

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON

December 12, 2011 Session

DELTA FAUCET COMPANY v. JEFFREY NOLES

Appeal from the Chancery Court for Madison County
No. 66169 James F. Butler, Chancellor

No. W2011-00383-WC-R3-WC - Mailed April 10, 2012; Filed May 11, 2012

An employee alleged that he sustained a work-related injury to his elbow and that his work aggravated his pre-existing carpal tunnel syndrome. His employer denied the claims, asserting that the employee's elbow problem was related to a prior injury and that his carpal tunnel syndrome was not caused or worsened by his work. The trial court awarded benefits for both injuries. The employer appealed, contending that the trial court erred in finding that the employee sustained a compensable injury to his elbow. The employer also contends that the trial court erred in finding that the employee's carpal tunnel syndrome was compensable and that the employee gave proper notice of the carpal tunnel injury. The employer also appeals the trial court's finding that the employee did not have a meaningful return to work, the award of temporary total disability benefits, and the amount of the award to the employee. We affirm the judgment of the trial court.

Tenn. Code Ann. § 50-6-225(e) (2008) Appeal as of Right;
Judgment of the Chancery Court Affirmed

JANICE M. HOLDER, J., delivered the opinion of the Court, in which DONALD P. HARRIS, SR. J., joined. TONY A. CHILDRESS, SP. J., filed a dissenting opinion.

J. Arthur Crews, P. Allen Phillips and Hailey H. David, Jackson, Tennessee, for the appellant, Delta Faucet Company.

James R. Krenis and Laura Ann E. Bailey, Jackson, Tennessee, for the appellee, Jeffrey Noles.

MEMORANDUM OPINION

Factual and Procedural Background

Jeffrey Noles began working for Delta Faucet Company (“Delta Faucet”) in September 2006 as a maintenance technician in the buffing unit. This unit carried faucets through a buffing assembly. Mr. Noles was required to remove the faucets from the buffing unit, put them onto a cart, push or pull them back to his area, and unload each faucet from the cart into a basket. An electric crane picked up the baskets and put them into a washer that removed most of the wax or buffing compound. While the washer was in operation, Mr. Noles picked up each faucet, placed it onto a table mount, and removed lint or dust from the springs and the mechanisms. He also performed any repair that was needed and replaced the faucets in the basket.

On July 19, 2007, Mr. Noles was pushing a cart containing metal parts when he felt a popping sensation and immediate pain in his left elbow. Mr. Noles reported the injury to his supervisor, and his supervisor took Mr. Noles to the plant nurse. The plant nurse referred Mr. Noles to Delta Faucet’s on-premises physical therapist. The physical therapist advised Mr. Noles to visit a doctor. Mr. Noles was referred to the West Tennessee Bone & Joint Clinic where he consulted an orthopaedic surgeon, Dr. Jason Hutchinson. Dr. Hutchinson recommended arthroscopic surgery and referred Mr. Noles to Dr. David Pearce, another orthopaedic surgeon at the West Tennessee Bone & Joint Clinic, who performed the surgery on Mr. Noles’ elbow. Mr. Noles filed a complaint for workers’ compensation benefits on May 26, 2009, in the Chancery Court for Madison County. A trial was held on December 13, 2010. This workers’ compensation appeal has been referred to the Special Workers’ Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law. Tenn. Sup. Ct. R. 51.

Both Dr. Hutchinson and Dr. Pearce testified by deposition. Dr. Hutchinson first examined Mr. Noles on July 23, 2007, and diagnosed a post-traumatic arthritic change of Mr. Noles’ elbow. Dr. Hutchinson testified that the arthritis was the result of an injury that occurred when Mr. Noles fell out of the back of a truck and fractured his elbow. Dr. Hutchinson explained that the radial head and capitellum “lost little pieces of bone and cartilage” over time because of the arthritis resulting from this injury. The pieces of bone and cartilage, or “loose bodies,” then floated into the joint, settling in the anterior capsula of the elbow. Dr. Hutchinson surmised that one of those pieces of bone or cartilage “became incarcerated within the joint and caused [Mr. Noles’ left elbow] to lock up which causes pain.” Although Dr. Hutchinson testified that Mr. Noles’ post-traumatic change “had been made worse by what happened at work[,]” he did not see any evidence that the incident that

occurred at Delta Faucet caused the post-traumatic arthritic change to Mr. Noles' elbow. Dr. Hutchinson recommended arthroscopic surgery to treat the elbow.

