IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
February 24, 2020 Session

KEVIN W. TAYLOR v. G.UB.MK CONSTRUCTORS

Appeal from the Chancery Court for Roane County
No. 2018-3 Frank V. Williams III, Chancellor

No. E2019-00461-SC-R3-WC-MAILED-APRIL 16, 2020 / FILED-JUNE 2, 2020

An employee filed a workers' compensation claim alleging he suffered permanent hearing loss in the course and scope of his employment. The trial court ruled that the employee's hearing loss was compensable and, based on an anatomical impairment rating of 14.1 percent, awarded the employee 56.4 percent vocational disability for loss of hearing in both ears. We affirm the trial court's judgment as to compensability but find that the award of vocational disability was excessive. We modify the award of vocational disability to thirty percent for loss of hearing in both ears.

Tenn. Code Ann. § 50-6-225(e) (2014) (applicable to injuries occurring before July 1, 2014) Appeal as of Right; Judgment of the Chancery Court Affirmed as Modified

SHARON G. LEE, J., delivered the opinion of the court, in which ROBERT E. LEE DAVIES, SR.J., and KRISTI M. DAVIS, SP.J., joined.

D. Brett Burrow, Nashville, Tennessee, for the appellant, G.UB.MK Constructors.

Edward L. Summers, Knoxville, Tennessee, for the appellee, Kevin W. Taylor.

OPINION

I.

On January 10, 2018, Kevin W. Taylor sued G.UB.MK Constructors ("the Employer") for workers' compensation benefits in the Roane County Chancery Court ("the trial court"). Mr. Taylor alleged that he suffered profound hearing loss and tinnitus from exposure to loud industrial noise in the course and scope of his employment. The Employer

denied that Mr. Taylor's hearing loss was work-related and claimed as affirmative defenses that Mr. Taylor failed to provide adequate notice of his injury and that his claim was barred by the statute of limitations.

The case was tried on February 27, 2019. Mr. Taylor testified and presented the testimony of Danny Jones and the deposition testimony of Dr. Charles G. Sewall. The Employer presented the deposition testimony of Dr. S. Mark Overholt, Dr. J. Leland Hughes, Jr., and industrial hygienist James M. Bradford.

Trial Testimony

Mr. Taylor was sixty-three years old at the time of trial. After graduating from high school, he studied welding in vocational school and became a certified welder. He also joined the Virginia Army National Guard and became certified as a wheeled vehicle mechanic. Mr. Taylor worked as a millwright and welder for approximately fifteen years before joining the International Brotherhood of Boilermakers Union in 1999. As a boilermaker, he performed maintenance of machinery and equipment at fossil-fuel steam plants.

Mr. Taylor worked as a union boilermaker from January 2000 until November 2013. The union assigned him to work at fossil-fuel steam plants on approximately forty-four occasions, and twenty-three of these assignments were at the Employer's sites.[1] Each assignment with the Employer lasted an average of about five to six weeks. The shortest assignment lasted four days; the longest assignment lasted over twenty-eight weeks. Mr. Taylor's last job with the Employer was from October 10 to November 22, 2013, at the Kingston Steam Plant.

Danny Jones, a co-worker of Mr. Taylor's who worked as a union boilermaker for forty years, testified about the work environment and noise level at various steam plants, including the Employer's Kingston Steam Plant site. He described the noise level at the plants as being so loud that workers had to "holler at each other" even if they were "almost nose to nose." According to Mr. Jones, the Employer's Kingston Steam Plant had nine boilers. The Employer would shut down one boiler for the boilermakers to perform maintenance while the other eight boilers remained operational. The work environment was loud and confined. The pneumatic tools used by the boilermakers created additional noise. Mr. Jones described the noise made by the "air tuggers," which were used to lift and move heavy objects, as being so loud that the workers had to use hand signals because they could not communicate verbally. He likened it to the loud continuous popping sound of a "jake brake" on an eighteen-wheeler truck.

