

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION
APPEALS PANEL

AT NASHVILLE
(July 15, 1999 Session)

FILED
November 19, 1999
Cecil Crowson, Jr.
Appellate Court Clerk

CYNTHIA MORRISON,)
GRUNDY COUNTY)
)
Plaintiff/Appellee,)
v.)
TECUMSEH PRODUCTS)
COMPANY,)
Defendant/Appellant.)

CHANCERY
Hon. Jeffrey F. Stewart,
Chancellor.
NO. M1998-00246-WC-R3-CV

For Appellant:

For Appellee:

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MEMORANDUM OPINION
MAILED:

Members of Panel:

Frank F. Drowota, III, Associate Justice, Supreme Court
Frank Clement, Jr., Special Judge
Samuel L. Lewis, Special Judge

AFFIRMED _____ Lewis, 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. In this appeal, the employer-appellant, Tecumseh Products Company (“Tecumseh”), questions the trial court’s finding in (1) determining the left extremity problem that the employee-appellee, Cynthia Morrison (“Morrison”), sustained is work-related and (2) awarding Morrison a 35% impairment for this injury. The panel finds that the evidence does not preponderate against the trial court’s findings. We find no error and affirm the judgment of the trial court.

Morrison, the employee-appellee, is 36 years of age. She has a GED and has worked several jobs, including working at a food store, working for the State of Tennessee and working at Walmart. She started to work at Tecumseh in May of 1994. Morrison’s job was a repetitive one turning both hands approximately 3,000 times a day.

According to Morrison’s recollection, she developed a problem with her left hand and upper extremity in June or July of 1996. In his record, Dr. Mark Brzezienski, a hand surgery, first noted a problem with her left arm or hand on August 13, 1996. Dr. Brzezienski opined that the problem with her left hand, which he believed to be carpal tunnel syndrome, was related to a reasonable degree of medical certainty to her work at Tecumseh.

Morrison quit her job at Tecumseh on August 16, 1996, and has not worked since then. Dr. Brzezienski last saw Morrison on July 22, 1997; she was still complaining about her left arm and needed a severe conduction test and a carpal tunnel release on her left hand and upper extremity. Tecumseh refused to pay for surgery on Morrison’s left arm. According to Morrison, she has not had the treatment because she can not afford it.

Dr. Brzezienski assessed Morrison’s left hand with a 4% to 7%

impairment with a reasonable degree of medical certainty although he noted that it is difficult to predict an impairment prior to the surgery actually being performed. The trial judge found that Morrison had sustained a 4% impairment to her left upper extremity and awarded her 35% permanent partial disability to her left upper extremity in a lump sum.

In a workers' compensation case, appellate review on factual issues is de novo with a presumption that the trial court's findings are correct, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (1991 & Supp. 1998); see also Hill v. Eagle Bend Mfg., Inc., 942 S.W. 2d 483, 487 (Tenn. 1997).

Tecumseh first contends that Morrison's injury was not caused by her work at Tecumseh. To prove a "work-related" injury, a plaintiff must establish by a preponderance of the evidence that she sustained an injury "arising out of and in the course of" her employment. Tenn Code Ann. § 50-6-102(a)(5) (Supp. 1998). The phrase "arising out of" refers to the cause or origin of the injury. The phrase "in the course of" refers to the time, place, and circumstances of the injury. E.g., Jones v. Hartford Accident & Indem. Co., 811 S.W. 2d 516, 519 (Tenn. 1991). Although causation can not be based upon speculative or conjectural proof, absolute medical certainty is not required, and reasonable doubt must be extended in favor of the employee. E.g., Hill, 942 S.W. 2d at 487.

In this case, Morrison's work was a repetitive job, turning both hands some 3,000 times per day. The proof shows that her left upper extremity pain occurred while she was on the job and doing work for her employer, Tecumseh. Morrison went to see Dr. Brzezienski for the left-hand problem before her quitting job at Tecumseh. Dr. Brzezienski specifically testified to a reasonable degree of medical certainty that Morrison's left carpal tunnel

syndrome was caused by her work at Tecumseh.

Tecumseh contends that Dr. Brzezienski admitted that there are several different causes of carpal tunnel syndrome. However, Dr. Brzezienski's admission was in response to a general question regarding carpal tunnel syndrome rather than the causation of Morrison's particular problem. Tecumseh did not put on proof as to any other potential causes of Morrison's left-hand problem. Tecumseh also argues that Morrison's condition should have improved after she quit job if her injury to her left extremity were work-related; however, her condition has deteriorated. Dr. Brzezienski explained this phenomenon:

I think that the initiation of her symptoms began while she was working. Should they have improved? It would have been nice if they improved. But they have not improved and she has had sustained symptoms in her left hand which we can trace back to that date. So it is difficult for me to say that, you know, because they did not get better that it is not necessarily linked to her job at Tecumseh.

We conclude that the evidence in the record does not preponderate against the trial court's finding that Morrison's left-hand syndrome is work-related.

Tecumseh also questions the percentage of impairment the trial court awarded to Morrison's left extremity. In fixing the extent of disability, the trial judge should consider not only the medical testimony, but also evidence concerning education, work skills and testimony of the plaintiff herself that she was unable to return to certain previous employments. Bailey v. Knox County, 732 S.W. 2d 597, 597-98 (Tenn. 1987).

With this principle in mind, we review the record to determine whether the evidence preponderates against the trial court's finding of 35% permanent partial impairment to Morrison's left extremity. As to the medical expert's opinion, Dr. Brzezienski assessed that the impairment is probably 4% to 7%, which is the usual range, although it is difficult to predict an impairment prior to the surgery actually being performed.

We also need to take into consideration Morrison's general situation and her own testimony. Morrison is 36 years of age with a GED. She has worked cleaning rooms, as a cashier, and has worked for Tecumseh since 1994. Morrison testified at trial that she still has problems with gripping and tingling in her fingers; she still has trouble with some numbness and pain, and even grading papers as a volunteer at school causes problems. She said that she has not found any other suitable work that she felt she could do with her condition. The trial judge found that Morrison's testimony was credible. This Court must give considerable deference to the trial court's findings with regard to the weight and credibility of oral argument, as it is the trial court which had the opportunity to observe the witness's demeanor and to hear the in-court testimony. Hill, 942 S.W. 2d at 487.

After considering the record, we conclude that the evidence does not preponderate against the trial court's award of 35% permanent partial disability to Morrison's left extremity.

Accordingly, the judgment of the trial court is affirmed. Costs on appeal are taxed to the employer-appellant, Tecumseh.

Samuel L. Lewis, Special Judge

CONCUR:

Frank F. Drowota, III, Associate Justice

Frank Clement, Jr. Special judge