Dr. David Pearce first examined Mr. Noles on August 24, 2007. Dr. Pearce ordered a computed tomography scan ("CT scan") of Mr. Noles' elbow that confirmed the diagnosis of arthritis. Mr. Noles also complained of numbness in his hands, and Dr. Pearce ordered an electromyogram ("EMG"). The EMG indicated that Mr. Noles had significant bilateral carpal tunnel syndrome. Like Dr. Hutchinson, Dr. Pearce recommended arthroscopic surgery to treat the left elbow arthritis and also recommended carpal tunnel release surgery.

Dr. Pearce performed a left elbow arthroscopy and left carpal tunnel release on August 31, 2007. Mr. Noles developed stiffness in his elbow after this surgery. On September 21, 2007, Dr. Pearce performed a right carpal tunnel release and manipulated Mr. Noles' left elbow to decrease the stiffness. Dr. Pearce considered the results of the surgical procedures to be successful. Dr. Pearce last examined Mr. Noles on November 19, 2007. Dr. Pearce assigned no impairment rating to Mr. Noles' elbow. Dr. Pearce assigned 3% anatomical impairment to the right arm and 2% impairment to the left arm due to the carpal tunnel syndrome and surgery. Dr. Pearce did not place any permanent restrictions on Mr. Noles' activities.

Dr. Pearce testified about the relationship between Mr. Noles' underlying arthritic condition, Mr. Noles' work, the July 2007 injury, and the reasons for the procedure on Mr. Noles' elbow. Dr. Pearce opined that the loose bodies in Mr. Noles' elbow were pre-existing and that the loose bodies were "a bit of a ticking time bomb." Although he was not certain, Dr. Pearce believed that Mr. Noles probably would have required surgery at some point for the loose bodies in his elbow.

Dr. Pearce was also questioned concerning the cause of Mr. Noles' carpal tunnel syndrome. As part of Delta Faucet's hiring process, an EMG test had been performed in September 2006. That study showed the presence of moderate carpal tunnel syndrome in the right wrist and mild carpal tunnel syndrome in the left wrist. The study was shown to Dr. Pearce, who opined that Mr. Noles' work for Delta Faucet did not "develop or start him on the path of carpal tunnel" syndrome. During cross-examination, Dr. Pearce was asked "if [Mr. Noles] had to lift ten sets of sixty metal pieces weighing twenty-eight pounds into a degreaser and then buff them, is that the type of motion that can . . . exacerbate carpal tunnel syndrome?" Dr. Pearce's response to that question was "yes."

Dr. Samuel Chung, a physiatrist, examined Mr. Noles at the request of Mr. Noles' attorney on August 13, 2008, and testified by deposition. When questioned concerning the

cause of Mr. Noles' left elbow problem and bilateral carpal tunnel syndrome, Dr. Chung responded:

Specifically for the left elbow injury, I think the events that took place in July of 2007, where [Mr. Noles] was swinging bracket parts, as he complained, is the cause of his left elbow injury, and in my medical opinion that the residual from the carpal tunnel release is—the cause would be from the repetitive nature of his work that was brought on, on a gradual basis.

Dr. Chung elaborated on his opinion concerning the left elbow, stating that he believed the loose bodies were present in Mr. Noles' elbow prior to July 2007 and that the loose bodies were responsible for the onset of acute pain and the further pain and loss of function. In addition, Dr. Chung agreed that repetitive manual labor required by Mr. Noles' position could cause carpal tunnel syndrome. Dr. Chung opined that Mr. Noles retained an impairment of 10% to the left arm with respect to his left elbow. Dr. Chung primarily based this rating on the weakness of Mr. Noles' elbow flexion and extension. Dr. Chung also assigned 10% impairment to each arm for the residual effects of the carpal tunnel syndrome. When combined, these impairments were 19% to the left arm and 10% to the right arm.

