

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

**TERESA M. McCARLEY JOHNSON v. MAURY REGIONAL HOSPITAL,
ET AL.**

**Direct Appeal from the Chancery Court for Maury County
No. 98-237 Jim T. Hamilton, Judge**

**No. M1999-00291-WC-R3-CV - Mailed - May 24, 2000
Filed - September 6, 2000**

The employer, Maury County Regional Hospital contends the trial judge erred in concluding the employee's back injury arose out of and occurred in the course of employment and that the award of permanent partial disability benefits is excessive.

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

LOSER, SP. J., delivered the opinion of the court, in which BIRCH, J., and KURTZ, SP. J., joined.

Jeffrey Zager, Nashville, Tennessee, for the appellant, Maury County Regional Hospital.

Gary R. Gober, Nashville, Tennessee, for the appellee, Teresa M. McCarley Johnson.

MEMORANDUM OPINION

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. As discussed below, the panel has concluded the judgment should be affirmed.

The employee or claimant, Johnson, filed this civil action on April 20, 1998 to recover benefits for injuries which she alleged resulted from an injury by accident arising out of and in the course of her employment by the employer. By its answer, the employer denied the occurrence of a compensable work related injury. Following a trial, the trial judge found that the claimant suffered a ruptured disc arising out of and in the course of employment and awarded, among other things, permanent partial disability benefits based on fifty-four percent to the body as a whole. As discussed below, this tribunal has concluded the judgment should be affirmed.

Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). This standard requires the panel to examine in depth a trial court's factual findings and conclusions. We are not bound by the trial court's factual findings, but must instead conduct an independent examination to determine where the preponderance of the evidence lies. Galloway v. Memphis Drum Serv., 822 S.W.2d 584 (Tenn. 1991). However, where the trial judge has seen and heard the witnesses, especially if issues of credibility and weight to be given oral testimony are involved, considerable deference must be accorded those circumstances on review. Townsend v. State, 826 S.W.2d 434, 437 (Tenn. 1992).

The claimant was employed by the hospital as a surgical nurse, a position which required her to lift heavy instrument trays and to position patients on operating room beds to be transported to and from surgery. In 1995, while performing her said duties, she was knocked to the floor by a large male patient who had just awakened from surgery. Although she suffered a ruptured disc requiring surgery, she did not make a claim for workers' compensation benefits. Her treating physician, Dr. Frederick Wade, permitted her to return to work with restrictions. She continued to have intermittent back pain, for which she took prescribed medication.

On September 6, 1997, the claimant was called to the pediatric floor of the hospital to transport a teenaged male patient. As she reached across the patient to slide him onto the gurney, she felt a sudden and severe pain in her lower back. A few days later, Dr. Wade took her off work and ordered complete rest, physical therapy and strong medication. She returned to work briefly on September 15, 1997 but, after a discussion with her immediate supervisor, resigned. Thereafter, she worked briefly at the Columbia Outpatient Surgery Center.

In March of 1998, Dr. Wade diagnosed another herniated disc, which he surgically repaired in June of 1998. As a result, she is permanently restricted from lifting, standing or sitting for more than eight hours per day or lifting more than fifteen to twenty pounds occasionally.

An injury arises out of and in the course of employment if it has a rational causal connection to the work and occurs while the employee is engaged in the duties of her employment. Hall v. Auburntown Indus., Inc., 684 S.W.2d 614, 617 (Tenn. 1985). In most cases, causation must be established by expert medical testimony. Dr. Wade testified that the injury could have been causally related to the lifting episode of September 6, 1997. The lay testimony, accredited by the trial judge, supports that medical possibility.

In a workers' compensation case, a trial judge may properly predicate an award on medical testimony to the effect that a given incident could be the cause of a claimant's injury when, from other evidence, it may reasonably be inferred that the incident was in fact the cause of the injury. Long v. Tri-Con Indus., Ltd., 996 S.W.2d 173, 177 (Tenn. 1999). Absolute certainty on the part of a medical expert is not necessary to support a workers' compensation award, for expert opinion must always be more or less uncertain and speculative. Reeser v. Yellow Freight Systems, Inc., 938 S.W.2d 690 (Tenn. 1997).

The employer contends the claimant's injury gradually occurred and that the successive employer is therefore liable. As already noted, however, the question before this tribunal is whether the evidence preponderates against the trial court's finding that the injury resulted from the occurrence which is the subject of this litigation. We are persuaded that it does not. The first issue is resolved in favor of the employee.

Dr. Wade estimated the claimant's permanent whole person medical impairment to be nine percent, from appropriate guidelines. The employer next contends the trial court's award is excessive and, particularly, that the award should be limited to two and one-half times the medical impairment rating.

In cases where an injured worker is entitled to permanent partial disability benefits to the body as a whole and the pre-injury employer returns the employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of the injury, the maximum permanent partial disability award that the employee may receive is two and one-half times the medical impairment rating. Tenn. Code Ann. § 50-6-241(a)(1). In this case, the employee returned to work for less than a day and with restrictions that prohibited her from working in the job that was available to her. Where an employer's offer to return to work is not reasonable in light of the employee's physical disability to perform the offered employment, then the offer of employment is not meaningful and the injured employee may receive up to six times the medical impairment. On the other hand, an employee will be limited to disability benefits of not more than two and one-half times the medical impairment if her refusal to return to offered work is unreasonable. Newton v. Scott Health Care Center, 914 S.W.2d 884 (Tenn. 1995). The evidence fails to preponderate against the finding that there was not a meaningful offer to return to work.

In determining the extent of a worker's vocational disability, the courts are to consider all pertinent factors, including lay and expert testimony, the employee's age, education, skills and training, local job opportunities for the disabled and capacity to work at types of employment in the claimant's disabled condition, as well as medical impairment. Tenn. Code Ann. § 50-6-241(a)(1). At the time of the trial, the claimant was 42 years old. She received her nursing degree in 1993. The trial judge found from the evidence that she had applied without success for nursing work within her limitations and was at a substantial disadvantage in competing for a job in Middle Tennessee; and he accredited her own testimony that her pain from the injury prevents her from performing the duties required in most nursing jobs or others for which she is otherwise qualified. We cannot say the evidence preponderates against those findings or the trial court's award.

The judgment of the Chancery Court is affirmed. Costs on appeal are taxed to Maury County Regional Hospital.

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No. M1999-00291-SC-WCM-CV - Filed - September 6, 2000

JUDGMENT

This case is before the Court upon the motion for review pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B) of Maury Regional Hospital and The Reciprocal Group, 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 Maury Regional Hospital and The Reciprocal Group, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM

BIRCH, J., NOT PARTICIPATING