[1] By comparison, Mr. Taylor was assigned to other employers no more than four times each.

Mr. Taylor also testified about the noise at the Kingston Steam Plant. The air tuggers described by Mr. Jones were in operation and generating noise forty to forty-five percent of his ten- or twelve-hour work shift. Mr. Taylor said that the noise at the Kingston Steam Plant during his last stint in October to November 2013 was the same level as it had been during other times he had worked there and when he worked at other locations. He did not recall a single or specific incident that made his hearing loss worse during his last work assignment with the Employer.

Mr. Taylor agreed that there were many factors that went into his hearing loss over forty years while working in the construction industry with heavy equipment, as a boilermaker from 1999 to 2013, and in his twenty years of service in the Army National Guard. In the National Guard, he was required to participate in target practice each year, shooting forty-five rounds with an M16 rifle. Mr. Taylor described the M16 as not "near as loud" as shooting a 12-gauge shotgun but "a little bit louder" than shooting a .22 caliber rifle. He wore rubber earplugs for noise protection during target practice.

In 2006, Mr. Taylor's employers became more stringent about requiring hearing protection and he began using earplugs, which "helped some" with the noise at the fossil-fuel steam plants. Although the Employer posted signs advising workers about noise and requiring them to wear protection, Mr. Taylor was not given ear muffs or told to use double hearing protection. In his earlier years working as a boilermaker, there were times that he worked in the same conditions without any hearing protection at all.

During the last couple of years that he worked as a boilermaker, Mr. Taylor "got to noticing [his hearing loss] more," but he had started raising the volume on his television as early as 2008 and by 2012 began using closed captioning on his television because it was difficult to understand. At the time of trial, he was still using closed captioning on his television, turning up the volume on his telephone so he could hear, and having trouble hearing people if they turned away from him or were more than twenty feet away. Mr. Taylor said he did not know what had caused his hearing loss, and he was first advised that his hearing loss was noise-induced when he saw Dr. Charles G. Sewall on June 30, 2014, for a hearing evaluation.[2]

After his last assignment with the Employer ended in November 2013, Mr. Taylor could not find work and retired on March 1, 2014. Mr. Taylor's inability to find work was

[2] In January 2010, Mr. Taylor saw his cardiologist, Dr. John Arnett, who had begun treating Mr. Taylor after he had a heart attack in 2004. Mr. Taylor reported on his intake form that he had hearing loss. He admitted on cross examination that he associated his hearing problem with work and considered his hearing problem likely to be permanent to some degree. He stated, however, that he did not know at the time that he could make a claim for work-related hearing loss.

caused not by his hearing loss but by problems with his heart, back, shoulder, and knee that made it hard to walk, climb, squat, or lift over forty pounds. Mr. Taylor was approved for social security disability benefits based on his heart condition and back problems. He never turned down or left a job because of his hearing loss.

Dr. Sewall, an otolaryngologist, testified that on June 30, 2014, Mr. Taylor reported having hearing loss for approximately fifteen years and gave a history of working at the Kingston Steam Plant as a contractor. Mr. Taylor also told Dr. Sewall that he had previously worked in the construction industry and had been around heavy equipment noise for forty years and that he had served in the National Guard for twenty years. Mr. Taylor told Dr. Sewall he was having trouble communicating and had ringing in both ears.

According to Dr. Sewall, an audiogram showed high frequency hearing loss that was "characteristic for hearing loss due to exposure to such things as noise." Dr. Sewall concluded that Mr. Taylor suffered permanent, noise-induced hearing loss and that he had an impairment rating of 24.4 percent to the right ear, 9.4 percent to the left ear, and 11.9 percent to both ears (binaural), plus an additional impairment rating of three percent for the bilateral tinnitus. Dr. Sewall testified that Mr. Taylor's work around loud noises for forty years had cumulatively caused his hearing loss, but he could not distinguish the noise levels at Mr. Taylor's various work locations. Nor could he say that the last period of time Mr. Taylor had worked for the Employer—October to November 2013—was the primary cause of his hearing loss or had caused a worsening of his hearing loss. Dr. Sewall could not state a specific cause for Mr. Taylor's tinnitus, and he did not determine whether the tinnitus affected Mr. Taylor's quality of life.