On cross examination, Dr. Chung stated that the method he used to test Mr. Noles' elbow strength was to place Mr. Noles' arm in a specified position and to then push and pull on Mr. Noles' arm while he resisted any movement. Dr. Chung did not use a machine or device to measure Mr. Noles' strength and admitted that his result, which was based on his clinical judgment, was a subjective finding. With respect to the carpal tunnel syndrome, Dr. Chung administered Tinel's and Phalen's tests, which were negative. Dr. Chung's impairment rating for Mr. Noles' carpal tunnel syndrome was primarily based on a finding of diminished sensation from monofilament testing.

Mr. Noles returned to work after Dr. Pearce released him. Mr. Noles testified that he attempted to perform his regular job duties but that lifting parts for even a few minutes caused him pain. Mr. Noles was under no medical restrictions, but Delta Faucet attempted to place him in various light duty positions over the next few months. These positions, however, were all temporary assignments, and at times there was no work for Mr. Noles to perform. Mr. Noles accepted a voluntary layoff in June 2008. When asked why he accepted the layoff, Mr. Noles testified that he lived in Huntingdon, Tennessee, and that he could not afford to drive every day to his place of employment in Jackson, Tennessee, only to be told that there was no work for him that day. At the time of the trial, Mr. Noles was self-employed doing "light carpentry or handyman type work [and] also some mowing." Mr. Noles testified that he had unsuccessfully applied for three jobs.

Jeffrey Haynes is Delta Faucet's Manager of Environmental Health, Safety, and Security. Mr. Haynes testified that Mr. Noles was assigned to a job that was not highly repetitive because Mr. Noles' preemployment medical examination revealed that he had carpal tunnel syndrome. Mr. Haynes stated that Mr. Noles was assisted by co-workers in placing and removing parts from the buffing area. After his injury, Mr. Noles was offered permanent employment in a second shift assembly position, which was light duty work. The faucets that he was required to handle weighed from two to five pounds. Mr. Haynes testified that Mr. Noles declined this offer and chose a voluntary layoff instead. On rebuttal, Mr. Noles denied that he had been offered a second shift assembly position.

Mr. Noles was forty-three years old at the time of the trial and is a high school graduate. Prior to being hired by Delta Faucet, Mr. Noles had been employed most of his life in maintenance jobs, which required the use of wrenches and tools, and in mechanical jobs, which required the turning of bolts and the use of equipment to move heavy loads. Mr. Noles had also served as a police officer for twelve years. Mr. Noles testified that he was now capable of performing "very few" of his previous jobs. He stated that his elbow "hurts constantly." In addition, Mr. Noles reported that his fingers "go numb" and that he has "no strength in either hand."

The trial court's order of January 26, 2011, incorporated by reference a letter to counsel detailing the trial court's findings of fact and conclusions of law. The trial court found that Mr. Noles had sustained compensable injuries to his elbow and hands and that Delta Faucet had notice of Mr. Noles' carpal tunnel syndrome claim. The trial court found that Mr. Noles was offered his original job but that he could perform only a portion of his job requirements after the surgeries. The trial court therefore concluded that Mr. Noles did not have a meaningful return to work and that he was not limited to one and one-half times his impairment rating as stated in Tennessee Code Annotated section 50-6-241(d)(1)(A) (2008).

With respect to Mr. Noles' impairment rating, the trial court accredited Dr. Chung's rating, finding that Dr. Chung is certified to interpret the American Medical Association Guidelines ("AMA Guidelines") and that his rating was adequately explained and was not speculative. The trial court considered Mr. Noles' age, education, training, and the job opportunities available to him in his condition. The trial court agreed with Dr. Chung that Mr. Noles had sustained an anatomical impairment of 10% to his right arm and 19% to his left arm, or 14.5% to both arms. The trial court determined that Mr. Noles had a vocational disability of 43.5% to both arms and entered judgment in accordance with these findings.

