

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

**DAUGHTERS OF CHARITY, D/B/A SAINT THOMAS HOSPITAL v.  
BRENDA BOYD**

**Circuit Court for County  
No. 97C-736**

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**No. M1999-00443-WC-R3-CV - Decided - May 2, 2000**

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**JUDGMENT**

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 appellant, Saint Thomas Hospital, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM

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

|                                    |   |                                 |
|------------------------------------|---|---------------------------------|
| <b>DAUGHTERS OF CHARITY, d/b/a</b> | ) |                                 |
| <b>SAINT THOMAS HOSPITAL</b>       | ) |                                 |
|                                    | ) |                                 |
| <b>Petitioner/Appellant</b>        | ) | <b>DAVIDSON CIRCUIT</b>         |
|                                    | ) | <b>NO. M1999-00443-WC-R3-CV</b> |
| <b>v.</b>                          | ) |                                 |
|                                    | ) | <b>HONORABLE CAROL SOLOMAN</b>  |
|                                    | ) | <b>JUDGE</b>                    |
| <b>BRENDA BOYD</b>                 | ) |                                 |
|                                    | ) |                                 |
| <b>Respondent/Appellee</b>         | ) |                                 |

**For the Appellant:**  
**D. Randall Mantooth**  
**Leitner, Williams, Dooley & Napolitan, PLLC**  
**Nashville, Tennessee**

**For the Appellee:**  
**A. Gregory Ramos**  
**North, Pursell & Ramos, PLC**  
**Nashville, Tennessee**

**MEMORANDUM OPINION**

**Mailed March 22, 2000**

**Decided May 2, 2000**

**Members of the Panel**  
**Adolpho A. Birch, Jr., Supreme Court Justice**  
**James L. Weatherford, Senior Judge**  
**Hamilton V. Gayden, Jr., Special Judge**

**AFFIRMED**

**WEATHERFORD, SENIOR JUDGE**

This worker's compensation appeal has been referred to the Special Worker's Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated §50-6-225(e) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The employer, Saint Thomas Hospital, insists (1) that trial judge erred in failing to dismiss the employee's mental injury claim, (2) the trial judge erred by awarding permanent partial disability benefits to employee based on a 55% vocational disability to the body as a whole, (3) the trial judge erred in awarding discretionary costs to the employee and failing to award discretionary costs to the employer, and (4) the trial court erred in awarding employee medical expenses related to her treatment by medical providers not authorized by the employer.

Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness, unless the preponderance of the evidence is otherwise.

The employee, Brenda Boyd, was forty-five (45) years old at the time of trial. After high school, Ms. Boyd worked cleaning houses and at fast food restaurants. In 1979, she graduated from Trevecca Nazarene College with a nurse technician certificate. She worked for a nursing service and a home health agency as a certified nurse technician and after attending Tennessee State University School of Nursing, graduated in 1989 with an Associate Degree in nursing.

Ms. Boyd was employed by Saint Thomas Hospital in 1989 and worked as a nurse technician. After approximately one year, she was promoted to registered nurse after passing her registered nurse examination.

On October 15, 1995, Ms. Boyd slipped and fell while working at Saint Thomas Hospital.

She sought treatment from Dr. Raja in the Saint Thomas Hospital emergency room. Shortly after her fall, Ms. Boyd sought additional treatment from panel physician, Dr. Gary Nace. Dr. Nace referred her to Dr. Robert K. Johnston, an orthopedic surgeon, for follow-up treatment.

Dr. Johnston's initial impression was that Ms. Boyd had a severe bruise or a hairline fracture of her hip. Dr. Johnston released her to return to work without restrictions, other than some rest intervals on January 8, 1996. Although Ms. Boyd was to return to Dr. Johnston for a final evaluation on February 13, 1996, Ms. Boyd missed this appointment. She did return to Dr. Johnston on February 27, 1996, and was released from his care.