Dr. Sewall was unfamiliar with the Employer's Hearing Conservation Program but knew that the federal Occupational Safety and Health Act required noise-reducing controls when the weighted average of noise levels over an eight-hour period is ninety decibels or higher. Dr. Sewall agreed that an individual who was exposed to an average of ninety decibels over an eight-hour workday would be at risk for noise-induced hearing loss. However, he did not know the noise level that Mr. Taylor was exposed to while working for the Employer from October 10 to November 22, 2013.

James M. Bradford, an industrial hygienist for the Tennessee Valley Authority ("TVA"), testified by deposition about noise levels at the Kingston Steam Plant. Mr. Bradford explained that the permissible standard prescribed by the federal Occupational Safety and Health Administration is a time-weighted average of ninety decibels and that the "action level" is eighty-five decibels. Various forms of hearing protection have a "noise reduction rating," and the earplugs used at TVA steam plants have a rating of twenty-eight, which reduces noise by ten decibels. According to Mr. Bradford, noise levels were measured at the Kingston Steam Plant from July 8 to 11, 2013. He concluded that

employees at that location would be exposed to less than eighty-five decibels; if using hearing protection, the noise level would be reduced by 10.5 decibels. Mr. Bradford stated that it was "highly unlikely" that Mr. Taylor was exposed to eighty-five decibels or greater. The July 2013 study, however, did not include boilermakers who worked for the Employer or measure any noise created by tools used by boilermakers. The study measured a weighted-average of noise and did not include specific maximum levels.

Dr. S. Mark Overholt, an otolaryngologist, conducted an independent medical evaluation of Mr. Taylor on November 13, 2015, on behalf of the Employer. Dr. Overholt testified that Mr. Taylor presented with a complaint of difficulty hearing. He reported having trouble hearing others in conversation. He also reported some intermittent, high-pitched steady noise in his ears which did not interfere with his normal activities of daily living. Mr. Taylor gave a history of employment as a boilermaker throughout his adult life—intermittently with the Employer, among other employers, between 1999 and 2013. He described working in a loud environment with the noise of metal clashing on metal. Dr. Overholt was unable to state that Mr. Taylor's hearing loss was caused primarily by his noise exposure while working for the Employer from October 10 to November 22, 2013, that Mr. Taylor had a specific injurious exposure during that time, or that the hearing loss had worsened during that period. He agreed that Mr. Taylor's difficulty in hearing the television in 2008 and his use of closed captioning in 2012 were pertinent in determining when the problems arose. He also testified, based on his review of documents provided to him in advance of his deposition, that "Mr. Taylor ha[d] experienced hearing loss for at least 15 years." He testified that Mr. Taylor's lifelong employment as a boilermaker in a loud environment likely contributed to the vast majority of his hearing loss. Dr. Overholt determined that Mr. Taylor had an impairment rating of 18.8 percent to the right ear, 13.17 percent to the left ear, and 14.1 percent binaural, which equated to a five percent whole person impairment. He gave a zero percent impairment rating for tinnitus because it did not affect Mr. Taylor's activities of daily living.

The Employer also presented the deposition testimony of Dr. Leland Hughes, Mr. Taylor's primary care physician, regarding a document in his medical chart purporting to contain the results of an audiogram administered to Mr. Taylor on July 11, 2001. Two strips attached to the document reflect the results of an audiogram but do not show a name or identifying mark. A box on the document stating that the "[a]udiogram is acceptable" is not checked. Dr. Hughes testified that the audiogram was in his medical records on Mr. Taylor because it had come in to his office from another health care provider who had treated Mr. Taylor previously. He had no need to refer to or study the audiogram because he had never treated Mr. Taylor for hearing loss. The document contains a notation in Mr. Taylor's handwriting stating "Army National Guard." Mr. Taylor acknowledged that his hearing had been tested on many occasions, but he did not recall all of those tests or where they took place.