On appeal, Delta Faucet contends that the trial court erred by finding that Mr. Noles sustained a compensable injury to his left elbow. Delta Faucet also contends that Mr. Noles did not provide proper notice of his carpal tunnel injury and that the carpal tunnel injury was

not compensable. Delta Faucet also appeals the trial court's award of temporary total disability, the finding that Mr. Noles did not have a meaningful return to work, and the trial court's award of permanent total disability. The standard of review of findings of fact in a workers' compensation case is "de novo upon the record of the trial court, accompanied by a presumption of correctness of the finding, unless the preponderance of the evidence is otherwise." Tenn. Code Ann. § 50-6-225(e)(2) (2008). A trial court's conclusions of law are reviewed de novo upon the record with no presumption of correctness. Seiber v. Reeves Logging, 284 S.W.3d 294, 298 (Tenn. 2009).

Analysis

1. *Causation, Left Elbow Injury*

The trial court found that even though Drs. Pearce and Hutchinson stated that the "loose bodies" were present in Mr. Noles' elbow prior to his employment at Delta Faucet, the loose bodies lodged in the joint during the course of Mr. Noles' employment. Drs. Pearce and Hutchinson agreed that the Mr. Noles' work activities could have caused the loose bodies to lodge in the joint and that Mr. Noles required surgery to remove the loose bodies.

Delta Faucet does not contest that an incident occurred on July 19, 2007. Delta Faucet contends, however, that the evidence preponderates against the trial court's finding that this incident resulted in a compensable injury to Mr. Noles' left elbow. Delta Faucet argues that the testimony of Drs. Hutchinson and Pearce supports the assertion that the loose bodies were in Mr. Noles' elbow prior to July 19, 2007, and were unrelated to Mr. Noles' employment.

Delta Faucet argues that the July 19, 2007, incident did not cause an actual progression or advancement of Mr. Noles' underlying elbow condition but merely caused increased pain. Delta Faucet primarily relies on Foreman v. Automatic Sys., Inc., 272 S.W.3d 560, 571 (Tenn. 2008), to support this assertion. In Foreman, the Supreme Court held that an increase in pain, standing alone, is insufficient to support an award of benefits. Id. at 575 (citing Trosper v. Armstrong Wood Prods., 273 S.W.3d 598, 606-07 (Tenn.2008)).

We disagree with the characterization of Mr. Noles' injury as causing merely an increase in pain. For more than twenty years prior to July 19, 2007, Mr. Noles had not sought or received medical care for his elbow. On that date, Mr. Noles suffered immediate, severe pain while pushing a cart full of parts and required medical attention. The loose bodies lodged in the elbow while Mr. Noles was engaged in a work activity and this incident necessitated immediate medical attention and ultimately required a surgical procedure. Dr. Hutchinson testified that Mr. Noles' post-traumatic arthritic condition had been worsened by the July 19, 2007, incident. We conclude that the evidence does not preponderate against the

trial court's finding that Mr. Noles' preexisting injury was aggravated by his work related injury. See Tenn. Code Ann. § 50-6-225(e)(2); Trosper, 273 S.W.3d at 607.

2. Carpal Tunnel Syndrome: Notice

Tennessee Code Annotated section 50-6-201(a) (2008) provides that, unless an employer has actual notice of the injury, an employee who is injured while performing the duties of the employee's job must give written notice of the injury to the employer within thirty days of the injury. Unless the employee can provide a reasonable excuse as to why written notice was not given, an employee who fails to give his employer written notice will not be entitled to recover benefits. Tenn. Code Ann. § 50-6-201(a); McCaleb v. Saturn Corp., 910 S.W.2d 412, 415 (Tenn. 1995).

