his injury by a preponderance of the evidence using expert medical testimony. See Thomas, 812 S.W.2d at 283; Roark v. Liberty Mutual Ins. Co., 793 S.W.2d 932, 934 (Tenn. 1990). Such testimony must be considered along with the employee's testimony as to how the injury occurred and his subsequent physical condition. Thomas, 812 S.W.2d at 283.

We cannot say that the evidence preponderates against the findings of the trial judge. The testimony of Dr. Harrison indicates that he has treated the plaintiff for both the

difficulty he was having with his arms and wrists, as well as his mental illness. The other doctors who testified treated him for one condition or the other, but were not as familiar with his general condition as Dr. Harrison. Dr. Harrison's opinion is supported by that of Dr. Robert J. Barnett, an orthopedic surgeon. The trial judge gave credence to the plaintiff's testimony in reaching his conclusion. Since he observed the witnesses who testified and noted their demeanor, we must give deference to his findings regarding the weight and credibility of this oral testimony. The first issue is overruled.

With regard to Issue 2, in which the defendant states that the court erred in ordering the defendants to pay the medical expenses of Dr. Gulish when a panel of physicians had been offered to him. The evidence is overwhelming that the plaintiff went to Dr. Gulish upon referral by Dr. Harrison, a physician designated by the employer. Although the plaintiff testified himself that he intended to select his own doctor, this is not material. He ultimately went to the doctor designated by a panel physician, Dr. Harrison. Both Dr. Gulish and Dr. Harrison recommended the physical therapy. Issue 2 is without merit. Williams v. Delvan Delta, Inc., 753 S.W.2d 344, 347 (Tenn. 1988); Watson v. I. Appel Corp., 1996 WL 264332, at *2 (Tenn. May 15, 1996).

In the third issue, the defendants say that the court's award is excessive in light of the plaintiff's intelligence, training, and abilities. Even though the plaintiff is suffering with a mental illness, he appears to be a person of high intelligence. He has only a high school education in addition to the technical education he received in the service. Most of his training and abilities involve the use of his hands and arms in mechanical type work. He has not worked since his employment with Plumley was terminated. Bearing in mind the restrictions placed upon him by Dr. Harrison, we find that the award of two and one-half times the amount of the loss fixed by Dr. Barnett is not excessive.

It results that the judgment of the trial court is affirmed.

Costs are adjudged against the defendants.

_____

F. LLOYD TATUM, SENIOR JUDGE

CONCUR:

_____
JANICE M. HOLDER, JUSTICE

_____
JOHN K. BYERS, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

MICHAEL PAUL WATSON,	)	HENRY CIRCUIT
	)	NO. 483
Plaintiff/Appellee,	)	
	)	Hon. Julian P. Guinn,
vs.	)	Judge
	)	
PLUMLEY RUBBER COMPANY, INC. and, ITT HARTFORD INSURANCE GROUP,	)	NO. 02S01-9807-CV-00067
	)	
	)	
Defendants/Appellants.	)	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 Appellants and surety, for which execution may issue if necessary.

IT IS SO ORDERED this 23rd day of August, 1999.

PER CURIAM