

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

November 22, 2002 Session

**ELIZABETH CAMILLA WHITLOW v. MILAN SEATING SYSTEMS, ET
AL.**

**Direct Appeal from the Chancery Court for Gibson County
No. 15,531 George Ellis, Chancellor**

No. W2002-00451-SC-WCM-CV - Mailed January 9, 2003; Filed May 19, 2003

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 to the Supreme Court of findings of fact and conclusions of law. The plaintiff developed bilateral carpal tunnel syndrome arising out of and in the course of her employment by the defendant. The trial judge found the plaintiff had sustained a 10 percent permanent partial impairment to each arm. The plaintiff appeals from the judgment of the trial court and says the trial judge erroneously excluded the deposition testimony of an orthopedic surgeon and further says the evidence preponderates in favor of an award in excess of 10 percent to each arm.¹ We find the award should be set at 35 percent to each arm.

**Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Chancery Court
Affirmed as Modified and Remanded**

JOHN K. BYERS, SR. J., delivered the opinion of the court, in which JANICE M. HOLDER, J. and JOE C. LOSER, SP. J., joined.

Jay E. DeGroot, Jackson, Tennessee, for the appellant, Elizabeth Camilla Whitlow.

P. Allen Phillips and Jay Dustin King, Jackson, Tennessee, attorneys for appellees, Milan Seating Systems, assumed name for Intier Automotive Seating of America, Inc. and American Casualty Company of Reading, Pennsylvania.

MEMORANDUM OPINION

¹ We need not pass upon the exclusion of the medical deposition in reaching a decision in this case.

Facts

The plaintiff was forty years of age at the time of trial, divorced, and the mother of one child who apparently is grown. She completed eleven years of school, does not have a GED and is trained only for sewing, the work she does for the defendant.

There is no dispute concerning the compensability of the plaintiff's gradual injury (carpal tunnel syndrome). The plaintiff received medical treatment from the defendant and is continuing to do the same work for the defendant after treatment as she did before. In the course of her work, the plaintiff is required to use her hands, arms and fingers repetitively to fulfil her employment. She testified that after working as the day goes on she begins to experience numbness and swelling in her hands. She testified she was unable to perform the amount of work she did prior to developing carpal tunnel syndrome and that she had difficulty meeting production requirements. The plaintiff gave further testimony concerning her inability to do certain household chores.

The plaintiff's supervisor testified the plaintiff had not shown any inability to do the work assigned to her nor did she know of any complaint concerning the plaintiff's lack of performance. The supervisor testified she had not checked the records to determine the amount of production the plaintiff was doing prior to testifying.

Medical Evidence

The only medical evidence considered by the trial judge was that of Dr. Claiborne A. Christian, an orthopedic surgeon. Dr. Christian testified he first saw the plaintiff March 8, 2001. He diagnosed the plaintiff's condition as bilateral carpal tunnel syndrome with sensory and motor involvement. He testified this involvement made the reversal of the condition more difficult because the sensor and motor loss indicated the condition had existed for a longer time before treatment began than was usual. Dr. Christian testified surgery was necessary for release of the carpal tunnel syndrome.

Surgery was performed on the plaintiff's left hand on March 23, 2001 and on the right hand on April 27, 2001, which included cutting of the carpal ligament. Dr. Christian testified the plaintiff did well with both surgeries. He placed her on restriction of no repetitive use of her hands until the incisions from surgery were healed.

On June 7, 2001 the plaintiff reported to Dr. Christian that the numbness and tingling she had previously had in her hands was "all right" but that she had no grip strength. On July 5, 2001 the plaintiff saw Dr. Christian again. On this visit the plaintiff reported her left hand was doing fine but that she felt weakness and loss of grip in her right hand.

Dr. Christian released the plaintiff to return to work on July 9, 2001, without any restrictions. He testified the plaintiff reached maximum medical improvement on that date. He found she had suffered a 4 percent permanent partial impairment to both arms as a result of the carpal tunnel

syndrome. He based this upon the AMA Guidelines for evaluation of carpal tunnel syndrome, which includes evaluations for surgical release for carpal tunnel syndrome.

On September 11, 2001, Dr. Christian again saw the plaintiff, who complained of pain in her right hand. Dr. Christian was of the opinion the plaintiff was suffering from tendinitis because she was continuing to do the same work as before, which required repetitive use of her hands.

Dr. Christian was asked if there was any risk of recurrence of carpal tunnel syndrome in cases where there has been sensory and motor problems as was present in this case. He responded:

I think that true recurrent carpal tunnel syndrome is rare, but I think that continuing symptoms from repetitive motion disorders is very, very common, especially in people with motor and sensory involvement who are relatively young when they have to have their surgery done. I think that the chance of her having a problem was probably relatively high when we started down this whole road.

We find it is unnecessary to discuss the issue concerning the exclusion of the deposition of Dr. Joseph C. Boals because the deposition testimony is not necessary to reach a conclusion in this case.

Based upon the testimony of the plaintiff and the testimony of Dr. Christian, we find the plaintiff has sustained a 35 percent loss of use of both arms. The plaintiff is forty years of age, does not have a high school education or GED, and her only vocational training is in the sewing industry. She has no vocational history outside the industrial environment. This evidence and the plaintiff's testimony of her own assessment of her physical condition and resulting disabilities support a finding of permanency. We therefore modify the judgment of the trial court accordingly and remand this case to the trial court for entry of such orders as are necessary to carry out this judgment.

The costs of this appeal are taxed to the defendants.

JOHN K. BYERS, SENIOR JUDGE

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ORDER

This case is before the Court upon the motion for review filed by American Casualty Company of Reading, PA, Milan Seating Systems pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), 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.

It appears to the Court that the motion for review is not well-taken and is therefore denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to defendants-appellees, Milan Seating Systems, et al., for which execution may issue if necessary.

PER CURIAM