Delta Faucet argues that Mr. Noles failed to give notice of his carpal tunnel injury as required by Tennessee Code Annotated section 50-6-201(a). Prior to his employment with Delta Faucet, Delta Faucet performed a preemployment physical that indicated that Mr. Noles had carpal tunnel syndrome. Mr. Noles, however, testified that he was unaware of the diagnosis. Mr. Noles also testified that he told Delta Faucet's plant nurse he was having numbness in his wrist and fingers when he reported the July 19, 2007, elbow injury. In addition, prior to his consultation with Dr. Hutchinson, Mr. Noles completed an intake form at West Tennessee Bone & Joint clinic in which he indicated that he was experiencing numbness in his fingers. The August 27, 2007, medical record of Dr. Pearce, to whom Mr. Noles was referred for his arthroscopic elbow surgery, also includes a diagnosis of carpal tunnel syndrome based on an EMG performed by an additional physician.

In its letter providing the basis for its ruling, the trial court found that Delta Faucet had actual notice, noting that: "Notice was available to [Delta Faucet] not only through its preemployment physical, but through its own doctor's records, particularly Dr. Pearce who performed [carpal tunnel] surgery on Mr. Noles. No prejudice was shown to [Delta Faucet] by any delay in notice."

Regarding Delta Faucet's preemployment knowledge, Delta Faucet does not dispute that it knew Mr. Noles had carpal tunnel syndrome at the time it offered him employment. However, Delta Faucet argues that such awareness of a pre-existing condition or injury, standing alone, does not constitute "actual notice" of an aggravation or advancement of that condition or injury for the purpose of Tennessee Code Annotated section 50-6-201(a). Otherwise, employers who offer employment to someone whom they know has a pre-existing condition or injury would automatically have the required statutory notice for subsequent compensable aggravation or advancement of that condition or injury. This could have a chilling effect upon an employer's willingness to hire a person who has a pre-existing injury

or condition. We therefore agree that Delta Faucet’s preemployment knowledge of Mr. Noles’ carpal tunnel syndrome, standing alone, does not constitute actual notice.

The trial court also found that “[n]otice was available to [Delta Faucet] . . . through its own doctor’s records, particularly Dr. Pearce[,] who performed [carpal tunnel] surgery on [Mr. Noles].” The evidence established, however, that by the time Dr. Pearce began treating Mr. Noles, Delta Faucet had denied Mr. Noles workers’ compensation benefits. Dr. Pearce, as a result, treated Mr. Noles under Mr. Noles’ private health insurance. Dr. Pearce, therefore, was not treating Mr. Noles pursuant to Delta Faucet’s instruction and any information Mr. Noles gave Dr. Pearce cannot be the basis for actual notice.¹

We agree with the trial court, however, that the preponderance of the evidence indicates that Delta Faucet had actual notice of Mr. Noles’ carpal tunnel injury, albeit in a manner other than the records of Dr. Pearce. Mr. Noles testified that he informed Delta Faucet’s plant nurse that he had numbness in his left fingers and right thumb at the same time he reported his elbow injury.² Although the trial court did not make an explicit finding

¹ However, we note that actual notice would have been provided by Dr. Pearce’s records after the discovery of the advanced carpal tunnel syndrome on August 24, 2007, if Delta Faucet had not denied Mr. Noles’ workers’ compensation claim.

² The dissent points out that the trial court disagreed with Mr. Noles’ attorney, Mr. Krenis, as to whether Mr. Noles informed the plant nurse of the numbness and tingling in his wrists. We disagree, however, with the dissent’s interpretation of the transcript on this point. During closing arguments, Mr. Noles’ counsel summarized Mr. Noles’ testimony regarding notice for the court:

Mr. Krenis:	Well, his testimony that he told Angie Deere, who was I believe the supervisor, about carpal tunnel.
Mr. Crews [counsel for Delta Faucet]:	No.
Mr. Krenis:	I’m sorry.
The Court:	No, he didn’t say that.
Mr. Krenis:	He did say that he told Angie Deere, and I – I may have her title wrong. She’s the company nurse?
Mr. Crews:	Yes.
Mr. Krenis:	Sorry. I said that wrong. . . .

