IN THE SUPREME OF TENNESSEE

AT NASHVILLE

ALLEN DALE JARVIS	}	*RUTHERFORD CHANCERY*
	}	*No. Below 97WC-604*
Plaintiff/Appellee	}	
	}	*Hon. James L. Weatherford*
vs.	}	
	}	
	}	*No. 01S01-9810-CH-00186*
NISSAN MOTOR MANUFACTURING CORPORATION, U.S.A. and ROYAL INSURANCE COMPANY OF AMERICA	}	
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 October 11, 1999.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE

MAY 27, 1999 SESSION

ALLEN DALE JARVIS,	)	**01S01-9810-CH-00186**
	)	**RUTHERFORD COUNTY**
	)	
Plaintiff/Appellee,	)	**Hon. James L. Weatherford,**
	)	**Judge**
	)	
vs.	)	**No. 97WC-604**
	)	
NISSAN MOTOR MANUFACTURING	)	
CORPORATION, U.S.A., and	)	
ROYAL INSURANCE COMPANY OF	)	
AMERICA,	)	
	)	
Defendant/Appellant.	)	

FOR THE APPELLANT:

ROGER WALDRON, Esquire
202 West Main Street
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FOR THE APPELLEE:

LARRY G. TRAIL, Esquire
107 North Maple
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MEMORANDUM OPINION

MEMBERS OF PANEL:

ADOLPHO A. BIRCH, JR., JUSTICE

HENRY DENMARK BELL., RETIRED JUDGE

HAMILTON V. GAYDEN, JR., SPECIAL JUDGE

AFFIRMED

HENRY DENMARK BELL
Special Judge

This worker's 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.

At the time of trial plaintiff/appellee was 32 years old, single and had a high school education. Prior to his employment at Nissan he had worked at various labor intensive jobs such as construction, fabrication, welding, and

lumber yard and factory work. On his own time he maintains a farm and does repair and maintenance work on his vehicles and farm equipment. He has been working at Nissan as a line technician since 1991.

In 1993 plaintiff/appellee gradually developed an injury involving pain and locking of the left middle finger and reported the condition to his supervisor at Nissan in October. He was seen by Nissan's medical department and then referred to Dr. Pratt. Dr. Pratt performed three outpatient surgeries on plaintiff/appellee between December 1993 and May 1995. The first surgery was a "trigger finger release" which is a procedure in which the incision is made near the middle of the palm, extending toward the injured finger for about an inch. The second procedure was to clear up an infection in the incision wound. A final procedure was done by Dr. Pratt to remove what Dr. Pratt perceived to be an infected foreign body, or cyst in the palm. Still experiencing some pain, plaintiff/appellee was sent to Dr. James Lanter who referred him to Dr. Michael Milek.

Dr. Milek, whose deposition is the only medical evidence in this case, first saw plaintiff/appellee in February 1996 and diagnosed him with loss of A1 and A2 pulleys, and "bowstringing" of the tendon of the left middle finger. "Bowstringing" means that the tendon is not contained in its proper position in relation to the bone in the finger. Dr. Milek also noted that plaintiff/appellee had a mass or bump in his palm which was the misplaced tendon pushing under the skin.

Dr. Milek testified that, "from a medical standpoint", the injury was limited to the left middle finger. Dr. Milek assigned to plaintiff/appellee's left middle finger a permanent partial impairment rating of 40%. Dr. Milek suggested an outpatient surgical procedure to reconstruct the pulleys, which, if successful, would improve the condition. Plaintiff/appellee has elected not to undergo such surgery in the foreseeable future because of economic considerations and because Dr. Milek cannot guarantee success.

The trial court awarded plaintiff/appellee lump sum benefits based upon 40% permanent partial disability to the left hand. Defendant/appellant contends

that the trial court's award is excessive and that the compensation in this case is limited by Tenn. Code Ann. §50-6-207(3)(A)(ii)(c) which provides for compensation for the loss of a second finger.

Our review is *de novo* upon the record of the trial court accompanied by a presumption of correctness of the findings below unless the preponderance of the evidence is otherwise. Tenn. Code Ann. §50-6-225(e)(2). This standard of review requires that we weigh the factual findings and conclusions of the trial court in depth. Humphreys v. David Witherspoon, Inc., 734 S.W. 2d 315 (1987).

The extent of vocational disability is a question of fact to be determined from all the evidence including lay and expert testimony. Worthington v. Modine Mfg. Co., 798 S.W. 2d 232, 234 (1990).

A medical expert's rating of anatomical impairment is one of the relevant factors, but the vocational disability is not restricted to the precise estimate of anatomical impairment made by a medical witness. Corcoran v. Foster Auto GMC, Inc., 746 S.W. 2d 452, 458 (1988).

When the medical testimony is presented by deposition, as in this case, this court is able to make its own independent assessment of the medical proof to determine where the preponderance of the evidence lies. Landers v. Fireman's Fund Insurance Company, 775 S.W. 2d 355, 356 (1989); Henson v.

City of Lawrenceburg, 851 S.W. 2d 809, 812 (1993).

The case of Jeffrey Manufacturing Company v. Underwood, 246 S.W. 2d 189 (1968) reflects the rule of law applicable to this case and the rationale for it. Compensation to be paid for any injury to a scheduled member includes compensation for the expected effect of the injury on other scheduled members. Where an injury to a scheduled member produces an unusual and extraordinary condition affecting some other member to the body then compensation is not necessarily limited to impairment of the injured member. In a case such as this we must examine the evidence and see if it preponderates against the implied finding of the trial judge that the injury to plaintiff/appellee's hand was an unexpected and extraordinary result of the injury to his finger. Plaintiff's

uncontradicted testimony is that the strength of his grip in the left hand has been reduced to one-half of the strength of his grip before the injury. He further testified that gripping occasionally causes him to have pain shooting into his hand and up his arm. This testimony is not inconsistent with the testimony of Dr. Milek.

Upon a consideration of the above principles and authorities we cannot say the evidence preponderates against the findings of the trial judge on either issue. The judgment of the trial court is affirmed and the cause remanded to the Circuit Court of Rutherford County for enforcement of the judgment and such further proceedings, if any as may be necessary. Costs on appeal are taxed to the defendant/appellant.

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HENRY DENMARK BELL
RETIRED JUDGE

CONCUR:

_____
ADOLPHO A. BIRCH, JR.
JUSTICE

_____
HAMILTON V. GAYDEN, JR.
SPECIAL JUDGE