Over the course of the following year, Ms. Boyd visited Dr. Johnston on several occasions with "flare-ups" of her hip problem. Dr. Johnston took Ms. Boyd off of work in December, 1996, and prescribed an exercise program. Dr. Johnston referred Ms. Boyd to Dr. Phillip A.G. Karpos for a second opinion. After treating Ms. Boyd on several occasions, Dr. Karpos released Ms. Boyd without a specific diagnosis. On March 25, 1997, Dr. Karpos released Employee to full work with sitting for 5 to 10 minutes every hour. Dr. Karpos asked Dr. Clendenin to see Ms. Boyd for further evaluation of her back and also to see if an epidural steroid injection would be beneficial. Dr. Clendenin saw Ms. Boyd on February 19, 1997, and noted her continuing pain in her lower back, right buttock and right thigh. He proceeded to perform an epidural steroid block on February 28, 1997, which was unsuccessful in relieving any pain and it worsened the pain in her right leg. Ms. Boyd was then admitted to the Saint Thomas Emergency Room for leg pain and back pain and also complications resulting from the unsuccessful epidural.

On March 3, 1997, Ms. Boyd was released from the hospital and on this same day, Ms.

Boyd's attorney received a letter from the Administrator of the Saint Thomas Worker's Compensation Program, informing him that Ms. Boyd had been scheduled for an appointment with another physician for an independent medical examination. This examination was scheduled for March 7, 1997. Ms. Boyd's attorney requested a panel of three physicians so Ms. Boyd could select one of the physicians to conduct the independent medical examination. This was not done and Saint Thomas Hospital filed suit on March 5, 1997, denying that Ms. Boyd's claim was compensable. Saint Thomas, on the very same day, March 5, 1997, filed a Notice of Termination of Compensation Benefits, stating that it was terminating all medical treatment and compensation benefits for two reasons: (1) Ms. Boyd was not following prescribed medical treatment, and (2) Ms. Boyd's back injury was not related to the October 31, 1995, injury in this case.

On March 6, 1997, the worker's compensation administrator set letters to Ms. Boyd's previously authorized physicians and informed each one of them that as of the date of the letter, no further medical treatment of any kind would be authorized for Ms. Boyd under Saint Thomas Hospital's workers' compensation program.

On March 25, 1997, Ms. Boyd sought treatment from Dr. Vaughan A. Allen, a neurosurgeon, on her own initiative. Dr. Allen determined that Ms. Boyd's reflex, motor and sensory functions of her lower extremities were normal. Dr. Allen ordered a myelogram and perceived the myelogram as normal, and suggested long term chronic exercise program.

In late March, 1997, Saint Thomas Hospital offered Ms. Boyd a panel of orthopedic surgeons for medical evaluation or treatment, and Ms. Boyd selected Dr. Robert K. Johnston. Ms. Boyd saw Dr. Johnston on April 3, 1997, and Dr. Johnston opined that Ms. Boyd suffered a

significant injury to her right hip as a result of the accident at Saint Thomas. Dr. Johnston expressed his recommendation that Ms. Boyd receive physical therapy for the purpose of increasing her motion and strength and, hopefully decrease her pain. Dr. Johnston was of the opinion that Ms. Boyd would not be able to return to the type of employment she had previously. He imposed permanent work restrictions of no prolonged standing, stooping, bending, climbing, or lifting over forty pounds. He further expressed his opinion that Ms. Boyd would retain a 2% permanent partial impairment to the body as a whole as a result of the injury she sustained while employed at Saint Thomas Hospital.

Ms. Boyd, because of continuing pain, went to her own physician, Dr. Timothy Persee, who referred her to the Vanderbilt Pain Control Center. Her first visit to Vanderbilt Pain Control Center was on June 20, 1997. She was treated primarily by Dr. Benjamin Johnson, the Director of the Clinic and Dr. Janice Livengood, a psychologist.

Dr. Johnson found that Ms. Boyd retained a 5% permanent partial impairment to the body as a whole as a result of her chronic low back pain and an additional 5% permanent partial impairment to the body as a whole as a result of her sciatica, for a total of 10% permanent partial impairment to the body.

Dr. Johnson further stated that Ms. Boyd retains a 25% permanent partial impairment to the body as a whole as a result of her adjustment reaction with anxiety and depression. He further stated that when these numbers are combined under the Combined Values Chart of the A.M.A. Guides to the Evaluation of Permanent Impairment, 4<sup>th</sup> Ed., that the total resulting impairment is 33% permanent partial impairment to the body as a whole. Dr. Johnson relied on the information contained in the reports of Dr. Livengood, a psychologist.

