IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE

BRIDGESTONE/FIRESTONE, INC.,	)	WARREN CHANCERY
Plaintiff/Appellant,	)	No. 01S01-9707-CH-00160
v.	)	HON. J. RICHARD MCGREGOR
DEBORAH LOUISE DUNN,	)	
Defendant/Appellee.	)	

For the Appellant:

B. Timothy Pirtle
Third Floor, City Bank Bldg.
McMinnville, TN 37110

For the Appellee:

Sonya W. Henderson
218 West Main St., Suite 1
Murfreesboro, TN 37130

M E M O R A N D U M O P I N I O N

Members of Panel:

Justice Lyle Reid
Senior Judge William H. Inman
Special Judge Joe C. Loser, Jr.

AFFIRMED **INMAN, Senior Judge**

This workers' compensation appeal has been referred to the Special

Workers' Compensation Appeals Panel of the Supreme Court in accordance with T.C.A. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

This declaratory judgment action likely created an interest that otherwise might not have existed or, perhaps, might not have manifested itself. The employer filed the action alleging that its employee reported that she experienced pain in her neck on August 17, 1995, that she was successfully treated and returned to work on September 12, 1995, that her medical expenses had been paid, and that the plaintiff [employer] should be "discharged from responsibility to defendant [employee]."

A counter-claim followed in course, with the employee alleging that her neck injury resulted in temporary total disability, temporary partial disability, permanent impairment and disability, together with the incurrence of medical expenses.

The trial court found the issues in favor of the employee and awarded her benefits based upon a twelve and one-half percent disability to her whole body, thus entitling her to a recovery of $20,793.50 to be paid in a lump sum. By separate order the employee was awarded $600.00 discretionary costs.

The propriety of these awards is questioned on appeal. Our review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise. T.C.A. § 50-6-225(e)(2). *Stone v. City of McMinnville,* 896 S.W.2d 548, 550 (Tenn. 1995).

The claimant is 37 years old, with limited marketable skills. She was initially employed in 1991 or 1992, according to her testimony. In 1992 "something happened to my neck" while loading a spool of wire. Two or three

days later she was referred to Dr. Northcutt for therapy, and she soon returned to work. In August 1995 she injured her neck again, and she was referred to Dr. Chastain, who treated her conservatively and soon released her to return to work.

Medical Proof

Dr. Leland Northcutt, a chiropractor, testified that he performed a screening examination of Ms. Dunn, that he found her in good health and employable, that he next saw her November 12, 1992 when she complained of mid-back pain, that he treated her four times, and that she had a mild disc degeneration consonant with the aging process. He did not see her for the 1995 injury.

Dr. Benjamin Chastain

Dr. Chastain is certified in family practice. He initially saw Ms. Dunn on May 17, 1995 who complained of upper respiratory problems. He saw her again on August 17, 1995 for complaints of neck pain which he diagnosed as a cervical strain. He declined to state an opinion about any impairment.

Dr. David Gaw

Dr. Gaw evaluated Ms. Dunn on February 26, 1996 at the request of her attorney. He diagnosed muscle spasm on the right side of her neck and in the right trapezius muscles. He opined that based on the *American Medical Association Guides to the Evaluation of Permanent Impairment, 4th Ed.,* she had a five percent whole body impairment.

We cannot substitute our judgment for that of the trial judge, and our review is a limited to a consideration of the preponderance of the evidence. Having done so, we are unable to find that the evidence preponderates against the finding of 12-½ percent permanent partial disability to the body as a whole.

Turning now to the insistence of the employer that the discretionary costs of $600.00 should not have been allowed because "the opinions of the medical experts [could] be 'elicited' on the Department of Labor Standard Form Medical Report for Industrial Injuries,"would have cost only $375.00. Supportive of this insistence is the uncontroverted affidavit of counsel that there is "no testimony in any of these depositions of said physicians which would not have been elicited from the use of the forms."

The total costs claimed were $1,273.13, of which $600.00 was allowed, an excessive amount according to the employer.

The costs attributable to the depositions of Drs. Chastain and Northcutt, $607.00, obviously should not have been allowed, since the evidence given by either added nothing to the case. The costs of research fees, $35.13, cannot be allowed, which brings us to the fee of Dr. Gaw, $500.00, and the transcription charges of $101.00. We are not provided an exemplar of the form advocated by the employer, and are thus handicapped in our assessment of its value. Since the trial court apparently was of the same view, this issue is without merit.

Affirmed, with costs assessed to the appellant.

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William H. Inman, Senior Judge

CONCUR:

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Joe C. Loser, Jr., Special Judge

_____

Lyle Reid, Justice

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

PEGGY ANN DUNN,	}	*DAVIDSON CIRCUIT*
	}	*No. 96C-858 Below*
Plaintiff/Appellee	}	
	}	*Hon. Thomas W. Brothers,*
vs.	}	*Judge*
	}	
ERIN TRUCKWAYS, LTD. d/b/a	}	
DIGBY TRUCK LINE, INC. and	}	
LUMBERMEN'S UNDERWRITING	}	
ALLIANCE,	}	*No. 01S01-9704-CV-00080*
	}	
Defendants/Appellants	}	*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 Appellants, Erin Truckways, Ltd. d/b/a Digby Truck Line, Inc. and Lumbermen's Underwriting Alliance, and Surety, for which execution may issue if necessary.

IT IS SO ORDERED on February 24, 1998.

PER CURIAM