The transcript reflects that the trial court took issue with counsel’s misstatement of Angie Deere’s title rather
(continued...)

regarding Mr. Noles' testimony on this point, Delta Faucet did not produce the plant nurse or any other witness to testify to the contrary. We may infer the trial court's credibility determinations from the manner in which the trial court decided the case and resolved conflicts in the evidence. Rhodes v. Capital City Ins. Co., 154 S.W.3d 43, 46 (Tenn. 2004) (citing Tobitt v. Bridgestone/Firestone, Inc., 59 S.W.3d 57, 61 (Tenn. 2001)). The trial court's letter to counsel and award of workers' compensation benefits for Mr. Noles' carpal tunnel injury supports the inference that it found Mr. Noles to be a credible witness.

The evidence does not preponderate against the inference that Mr. Noles' testimony was credible. Mr. Noles' testimony shows that he consistently complained of numbness and tingling in his wrists and fingers. Mr. Noles testified that he told the plant nurse that he had numbness and tingling in both of his hands at the time he reported his elbow injury on July 19, 2007. Moreover, Mr. Noles also noted on his intake sheet at the West Tennessee Bone & Joint clinic that he was experiencing numbness and tingling in his wrists and fingers in addition to the pain in his elbow. Mr. Noles then discussed the numbness and tingling in his hands with Dr. Pearce after Delta Faucet denied his workers' compensation claim.

Delta Faucet argues that Mr. Noles conceded that he never explicitly told anyone at Delta Faucet that he had carpal tunnel syndrome. Mr. Noles, however, was unaware that the numbness and tingling in his hands was due to aggravated carpal tunnel syndrome until Dr. Pearce diagnosed this condition on August 24, 2007. See Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 169 (Tenn. 2002) (noting that employee is excused from providing notice until the diagnosis has been confirmed by a physician). This diagnosis occurred after Delta Faucet denied Mr. Noles' workers' compensation claim. Because Dr. Pearce was treating Mr. Noles under private insurance, Dr. Pearce testified that he did not discuss with Mr. Noles whether his carpal tunnel injury was work-related. Prior to Mr. Noles' August 24, 2007, diagnosis, Delta Faucet had as much information as Mr. Noles regarding the carpal tunnel injury.

For the reasons stated above, we conclude that Delta Faucet was provided with actual notice based on the report of numbness and tingling in his hands to Delta Faucet's plant nurse.

3. Temporary Total Disability Benefits

The trial court awarded temporary total disability benefits to Mr. Noles from August 24, 2007, the date of his first appointment with Dr. Pearce, through November 19, 2007, the

² (...continued)
than Mr. Noles' testimony.

date of his last appointment with Dr. Pearce. Delta Faucet contends that there is no evidence that Mr. Noles was totally disabled during this period of time and that the award of benefits was therefore erroneous.

To demonstrate that he is entitled to temporary total disability, an employee must prove that he suffers from a total disability because of a compensable work injury and that there is a causal connection between his injury and his work activities. Simpson v. Satterfield, 564 S.W.2d 953, 955 (Tenn. 1978). The employee must also prove the duration of the period of disability. Id.

By the time Mr. Noles came under Dr. Pearce's care, Delta Faucet had denied Mr. Noles' workers' compensation claim. As a result, Mr. Noles was treated under his private health insurance, and Dr. Pearce addressed his work status somewhat differently than if the claim had been accepted. Dr. Pearce testified that because the claim was not accepted as a workers' compensation claim, he did not attempt to return Mr. Noles to work on light duty. Instead, Dr. Pearce did not return Mr. Noles to work until he was released from his care on November 19, 2007. Dr. Pearce stated that Mr. Noles could not return to work as a result of the surgery for his injuries. After a thorough review of Dr. Pearce's testimony, we are unable to conclude that the evidence preponderates against the trial court's conclusion that Mr. Noles was entitled to an award of temporary total disability benefits from August 24, 2007, to November 19, 2007.

