IN THE SUPREME OF TENNESSEE

AT NASHVILLE

ALMA PRISCILLA GROOMS	}	*MAURY CIRCUIT*
	}	*No. Below 7727*
Plaintiff/Appellee	}	
	}	*Hon. Jim T. Hamilton*
vs.	}	
	}	
	}	*No. 01S01-9804-CV-00063*
HYPERION SEATING CORP.	}	
	}	
Defendant/Appellant	}	*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 defendant/appellant, 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

ALMA PRISCILLA GROOMS	)	
	)	
Plaintiff/Appellee	)	**MAURY CIRCUIT**
	)	
	)	**Hon. Jim T. Hamilton**
v.	)	**Judge**
	)	
	)	**No. 01S01-9804-CV-00063**
HYPERION SEATING CORPORATION	)	
	)	
Defendant/Appellant	)	

For the Appellant:

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For the Appellee:

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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 of findings of fact and conclusions of law. The employer, Hyperion Seating Corporation, insists the trial judge abused his discretion by refusing to consider the testimony of Dr. Leon Ensalada, who performed an independent medical evaluation and the trial court's award of an 85% disability rating to the right arm is contrary to the preponderance of the proof presented at trial. As discussed below, the panel has

concluded the judgment should be affirmed.

The employee or claimant, Grooms, initiated this action for the recovery of worker's compensation benefits for a gradually occurring injury to her right arm. After a trial on the merits, the trial court awarded permanent partial disability based on eighty-five percent to the right arm. 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).

The claimant, Grooms, forty-six (46) years old at the time of trial had

attended school to the eleventh grade and obtained her GED. She was employed with appellant, Hyperion, from October, 1993, until June, 1997. In July 1996, claimant began experiencing problems with her right arm and was seen by Dr. Dwayne Fulks the same month. She continued to see Dr. Fulks approximately five more visits. On February 7, 1997, Dr. Fulks performed a submuscular transposition of the ulnar nerve.

Claimant was released to return to work on light duty on March 18, 1997, and was placed at maximum medical improvement in May, 1997. Dr. Fulks assigned permanent restrictions on May 13, 1997 of maximum lifting of ten (10) pounds, frequent lifting of ten (10) pounds, standing or walking up to six hours a day, sitting up to six hours a day, unlimited use of foot controls and no constant gripping, grasping, pushing or pulling. Dr. Fulks assigned a 40% permanent partial impairment rating to the right arm.

Claimant described her job with the appellant, Hyperion Seating Corporation, as working in "front backs sewing". She further explained that she stood up and ran an industrial-type sewing machine, single needle which required bending, pulling, tugging, trying to keep the material straight.

Attempts were made to return the claimant to her regular work, but eventually Dr. Fulks was of the opinion that she would be unable to continue performing the heavy, repetitive type work that she had been doing with Hyperion Seating Corporation. The last day claimant worked at Hyperion Seating Corporation was June 17, 1997. Claimant received unemployment benefits from the time she left Hyperion Seating Corporation until those benefits ceased in December, 1997. She obtained two job applications from Kroger and Wal-Mart that she did not complete. She explained that the reason

she did not turn the application back to Kroger was because it stated that the work she would be required to do may involve one or more of the following job requirements, "lifting, pushing or pulling 25 pounds or more repeatedly, up to 60 pounds occasionally, lifting or extending 30 pounds above the head sometimes repeatedly, lifting, bending and turning at waist, standing or walking for at least two hours at a time."

The claimant was seen by Dr. Leon Ensalada for an independent medical evaluation on November 11, 1997. Dr. Ensalada performed a physical and neurological examination of the claimant and sent her to Physiotherapy Associates for a Jamar dynamometry grip strength assessment. Based upon his examination and the results of the grip strength assessment, Dr. Ensalada found that the plaintiff had no loss of strength or sensation in the ulnar nerve distribution and no objective signs of neurological or musculoskeletal impairment. Dr. Ensalada was of the opinion that the claimant had recovered from her surgery and reached maximum medical improvement in April, 1997. He assigned a 5% permanent partial impairment rating to claimant's right arm and was of the opinion that she would not retain any permanent restrictions.

The first issue, fairly stated, is whether the trial court abused its discretion by accrediting the testimony of Dr. Fulks over that of Dr. Ensalada. This complaint is not supported by the record on this appeal. The trial court specifically stated in it's judgment, "The Court has considered the opinion of both doctors," (Dr. Dwayne Fulks and Dr. Leon Ensalada) the only medical testimony contained in the record.

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.**, 803 S.W.2d 672 (Tenn. 1991).

After reading the deposition 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. K. Dewayne Fulks.

The appellant in it's second issue alleges that the trial court's award of an 85% disability rating to the right arm was contrary to the preponderance of the proof presented at trial. Considering the testimony of the treating physician, the claimant and her husband, and her skills and training, her education, her work history, her age, 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 85% disability rating to the right arm is supported by the preponderance of the proof presented at trial.

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 appellant.

_____ James L. Weatherford, Senior Judge

CONCUR:

_____

Adolpho A.Birch,Jr.,Associate Justice

_____

Joe C. Loser, Jr., Special Judge