

IN THE SUPREME OF TENNESSEE

AT NASHVILLE

FILED

October 11, 1999

MONTGOMERY CHANCERY
Cecil Crowson, Jr.
Appellate Court Clerk

MONIKA PELIS	}	MONTGOMERY CHANCERY
	}	No. Below 99-06-0075
Plaintiff/Appellee	}	
	}	Hon. Robert W. Wedemeyer
vs.	}	
	}	
	}	No. 01S01-9809-CH-00160
PRECISION PRINTING AND	}	
PACKAGING, INC.	}	
	}	
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

MONIKA PELIS,)	01S01-9809-CH-00160
)	MONTGOMERY COUNTY
)	
Plaintiff/Appellee,)	Hon. Robert W. Wedemeyer,
)	Judge
)	
vs.)	No. 96-06-0075
)	
PRECISION PRINTING AND)		
PACKAGING, INC.,)		
)	
Defendant/Appellant.)		

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FOR THE APPELLANT:

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FOR THE APPELLEE:

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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 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.

Monika Pelis, plaintiff/appellee initiated this civil action to recover disability benefits resulting from work related carpal tunnel syndrome in both wrists while employed by defendant/appellant Precision Printing and Packaging, Inc. The trial court awarded, *inter alia*, benefits based on vocational disability of 20% to the right arm and 20% to the left arm. Our review is *de novo* upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. §50-6-225(e)(2).

Plaintiff Monika Pelis graduated from Clarksville Northeast High School in 1988 and attended college for two years at Austin Peay University. She then worked at Burger King starting in food preparation and moving up to production leader before finding a better position at Clarksville Memorial Hospital. She described her work at the hospital as follows: "At the snack bar, I was responsible for the whole night crew. I was the only one there. I ran the register, cleaned tables, cooked food, did dishes, kept everything running basically, until the morning shift came in". Subsequently, she moved to the hospital cafeteria where she began as a porter and advanced to the level of assistant chef. While at the cafeteria, she "was responsible for picking up the trash, doing dishes, making sure the dinner dishes were washed for the patients, and cleaning up the floors in the cafeteria". She then took a cut in pay to begin working for defendant Precision Printing. As of that time she had experienced no difficulties with her wrists or hands. Her first job at defendant Precision Printing was shrink wrapper which she continued to do for three years. After that plaintiff's job for a short period was working on tickets. She testified that a ticket person printed the labels that went on the boxes and

placed the labels in the boxes and thereafter placed the boxes on the shelf. She next worked for Precision Printing briefly as a cutter helper and then as a strip

helper. She was then assigned to the job as a jogger. Prior to that time plaintiff had experienced no pain or other difficulties with her hands and wrists. A jogger sat at a vibrating table and pulled sheets of labels tightly across the vibrating tables. Once 1000 sheets were on the table the jogger would place the sheets on the pallet which held 7000 sheets and then sent them to the cutter. In order to manipulate the sheets that were on the table, according to plaintiff's testimony, she had to fold the corners back, twisting her wrists around and grabbing it with her thumb to pull them tight and then vigorously shake them to line them up. Four to nine months after starting work as a jogger plaintiff began experiencing the pain, burning sensation and tingling in her finger tips which condition was ultimately diagnosed as carpal tunnel syndrome in both wrists. Dr. Salyers, an orthopaedic surgeon, made this diagnosis after examination and diagnostic studies. Dr. Salyers performed carpal tunnel release surgery on her left hand in November 1995 and in January 1996 he performed carpal tunnel release surgery on her right hand. On April 10, 1996 Dr. Salyers declared plaintiff to be at maximum medical improvement and assessed her anatomical impairment at 8% to the right upper extremity and 8% to the left upper extremity, using AMA Guidelines. Dr. Salyers was of the opinion that her work history as she described it to him was consistent with the development of her carpal tunnel syndrome.

Subsequent to Dr. Salyers evaluation Dr. Myron L. Mills, examined plaintiff and reviewed the records related to her treatment for the purpose of generating an independent medical evaluation. Dr. Mills' specialty is occupational medicine. Dr. Mills agreed with Dr. Salyers' diagnosis of bilateral carpal tunnel syndrome and agreed that plaintiff has sustained permanent partial impairment to both upper extremities. Using AMA Guidelines he assigned as anatomical impairment 5% to the right upper extremity and 5% to

the left upper extremity. Both Dr. Salyers and Dr. Mills noted that the report on her grip strength study indicated that she had exerted less than maximum effort. This may have been reflected in the impairment ratings assigned by the two doctors which in each case was lower than it might have been under AMA Guidelines. The

issue in this case is causation. Based on his own experience and reported experience of other practicing physicians Dr. Salyers thinks it is more probable that not that the carpal tunnel syndrome was caused by the repetitive use of plaintiff's hands and wrists in the course of her employment. Dr. Mills is of the opinion that it is more probable that plaintiff's condition resulted from her obesity. In workers' compensation cases appellate review is *de novo* on the record accompanied by a presumption that the findings of the trial court are correct unless the preponderance of the evidence is otherwise. Tenn. Code Ann. §50-6-225(e)(2). To satisfy this standard of review we are required to conduct an independent examination to determine where the preponderance of the evidence lies. Wingert v. Government of Sumner County, 908 S.W. 2d 921, 922 (Tenn. 1995).

The testimony of expert witnesses must be considered in conjunction with the employees testimony as a lay witness. Thomas v. Aetna Life and Casualty Company, 812 S.W. 2d 278, 283 (Tenn. 1991). The trial court implicitly credited plaintiff's testimony notwithstanding that the results of grip-strength testing indicated sub-maximal effort on plaintiff's part. *Cf.* Williams v. Tecumseh Products Company, 978 S.W. 2d 932 (Tenn. 1998). At trial in the Spring of 1998 plaintiff's height was 5'11" and her weight was 287 pounds. In 1988 when plaintiff graduated from high school her height was 5'10" and she weighed "over 200 pounds". She testified that her gain in weight had been gradual. Thus, plaintiff had been obese for about seven years preceding her assignment to work as a jogger with no symptoms suggesting carpal tunnel syndrome. Four to five months later the symptoms appeared.

Upon consideration of the above principles and authorities, we cannot say the evidence preponderates against the findings of the trial judge. The judgment of the trial court is affirmed and the cause remanded to the Chancery Court of Montgomery 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.

HENRY DENMARK BELL
RETIRED JUDGE

CONCUR:

ADOLPHO A. BIRCH, JR.
JUSTICE

HAMILTON V. GAYDEN, JR.
SPECIAL JUDGE