Trial Court Judgment

The trial court found that Mr. Taylor sustained a permanent hearing loss within the course and scope of his employment as a boilermaker. The trial court, quoting from the deposition testimony of Dr. Sewall and Dr. Overholt, noted that it would be impossible for the doctors to describe Mr. Taylor's progression of hearing loss from one point in time to another "[a]nd that's what makes his hearing loss compensable." The trial court concluded that there was no question that Mr. Taylor's hearing loss was work-related. The trial court found that Mr. Taylor's anatomical impairment rating was 14.1 percent for loss of hearing in both ears and awarded Mr. Taylor a 56.4 percent vocational disability for his hearing loss and future medical benefits. The Employer has appealed.

The 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 under Tennessee Supreme Court Rule 51.

II.

Standard of Review

We review factual issues de novo upon the record of the trial court, with a presumption of correctness of the trial court's factual findings, "unless the preponderance of the evidence is otherwise." Tenn. Code Ann. § 50-6-225(e)(2) (2014) (applicable to injuries occurring before July 1, 2014). Considerable deference is afforded to the trial court's findings with respect to the credibility of witnesses and the weight to be given to their in-court testimony. *Richards v. Liberty Mut. Ins. Co.*, 70 S.W.3d 729, 732 (Tenn. 2002) (citations omitted); *see also Madden v. Holland Grp. of Tenn., Inc.*, 277 S.W.3d 896, 898 (Tenn. 2009) (citation omitted). The reviewing court, however, may draw its own conclusions about the weight and credibility to be given to expert testimony when all of the medical proof is by deposition. *Foreman v. Automatic Sys., Inc.*, 272 S.W.3d 560, 571 (Tenn. 2008) (citation omitted). "When expert medical testimony differs, it is within the trial judge's discretion to accept the opinion of one expert over another." *Fritts v. Safety Nat'l Cas. Corp.*, 163 S.W.3d 673, 679 (Tenn. 2005) (citation omitted).

The Employer contends that Mr. Taylor's hearing loss was not primarily caused by his employment and, therefore, not compensable; that Mr. Taylor failed to provide timely notice of his injury and to file his claim within the applicable statute of limitations; and that Mr. Taylor's vocational disability from his hearing loss is minimal, if any.

Compensability

The Employer argues that Mr. Taylor failed to establish that his hearing loss arose primarily out of and in the course and scope of employment during the October to November 2013 time period. Mr. Taylor contends that the trial court considered the progression of his noise-induced hearing loss over time, including the October to November 2013 period, and properly found his hearing loss was compensable.

In most cases of work-related injury, causation must be established by expert medical evidence. *Tindall v. Waring Park Ass'n*, 725 S.W.2d 935, 937 (Tenn. 1987) (citations omitted). Absolute certainty in the medical evidence is not required. *Trosper v. Armstrong Wood Prods., Inc.*, 273 S.W.3d 598, 604 (Tenn. 2008) (quoting *Glisson v. Mohon Int'l, Inc./Campbell Ray*, 185 S.W.3d 348, 354 (Tenn. 2006)). An employee "must establish causation by the preponderance of the expert medical testimony, as supplemented by the evidence of lay witnesses." *Excel Polymers, LLC v. Broyles*, 302 S.W.3d 268, 274 (Tenn. 2009) (citation omitted). For injuries before July 1, 2014, Tennessee Code Annotated section 50-6-301 provides as follows:

> (b) Cumulative trauma conditions, hearing loss, carpal tunnel syndrome, and all other repetitive motion conditions shall not be considered an occupational disease unless such conditions arose primarily out of and in the course and scope of employment.

Tenn. Code Ann. § 50-6-301(b); *see also* Tenn. Code Ann. § 50-6-102(12)(C)(ii). The employee is granted the benefit of all reasonable doubt regarding causation. *Excel Polymers*, 302 S.W.3d at 274–75.

