IN THE SUPREME OF TENNESSEE

AT NASHVILLE

VIDA NELL BAILEY	}	*STEWART CIRCUIT*
	}	*No. Below 4-360-CV-97*
Plaintiff/Appellee	}	
	}	*Hon. Allen Wallace*
vs.	}	
	}	
	}	*No. 01S01-9803-CV-00050*
CARHARTT, INC. AND AMERICAN MOTORIST INSURANCE CO.	}	
	}	
Defendant/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 defendants/appellants, for which execution may issue if necessary.

IT IS SO ORDERED on July 22, 1999.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION PANEL

AT NASHVILLE

VIDA NELL BAILEY	)	
	)	
Plaintiff/Appellee	)	
	)	**STEWART CIRCUIT**
v.	)	
	)	
	)	**Hon. Allen Wallace**
CARHARTT, INC., and AMERICAN MOTORIST INSURANCE COMPANY	)	**Judge**
	)	
	)	**No. 01S01-9803-CV-00050**
Defendant/Appellants	)	

For the Appellant:

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MEMORANDUM OPINION

Members of Panel:

Adolpho A. Birch, Jr. Associate Justice
James L. Weatherford, Senior Judge
Joe C. Loser, Jr., Special Judge

AFFIRMED WEATHERFORD, Senior Judge

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. §50-6-225 (e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

The trial court awarded 40% permanent partial disability to the body as a whole.

The employer/appellant raises on this appeal three issues as follows:

1. Whether the trial court abused his discretion by refusing to consider the testimony of Dr. Ensalada?
2. Whether the trial court's determination that the plaintiff/employee is not subject to the limitation of the two and one-half (2 1/2) multiplier within Tenn. Code Ann. §5-6-241 (a)(1) is contrary to the preponderance of the evidence presented at trial?
3. Whether the trial court's award of 40% is contrary to the preponderance of the proof presented at trial?

The defendant/appellant was engaged in the manufacture of men's coveralls, the type used for duck hunting. The employee's job was putting rivets in the bibs and pockets of the coveralls.

The employee described the type of rivet she used as follows, "it's like a tack that goes through the material and there's another little cap that goes around, curls around that, that's put together that holds it in place".

On July 18, 1996, while employee was engaged in her rivet job, the rivet machine "double tripped" or for some reason a rivet had gone through her thumb and she had coveralls attached to her thumb. She was immediately taken to Dover Clinic, and then on to Memorial Hospital in Clarksville where Dr. Cooper Beazley stated, "that the problem with this type injury is that the machine that installs the rivets exerts a tremendous amount of

force, probably upwards of fifteen hundred pounds and the employee had more than just a brad put through the thumb, she had a crush injury to the thumb which is a very sensitive part of the hand".

Dr. Beazley felt that employee had reflex sympathetic dystrophy or RSD.

When asked to define reflex sympathetic dystrophy, Dr. Beazely stated, "reflex sympathetic dystrophy is known as RSD. It is a condition where from whatever the injury, be it trivial or significant, the sympathetic nerve becomes overactive. And if that's the case, it creates a tremendous amount of pain and discomfort, in her case in her thumb, hand, and shoulders. It's a condition that is extremely difficult to treat. It's one that tends to linger on. People almost always have permanent residual pain from this, some worse than others. And basically you can get them to certain point and then they have to live with that pain."

The employee continued to be treated by Dr. Beazley and he prescribed pain medication for her.

Dr. Beazley also diagnosed adhesive capsulitis, which is a condition that can occur with RSD, and it is a condition in the shoulder whereby the shoulder progressively becomes more stiff and painful. There is a cascade type effect whereby the stiffer the shoulder becomes, the less motion it gets, and the more it hurts. The more the shoulder hurts, the less a person will move it.

Based on the AMA guidelines, fourth edition, Dr. Beazley gave the employee a 15% percent permanent physical impairment to the left upper extremity which converts to 9% percent to the body as a whole. Employee, according to Dr. Beazley, reached maximum medical improvement on April 23, 1997. Dr. Beazley felt that the employee could not do repetitive manufacturing work and that she would be limited in terms of use of the left hand, even as a helper extremity. He also felt that the employee would not be able to be employed at Carhartt.

The employee was sent to Dr. Leon Ensalada, neurologist, for a second opinion. He saw the employee on March 12, 1997, and prescribed physical therapy. He next saw her on April 8, 1997, and released her back to work with no restrictions and a two percent (2%) impairment to the thumb.

After Dr. Beazley reviewed Dr. Ensalada's opinion, Dr. Beazley wrote a letter which

stated:

> "Mrs. Nell Bailey was taken off work by me as we tried to do light duty activities at her job situation, and this was unsuccessful. I disagree with Dr. Ensalada's opinion that she can return to work without restrictions. I have cared for this lady since the time of her injury and I feel like I know her history very well and her work capabilities."

The employer's plant manager testified that employee had tried to do her prior rivet job and had tried to work sewing,but was unable to do either job.

The first issue, fairly stated, is whether the trial court abused its discretion by accrediting the testimony of Dr. Beazley over that of Dr. Ensalada.

When the medical testimony differs, the trial judge must obviously choose which view to believe. In doing so, he 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 v. Williams Sonoma, Inc.**, S.W.2d 672 (Tenn. 199l).

After reading the depositions of both doctors who testified in this case, along with the entire record, we are satisfied that the trial judge was well justified in accepting the testimony of Dr. Cooper Beazley.

The appellant's issue concerning the trial court's ruling that the employee was not subject to the limitation of the two and one-half (2 1/2) multiplier within Tenn. Code Ann. §50-6-241

(a)(1) is found to be without merit. Dr. Beazley in his clinic notes stated that considering the two types of work that employer had available (riveting machine or sewing), that employee may have to find employment other than what the employer had to offer. Also, the plant manager testified that employee had tried to do her prior rivet job and tried to work sewing, but was unable to do either job. Considering the testimony of the treating physician, the employee, and the plant manager, the trial court's conclusion that the employee was not subject to the limitation of Tenn. Code Ann. §50-6-241 (a)(1) was supported by a preponderance of the evidence.

The appellants in their third issue allege that the trial court's award of 40% is contrary to the preponderance of the proof presented at trial.

The appellee alleges on this appeal that the trial court's award of 40% to the body as a whole is insufficient and is contrary to the preponderance of the proof presented at trial.

Considering the employee's skills and training, her education, her work history, her age, the local job opportunities and her capacity to work at kinds of employment available in the local market in a disabled condition, we find that the trial court's award of 40% vocation disability is supported by the preponderance of the proof presented at trial.

Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness, unless the preponderance of the evidence is otherwise. Tenn. Code Ann.

§50-6-225 (e)(2).

For the above reasons, the evidence fails to preponderate against the findings of the trial court and the judgment is therefore affirmed. Costs on appeal are taxed to the appellants.

_____ James L. Weatherford, Senior Judge

CONCUR:

_____

Adolpho A. Birch, Jr., Associate Justice

_____

Joe C. Loser, Jr., Special Judge