Dr. Nicholas Sieveking, a clinical psychologist, testified at trial for the purpose of providing his opinion regarding his occupational disability evaluation of Ms. Boyd. Dr. Sieveking testified that considering just the physical component of Ms. Boyd's injuries, she is now able to perform only 15% of the jobs she was able to perform prior to her injury and is 85% occupationally disabled. Dr. Sieveking further testified that considering the emotional component of Ms. Boyd's injuries that she is 91% disabled.

The first issue is whether the trial court erred in failing to dismiss Ms. Boyd's mental injury claim.

The trial judge, in her memorandum, specifically found that the testimony of the clinical psychologists who testified in this case was not competent regarding causation or permanency of medical impairment.

The memorandum of the trial court stated, "In determining disability, this Court looked to a variety of factors including job skills, education, age, training, duration of the disability, anatomical disability as established by medical experts, and local job opportunities for someone in the employee's disabled condition."

Even though the trial court discussed Ms. Boyd's psychological injury, in her memorandum, it appears that the trial court did not take any allegation of a psychological injury into consideration in assigning the vocational disability of 55%.

The second issue, fairly stated, is whether the trial court abused its discretion by accrediting the testimony of Dr. Benjamin W. Johnson over that of other medical evidence introduced in this case. Dr. Johnson's testimony was introduced by deposition, Dr. Joe Reisman,

a psychiatrist, testified live, all of the other medical testimony was introduced by C-32 Reports, letters, office notes, etc. Dr. Reisman's testimony was based on reading records and reports of other physicians, and psychologists. He never met Ms. Boyd.

When the medical testimony differs, the trial judge must obviously choose which view to believe. In doing so, he or she is allowed, among other things, to consider the qualifications of the experts, the circumstances of their examination, the information available to them, and the evaluation of the importance of that information by other experts. *Orman v. Williams Sonoma, Inc.*, 803 S.W.2d 672 (Tenn, 1991).

After reading all of the medical testimony that was introduced at the trial of this case, we are satisfied that the trial judge was justified in accepting the testimony of Dr. Benjamin W. Johnson.

The third and fourth issue complain of the trial court's awarding of discretionary costs to the employee, Ms. Boyd and denying the motion of the employer, Saint Thomas Hospital, for discretionary costs.

Discretionary costs are governed by Rule 54.04 (2) Tenn. R. Civ. P.

The appellant, Saint Thomas Hospital, had treated the appellee's, (Ms. Boyd) injury as a compensable injury from the date it occurred, October 31, 1995, until March 5, 1997, when Saint Thomas filed suit denying that Ms. Boyd's claims was compensable, and filed a Notice of Termination of Compensation Benefits. Also, the next day, the previously authorized physicians were informed that no further medical treatment of any kind would be authorized for Ms. Boyd under the Hospital's Workers' Compensation Program.

Considering all the facts and circumstances of this case, we feel that the trial judge was



justified in awarding discretionary costs to the employee, Ms. Boyd.

Appellate courts are generally disinclined to interfere with a trial court's decision in assessing costs unless there is a clear abuse of discretion. Perdue v. Green Branch Mining Co., 837 S.W.2d 56 (Tenn. 1992).

Since the employee was the prevailing party in this suit, it would have been improper for the trial court to have awarded discretionary costs to the employer, Saint Thomas Hospital.

The fifth issue, fairly stated, questions the entitlement of the employee, Ms. Boyd, to reimbursement of medical expenses related to her treatment by Dr. Timothy Persse and the physicians at the Vanderbilt Pain Clinic.

After treating Ms. Boyd's injury as a compensable injury for some sixteen months, the employer informed the previously authorized physicians that they would authorize no further medical treatment for Ms. Boyd.

Whether an employee is justified in seeking additional medical services to be paid by the employer without consulting the employer, depends upon the circumstances of each case Buchanan v. Mission, Inc. Co., 713 S.W.2d 654 (Tenn. 1986).

Under the circumstances of this case, the employee, Ms. Boyd, was justified in seeking additional medical treatment at the expense of her employer.

We affirm the judgment of the trial court. Costs are taxed to the appellant, Saint Thomas Hospital.

James L. Weatherford, Senior Judge

CONCUR:

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Adolpho A. Birch, Jr., Associate Justice

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Hamilton V. Gayden, Jr., Special Judge