The evidence established that Mr. Taylor was exposed to loud environments as a union boilermaker for almost fourteen years. During that time, he worked for the Employer on twenty-three occasions, including his final stint from October to November 2013. Both Dr. Sewall and Dr. Overholt testified that Mr. Taylor's hearing loss was noise-induced, but neither doctor could tie the hearing loss to a single incident or time period. The trial court cited Dr. Sewall's testimony agreeing that it was Mr. Taylor's work for over forty years of working around heavy equipment noise "that cumulatively caused him some type of hearing loss and a noise-induced hearing loss." The trial court further noted that Mr. Taylor worked for the Employer on twenty-three occasions and that his hearing loss was "a progressive problem . . . that was related to his exposure to loud noises during the time that he was working as a boilermaker."

Although the Employer argues that the causation inquiry should focus solely on the October to November 2013 period, we disagree. Dr. Sewall stated that "what matters is that [Mr. Taylor's] total hearing loss is related to all the exposure he's ever been through, including this time period [in October to November 2013]." Dr. Sewall further explained that if Mr. Taylor was exposed to noise within that time frame, "it is contributory, no matter what it was." Similarly, Dr. Overholt said that it was possible that "any exposure could . . . augment the hearing loss, however slight, in any given week, in any given month, in any given day." Dr. Overholt specifically found that Mr. Taylor's work as a boilermaker for the Employer contributed to the hearing loss.

The evidence does not preponderate against the trial court's decision that Mr. Taylor's permanent hearing loss arose primarily out of and in the course and scope of his employment with the Employer. As the trial court noted, Mr. Taylor's exposure to loud noises "stretches back" over the many years he worked as a boilermaker, including the period of time that he worked for the Employer.

Notice and Statute of Limitations

The Employer argues that Mr. Taylor failed to provide timely notice of his hearing loss and failed to file his claim within the statute of limitations. The Employer emphasizes that Mr. Taylor knew or reasonably should have known of his hearing loss more than a year before he filed his claim because he began turning up the volume on his television as early as 2008, mentioned his hearing loss to Dr. Arnett in 2010, and began using closed captioning on his television in 2012. Mr. Taylor maintains that he first learned that his hearing loss was noise-induced when he saw Dr. Sewall on June 30, 2014, and that he gave prompt notice to the Employer in July 2014.

An employee must give prompt notice to his employer of any workplace injury. Tenn. Code Ann. § 50-6-201(a)-(b). Further, the right to compensation is barred unless the employee files a petition for benefit determination within one year after the alleged work-related injury. *Id.* § 50-6-203(b)(1). With hearing loss and other gradually occurring injuries, the timeframes applicable to notice and the statute of limitations are difficult to determine because these injuries tend to occur over lengthy periods of time. *See Lawson v. Lear Seating Corp.*, 944 S.W.2d 340, 341 (Tenn. 1997); *see also Hill v. Whirlpool Corp.*, No. M2011-01291-WC-R3-WC, 2012 WL 1655768, at *4 (Tenn. Workers' Comp. Panel May 10, 2012). Moreover, "there is generally no particular event that should make it obvious to the employee that his or her hearing loss is work-related." *Hill*, 2012 WL 1655768, at *4 (citing *Ferrell v. Cigna Prop. & Cas. Ins. Co.*, 33 S.W.3d 731, 735 (Tenn. 2000)).