4. Meaningful Return to Work

Delta Faucet next argues that the trial court erred by finding that Mr. Noles did not have a meaningful return to work. Mr. Noles testified that he attempted to return to his pre-injury job but that he was unable to perform it for even a short period of time because the parts were too heavy. Mr. Noles also stated that his elbow was worse following the July 2007, incident. Mr. Noles testified that although he did have better range of motion following the arthroscopic surgery, his elbow did not have same strength, and he now experiences severe pain.

Mr. Haynes testified that Mr. Noles declined an offer of a different, lighter job before accepting a voluntary layoff. Mr. Haynes, however, did not make the offer himself, and it is clear from his statements that his testimony was based on corporate records generated by another person. On rebuttal, Mr. Noles flatly denied that such an offer was made.

When weight to be given testimony is involved, considerable deference is given to the trial court when the trial judge had the opportunity to observe the witnesses' demeanor and to hear in-court testimony. Madden v. Holland Grp. of Tenn., Inc., 277 S.W.3d 896, 900

(Tenn. 2009). The trial court accredited Mr. Noles' testimony over Mr. Haynes's second-hand account concerning the offer of employment. Findings concerning the credibility of live testimony are entitled to our deference. Richards v. Liberty Mut. Ins. Co., 70 S.W.3d 729, 733 (Tenn. 2002). There is sufficient evidence in the record to support the trial court's finding that Mr. Noles did not have a meaningful return to work because he could only perform a portion of his job duties after the surgeries. We conclude that the evidence does not preponderate against that finding. Tenn. Code Ann. § 50-6-225(e)(2).

5. Excessive Award

Finally, Delta Faucet argues that the award of permanent partial disability was excessive. Delta Faucet contends that the trial court erred by using the impairment ratings assigned by Dr. Chung, rather than those of Dr. Pearce. Delta Faucet also contends that Mr. Noles' background as a skilled diesel mechanic and the absence of formal medical restrictions is consistent with a lower disability award. In response, Mr. Noles points to Dr. Chung's testimony that he had specific training in the application of the AMA Guidelines and to Dr. Chung's finding that Mr. Noles had diminished strength in his elbow as providing a basis for the trial court's finding on this issue. Further, Mr. Noles relies on his own testimony concerning the effects of his injury, including his belief that he was no longer capable of performing the types of work he had performed before his injuries.

The claimant's own assessment of his physical condition and resulting disabilities cannot be disregarded. Uptain Constr. Co. v. McClain, 526 S.W.2d 458, 459 (Tenn.1975); Tom Still Transfer Co. v. Way, 482 S.W.2d 775, 777 (Tenn.1972). The trial court considered Mr. Noles' age, education, training, and the job opportunities available to him after his injuries in setting the award. When expert medical testimony differs, it is within the trial judge's discretion to accept the opinion of one expert over another. Hinson v. Wal-Mart Stores, Inc., 654 S.W.2d 675, 676-77 (Tenn. 1983). However, "[w]hen the issues involve expert medical testimony that is contained in the record by deposition, determination of the weight and credibility of the evidence necessarily must be drawn from the contents of the depositions, and the reviewing court may draw its own conclusions with regard to those issues." Foreman, 272 S.W.3d at 571. After reviewing the record in its entirety, we conclude that the evidence does not preponderate against Dr. Chung's impairment rating. We also conclude that the evidence does not preponderate against the trial court's award of three times the impairment rating in determining Mr. Noles' permanent partial disability award.

Conclusion

For the reasons stated above, we affirm the judgment of the trial court. Costs of this appeal are taxed to Delta Faucet Company and its surety, for which execution may issue if necessary.

JANICE M. HOLDER, JUSTICE

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
December 12, 2011 Session

DELTA FAUCET COMPANY v. JEFFREY NOLES

**Chancery Court for Madison County
No. 66169**

No. W2011-00383-WC-R3-WC - Filed May 11, 2012

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 on appeal are taxed to the Appellant, Delta Faucet Company, and its surety, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM