IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
(August 13, 1999 Session)

SHYUN S. HAMLETT,	)	
	)	
Plaintiff/Appellant,	)	**MADISON CHANCERY**
	)	
v.	)	**NO. W1998-00117-SC-WCM-CV**
	)	
HEILIG-MEYERS FURNITURE CO. and LUMBERMAN'S MUTUAL INSURANCE COMPANY,	)	**HON. JOE C. MORRIS**
	)	
Defendants/Appellees.	)	

FOR THE APPELLANT:

LEWIS L. COBB
Spragins, Barnett, Cobb & Butler
312 East Lafayette Street
P.O. Box 2004
Jackson, Tennessee 38302-2004

FOR THE APPELLEES:

J. ARTHUR CREWS, II
B. DUANE WILLIS
Waldrop and Hall, P.A.
106 South Liberty Street
P.O. Box 726
Jackson, Tennessee 38301

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

Members of Panel:

Justice Janice M. Holder
Senior Judge F. Lloyd Tatum
Senior Judge L. T. Lafferty

AFFIRMED

F. LLOYD TATUM, SENIOR JUDGE

OPINION

This workers' compensation appeal was referred to the Special Workers' Compensation Appeals Panel of the Supreme Court pursuant to Tennessee Code Annotated § 50-6-225(e)(3) (Supp. 1998) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

This is an appeal by the employee, Shyun S. Hamlett, from a judgment of the Chancery Court of Madison County in favor of the defendants. The chancellor found that the appellant "was outside the course and scope of her employment" at the time of the accidental injury. In her only issue, the plaintiff states that the trial court was in error in its conclusion. We find that the preponderance of the evidence supports the finding of the chancellor and affirm his judgment.

The standard of review of factual issues in workers' compensation cases is de novo upon the record of the trial court with a presumption of correctness, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (1991 and Supp. 1998); Henson v. Lawrenceburg, 851 S.W.2d 809, 812 (Tenn. 1993). Under this standard, we are required to conduct an in-depth examination of the trial court's findings of fact and conclusions of law to determine where the preponderance of the evidence lies. See Thomas v. Aetna Life and Cas. Co., 812 S.W.2d 278, 282 (Tenn. 1991); King v. Jones Truck Lines, 814 S.W.2d 23, 25 (1991). In making such a determination, this Court must give considerable deference to the trial judge's findings regarding the weight and credibility of any oral testimony received. Townsend v. State, 826 S.W.2d 434, 437 (Tenn. 1992).

The plaintiff in a workers' compensation suit has the burden of proving every element of the case by a preponderance of the evidence. Talley v. Virginia Ins. Reciprocal, 775 S.W.2d 587, 591 (Tenn. 1989). Compensable injuries are those caused "by accident arising out of and in the course of employment." Tenn. Code Ann. § 50-6-102(a)(4).

The phrase "in the course of" refers to time and place and "arising out of" to cause or origin. An injury by accident to an employee is "in the course of" employment if it occurred while he was performing a duty he was employed to do and an injury "arising out of" employment is caused by a hazard incident to such employment. Bill v. Kelso Oil Co., 597 S.W.2d 731, 734 (Tenn. 1980).

In Bell v. Kelso Oil Co., 597 S.W.2d 731 (Tenn. 1980), then Chief Justice Brock, speaking for the Court, stated:

> This Court and others over the years have attempted, with little success, to bring more certainty and specificity from the terse words "arising out of and in the course of employment." This has resulted in various judicial "tests" and "doctrines," such as, the "positional doctrine," the "peculiar hazard doctrine," the "foreseeability" test, the "street-risk doctrine," and others.

> It is difficult, perhaps impossible, to compose a formula which will clearly define the line between accidents and injuries which arise out of and in the course of employment to those which do not; hence, in determining whether an accident arose out of and in the course of employment, each case must be decided with respect to its own attendant circumstances and not by resort to some formula. (citation omitted)

We now turn to the record and will state the facts as are established by the preponderance of the evidence:

The plaintiff was a salesperson at one of the Heilig-Meyers stores in Jackson, Tennessee. On Friday, February 21, 1997, she was clocked in at work at 8:51 a.m. She was clocked out for lunch at 11:56 a.m. and clocked back in from lunch at 12:56 p.m. She was clocked out for the day at 5:51 p.m. She left the store and returned shortly before 8:00 p.m. with her son and her nephew, ages seven years and five years. She was taking the two boys to the YMCA for a sleep-in and needed a pillow for each of them. She stated to co-employees who were at the store and still on duty that her purpose was to obtain two pillows. She rejected an offer by one of the employees on duty to assist her and proceeded to wait upon herself.

She proceeded upstairs searching for pillows, stepping over a four foot high guard rail that was in place to keep people out of the storage area. There was a rack of pillows outside of the storage area and a rolling ladder available to climb to the pillow rack to avoid the storage area. The plaintiff did not use the ladder. No one but warehouse employees were to enter the storage area.

The storage area had not been floored and when the plaintiff attempted to walk across this area, she fell through the ceiling, fracturing her right leg and injuring her left foot. At some point, the cashier was paid for the pillows, at a cost of $5.00 each.

We are cognizant that our foregoing findings of fact does not conform with much of the plaintiff's trial testimony. For example, she testified that when she returned with the two boys, she was "on the clock," but the evidence is overwhelming that she was not. In a deposition, she testified that she was waiting on a customer when she fell and did not mention the fact that she was buying pillows for herself. She admitted at trial that she had changed her testimony. At trial she testified that she was at the store both to purchase pillows for herself and to also look for pillows which an unidentified customer had inquired about earlier.

The parties have cited a number of cases, all of which we find factually distinguishable from this case. The issue requires us to determine whether the accident arose out of and in the course of the plaintiff's employment. We must decide this issue with respect to the attendant circumstances of this case and we will not resort to any formula.

We agree with the trial judge. The plaintiff was on a purely personal mission of her own when the accident occurred. She was there for the purpose of obtaining pillows for the two boys to use that night, and her mission was of no benefit of any substance to the store. She was off duty for the day and not performing any duty that she was employed to do. She was not in the store as an employee, and there was no causal connection between the conditions under which she was required to work and the resulting injury. She was there for her own convenience and not for the convenience of the employer.

The judgment of the trial court is affirmed. Costs are adjudged against the plaintiff for which execution may issue, if necessary.

_____
F. LLOYD TATUM, SENIOR JUDGE

CONCUR:

_____
JANICE M. HOLDER, JUSTICE

_____
L. T. LAFFERTY, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

FILED

February 08, 2000

Cecil Crowson, Jr.
Appellate Court Clerk

SHYUN S. HAMLETT,	)	Madison
	)	Chancery
Plaintiff-Appellant,	)	No. 53551
	)	
v.	)	Hon. Joe C. Morris, Chancellor
	)	
HEILIG-MEYERS FURNITURE CO. and LUMBERMAN'S MUTUAL CASUALTY COMPANY,	)	NO. W1998-00117-SC-WCM-CV
	)	
Defendant-Appellees.	)	Affirmed

JUDGMENT ORDER

This case is before the Court upon motion for review 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, which are incorporated herein by reference;

Whereupon, it appears to the Court that the motion for review is not well-taken and should be denied; 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 the plaintiff-appellant and her surety, for which execution may issue if necessary.

It is so ordered.

PER CURIAM

Holder, J., Not Participating