In these types of cases, the statute of limitations begins "to run 'at that time when the employee, by a reasonable exercise of diligence and care, would have discovered that a compensable injury had been sustained.'" *Gerdau Ameristeel, Inc. v. Ratliff*, 368 S.W.3d 503, 509 (Tenn. 2012) (quoting *Bellar v. Baptist Hosp., Inc.*, 559 S.W.2d 788, 789–90 (Tenn. 1978)). Therefore, an employee who sustains a gradually occurring injury may be relieved of the notice requirement until a medical diagnosis confirms the injury. *Banks v. United Parcel Serv., Inc.*, 170 S.W.3d 556, 561 (Tenn. 2005) (citations omitted). The "last-day-worked rule" is used to assign the date of injury in gradually-occurring-injury cases. *Bldg. Materials Corp. v. Britt*, 211 S.W.3d 706, 711 (Tenn. 2007) (citing *Lawson*, 944 S.W.2d at 341–42; *Barker v. Home-Crest Corp.*, 805 S.W.2d 373, 375 (Tenn. 1991)). The purpose of the last-day-worked rule is to prevent employees "with gradually occurring injuries from losing the opportunity to bring workers' compensation claims due to the running of the statute of limitations." *Id.* Taking the discovery rule and last-day-worked rule together, an employee's claim filed more than one year after his last day of work would not be barred by the last-day-worked rule if the employee, by the exercise of diligence and care, did not discover that he had sustained a compensable injury until sometime later.

Although there was some evidence that Mr. Taylor was aware of his hearing loss before he was examined by Dr. Sewall, the trial court made no findings as to whether Mr. Taylor knew the hearing loss was noise-induced or work-related before seeing Dr. Sewall. Mr. Taylor, whose last day of work with the Employer was November 22, 2013, testified he did not know his hearing loss was noise-induced until he was examined by Dr. Sewall on June 30, 2014. Mr. Taylor gave notice of his hearing loss to the Employer on July 22, 2014. The Employer raised the notice and statute of limitations defenses in its answer but did not assert these defenses by motion or request a ruling from the trial court. Before ruling, the trial court asked the parties if any additional findings were needed. Neither party requested additional findings, and the trial court made no express ruling on these defenses. We conclude that the evidence does not preponderate against the trial court's implicit decision that Mr. Taylor's claim was not barred by either lack of timely notice or the statute of limitations.

Vocational Disability

The Employer argues that the trial court erred in awarding vocational disability of 56.4 percent because Mr. Taylor's hearing loss did not affect his ability to work, prevent him from finding work, or cause him to end his employment. Rather, he stopped working because of a host of other physical ailments. Mr. Taylor contends that the evidence does not preponderate against the trial court's vocational disability award.

The outcome of workers' compensation cases, including those involving hearing loss, rests on the specific facts of each case. *Westby v. Goodyear Tire & Rubber Co.*, No.

W2017-01408-SC-R3-WC, 2018 WL 3561731, at *4 (Tenn. Workers' Comp. Panel July 24, 2018). In assessing the extent of an employee's vocational disability, the trial court may consider '"many pertinent factors, including job skills, education, training, duration of disability, and job opportunities for the disabled, in addition to the anatomical disability testified to by medical experts.'" *Hatmaker v. Allied Indus. Equip., Inc.*, No. E2005-02519-SC-R3-WC, 2006 WL 2855083, at *6 (Tenn. Workers' Comp. Panel Oct. 9, 2006) (quoting *Clark v. Nat'l Union Fire Ins. Co.*, 774 S.W.2d 586, 588 (Tenn. 1989); *McIlvain v. Russell Stover Candies, Inc.*, 996 S.W.2d 179, 183 (Tenn. 1999)). The trial court may also consider an employee's own assessment of his physical condition. *See Uptain Constr. Co. v. McClain*, 526 S.W.2d 458, 459 (Tenn. 1975). The trial court is not bound to accept physicians' opinions regarding the extent of the employee's disability but should consider all the evidence, both expert and lay testimony, to decide the extent of an employee's disability. *Hinson v. Wal-Mart Stores, Inc.*, 654 S.W.2d 675, 677 (Tenn. 1983) (citations omitted).

The Employer argues that based on the rulings in *Hix v. TRW, Inc.*, No. M2007-02822-WC-R3-WC, 2009 WL 1643448 (Tenn. Workers' Comp. Panel June 12, 2009), and *Bain v. TRW, Inc.*, No. M2008-02311-WC-R3-WC, 2010 WL 1508519 (Tenn. Workers' Comp. Panel Apr. 15, 2010), this Panel should reduce the trial court's vocational disability award. In *Hix*, the trial court awarded the employee vocational disability of fifty percent after medical experts gave the employee a binaural impairment rating of 5.3 to 6.6 percent. *Hix*, 2009 WL 1643448, at *2–3. The evidence showed that most of the employee's hearing loss occurred after his work-related noise exposure had ended and likely resulted from aging. *Id.* at *8. Finding that the hearing loss did not cause the employee to leave his job or limit his ability to find work, the Panel reduced the vocational disability award to five percent. *Id.* In *Bain*, the trial court awarded sixty-five percent vocational disability after expert testimony established a binaural impairment rating of 12.8 to 18.1 percent. *Bain*, 2010 WL 1508519, at *1–2. Citing to *Hix*, the Panel reduced the award to fifteen percent, finding that the employee's hearing loss did not interfere with his ability to work for the employer, cause him to quit his job, or impact his work performance at subsequent employers. *Id.* at *5. The Panel noted that the employee's testimony, which was the only vocational evidence in the record, showed minimal vocational disability. *Id.*

Other Panels, however, have upheld vocational disability awards in hearing loss cases where the trial court had considered the "age, education, work history, transferrable job skills, medical and lay testimony, job opportunities in the community, and the ability of Employee to compete in the job market with disabilities" and the evidence did not preponderate against the trial court's findings. *Westby*, 2018 WL 3561731, at *4 (affirming a sixty-percent vocational disability award where the employee had a 20.6 percent binaural impairment rating); *see also Lang v. Nissan N. Am., Inc.*, 170 S.W.3d 564, 570–71 (Tenn. 2005) (upholding a forty-five-percent vocational disability award where the employee had

a binaural impairment rating of 22.5 to 26.6 percent, could not hear high-pitched sounds, could not use hearing aids at work, and missed twenty-five percent of conversations).

After accepting Dr. Overholt's opinion that Mr. Taylor's hearing loss resulted in an impairment rating of 14.1 percent, the trial court awarded a vocational disability of 56.4 percent based on Mr. Taylor's "education, his background, his work history, [and] all of the things that he comes into court with here today." The trial court did not make specific findings of fact as to the extent that Mr. Taylor's hearing loss impaired his earning capacity; therefore, this Panel may make its own determination of where the preponderance of the evidence lies. *Hopson v. Philips Consumer Elecs.*, No. 03S01-9710-CV-00141, 1999 WL 124438, at *2 (Tenn. Workers' Comp. Panel Mar. 10, 1999) (citing *Down v. CNA Ins. Co.*, 765 S.W.2d 738 (Tenn. 1989)).

After careful review, we are of the opinion that the evidence preponderates against the trial court's decision and in favor of a lower vocational disability award. Mr. Taylor was sixty-three years old, had a high school education, was a certified welder, and had worked as a welder and boilermaker for more than thirty years. Mr. Taylor's hearing loss reduced his ability to hear telephone and in-person conversations as well as the television. Mr. Taylor's vocational disability was more affected by problems with his heart, back, shoulder, and knees than his hearing loss. For example, his shoulder problems kept him from lifting more than forty pounds, climbing a scaffold, or raising his own weight. Mr. Taylor's hearing loss did not cause him to retire, miss work, or lose a job. Under these facts, we conclude that the trial court's award of vocational disability was excessive. We hold that a vocational disability award of thirty percent for the loss of hearing in both ears is appropriate based on the evidence presented at trial. The judgment is otherwise affirmed.

III.

We affirm the trial court's judgment that Mr. Taylor suffered a compensable injury and is entitled to medical benefits. We modify the award of vocational disability to thirty percent. The case is remanded to the trial court for further proceedings consistent with this opinion. Costs of this appeal are taxed equally to Kevin W. Taylor and G.UB.MK Constructors for which execution may issue of necessary.

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SHARON G. LEE, JUSTICE