

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

FILED

September 12, 1997

**Cecil W. Crowson
Appellate Court Clerk**

ROBERT STONE,)
Plaintiff/Appellant) No. 01S01-9610-CH-00213
) (No. 93-637 below)
)
v.) MAURY COUNTY CHANCERY
)
SATURN CORPORATION,) HON. JIM T. HAMILTON,
Defendant/Appellee) JUDGE
_____)

FOR THE APPELLANT:

J. ANTHONY ARENA
SCHULMAN, LEROY & BENNETT, P.C.
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FOR THE APPELLEE:

THOMAS H. PEEBLES, IV
DANA C. McLENDON, III
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MEMORANDUM OPINION

MEMBERS OF PANEL:

LYLE REID, ASSOCIATE JUSTICE, SUPREME COURT
WILLIAM H. INMAN, SENIOR JUDGE
WILLIAM S. RUSSELL, RETIRED JUDGE

AFFIRMED

RUSSELL, SP. J.

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated Section 50-6-225 (e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

Robert Stone, the appellant, was an assembly line worker for the Saturn Corporation when, on December 17, 1991, he injured his right shoulder, elbow and wrist.

Injury to the shoulder necessitated three surgical procedures: an arthroscopic debridement and acromionectomy, an open acromionectomy and rotator cuff repair, and an open ligamentous reconstruction. The trial judge determined that he retained an 18% vocational disability to the body as a whole and entered judgment accordingly.

The sole issue on appeal is whether or not the injured employee should have been found to have a greater vocational disability than the 18% awarded.

We have reviewed the evidence de novo, aware of the presumption of the correctness of the trial judge's decision, which prevails unless the preponderance of the evidence is

otherwise. Tennessee Code Annotated Section 50-6-225 (e)(2). Central to this issue is the deposition testimonies of three attending physicians. We review that testimony and give it the weight that this court deems appropriate without the application of any presumption. Cooper v. Insurance Co. of North America, 884 S.W. 2d 446, 451 (Tenn. 1994).

When evaluating the extent of an injured employee's permanent vocational disability the court may consider many pertinent factors including age, job skills, education, training, duration of disability, and job opportunities for the disabled, in addition to the anatomical impairment testified to by medical experts. Hinson v. Wal-Mart Stores, Inc., 654 S.W. 2d 675 (Tenn. 1983).

Anatomical impairment and vocational disability are distinct and may be the same or may be quite different, depending upon how the anatomical impairment relates to the employee's vocational abilities and opportunities.

Mr. Stone has returned to his work with Saturn, and his permanent restrictions are not great.

Three physicians testified by deposition as to his permanent anatomical impairment. Dr. Jimmy V. Wolfe, M.D., opined that plaintiff has a 5% whole body impairment; Dr. Jeffrey T. Adams, M.D., assessed the anatomical impairment at 6% to the body as a whole; and Dr. David Gaw, M.D., testified to 13% impairment to the whole person.

After a careful review of all of the evidence we affirm the

judgment of the trial court. Costs on appeal are assessed to the appellant.

WILLIAM S. RUSSELL, SPECIAL JUDGE

CONCUR:

LYLE REID, ASSOCIATE JUSTICE

WILLIAM H. INMAN, SENIOR JUDGE

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<i>ROBERT STONE,</i>	}	<i>MAURY CHANCERY</i>
	}	<i>No. 93-637 Below</i>
<i>Plaintiff/Appellant</i>	}	
	}	<i>Hon. Jim T. Hamilton,</i>
vs.	}	<i>Judge</i>
	}	
<i>SATURN CORPORATION,</i>	}	<i>No. 01S01-9610-CH-00213</i>
	}	
<i>Defendant/Appellee</i>	}	<i>AFFIRMED.</i>

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 Plaintiff/Appellant and Surety, for which execution may issue if necessary.

IT IS SO ORDERED on September 12, 1997.

PER CURIAM