IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
(November 15, 1999 Session)

ERNESTYNE M. WEBB v. SHOE CITY, INC., ET AL.

Direct Appeal from the Circuit Court for Shelby County
No. 79201 T.D. Karen R. Williams, Judge

No. W1998-00741-WC-R3-CV - Mailed May 17, 2000; Filed September 20, 2000

This case involves a back injury sustained in 1995 by Ernestyne M. Webb, an employee of Shoe City, Incorporated. The employee brought suit against the employer and its insurer, The Traveler's Insurance Company. The trial court found that the employee had sustained a herniated disk at the L-4 level of her spine and suffered a 15 percent anatomical impairment rating as a result. The court awarded benefits based upon 67.5 percent disability to the body as a whole. The court also found that the employee was not returned to work and declined to apply the two and one-half (2.5) times cap in Tennessee Code Annotated § 50-6-241(a). The defendants have presented the following issues on appeal: (1) whether the evidence preponderates against the trial court's finding that the plaintiff was not returned to work as required by Tennessee Code Annotated § 50-6-241(a); and (2) whether the evidence preponderates against the court's finding that the plaintiff suffered a 15 percent anatomical impairment to the body as a whole. We find that we must affirm the trial court's judgment as modified.

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

TATUM, SR. J., delivered the opinion of the court, in which HOLDER, J., and ELLIS, SP. J., joined.

Marc A. Sorin, Memphis, Tennessee, for the appellants, Shoe City, Inc., et al.

Lewis K. Garrison, Sr. and John H. Bledsoe, for the appellee, Ernestyne M. Webb.

MEMORANDUM OPINION

At the time of trial, the plaintiff, Ernestyne M. Webb, was a sixty (60) year old widow with a tenth grade education. The plaintiff was employed by Shoe City, Incorporated, as a store manager approximately six (6) years before she was injured on June 14, 1995. She spent approximately eleven (11) years prior to that time working for Shoe Fair. The plaintiff admitted to having "slight arthritis" prior to her injury but was otherwise in good health. She described her managerial duties

as including stocking, racking, and packing shoes, as well as cleaning and maintaining the store. On June 14, 1995, the plaintiff was stacking boxes of men's work shoes in crates when she felt a sharp pain in the lower part of her back. When the pain did not subside two days later, she was x-rayed by her doctor, who referred her to Dr. Jesse McGee. Dr. McGee examined the plaintiff and sent her to the emergency room of Baptist East Hospital. She was ultimately hospitalized with two ruptured disks, and surgery was performed by Dr. Harry Friedman.

The plaintiff testified that her back problems did not improve following her surgery, as she was in constant pain. She stated that Dr. Friedman never recommended a work hardening program or any type of physical therapy for her until almost a year after the surgery, and her elevated blood pressure prevented her from continuing therapy. In December of 1995, the plaintiff's husband died from lung cancer, but the plaintiff denied that she was under stress from his treatments and death.

The plaintiff testified that she received a slip of paper from Dr. Friedman in March of 1996, stating that she was to return to work. She went to the store on Elvis Presley Boulevard to report for work, but the store manager did not know she was supposed to be there. The store manager attempted to reach the District Manager, Mr. Bowser, but was unsuccessful. The plaintiff waited almost three hours at the store for Mr. Bowser to call back before leaving. On another occasion, the plaintiff met with Mr. Bowser at another store, but he told the plaintiff that he could not offer her any work at that time until he got the results of an MRI that the plaintiff said was ordered by Dr. Friedman. She never heard from Mr. Bowser or Shoe City after that time,[1] nor did she ever call Mr. Bowser once the MRI results came back. The plaintiff denied that she was aware that her doctor had released her to return to work without restrictions, and she testified that she never saw anyone on light work duty at Shoe City. She never applied for any other positions.

As a result of her injury, the plaintiff stated that she is unable to do housework, sit for very long without pain, or walk very far without experiencing spasms in her left leg. She testified that she is very nervous and does not sleep well due to pain. The only medication prescribed by her doctor is Extra Strength Tylenol. The plaintiff testified that she believes she is 75 percent disabled. In her managerial position, she was trained to run the cash register, do the store payroll, schedule employees, and make decisions relevant to employee disputes. The plaintiff stated that she can read and write well, add and subtract well, and communicate well with others.

The plaintiff's daughter, Kimberly M. Haynes, testified at trial that her mother was physically active before the back injury at work but has to have help with daily chores now. Her testimony essentially supported her mother's regarding the plaintiff's problems with sitting and walking.

Larry Donnell Pfeiffer, a family friend, also testified for the plaintiff. His testimony supported that of the plaintiff and her daughter as to the plaintiff's lack of ability to do her usual daily activities unassisted due to pain.

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[1]The plaintiff denied ever receiving letters from the company dated March 20 and July 11, 1996. The contents of the letters are discussed below in Mr. Bowser's testimony.

David H. Bowser, Shoe City's District Manager,[2] testified for the defendants. He stated that he came to Memphis in November of 1995, after the plaintiff's injury had occurred. As the plaintiff's supervisor, it was his duty to find work that she was able to do upon her release from her doctor. The plaintiff's duties as a store manager included a 45 hours per week position that required staffing the store, supervising employee schedules and work loads, handling payroll, and making sure the general maintenance of the store was properly kept. According to Mr. Bowser, lifting cases of shoes was not the manager's duty alone, since she would delegate this as part of the work assignments for the entire staff.

Mr. Bowser stated that he met with the plaintiff on February 6, 1996, at approximately 11:30 a.m. at the Southhaven, Mississippi, store to discuss her return to work. He stated that the plaintiff gave him a note from her doctor and told him she was not able to return to work at that time. Mr. Bowser further explained, "And I told her that I was sure that our offices would be in contact in the future but also that she could feel free to contact me when this situation with the doctor was completed." Mr. Bowser stated that he understood that the plaintiff had agreed to contact him. He made a record of the meeting on the company form at or near the time of the meeting which stated:

> Ms. Webb handed me a note from Dr. Harrie [sic] Friedman which stated that her return to work could be after the "completion of work hardening program." Ms. Webb stated to me that the completion would be Friday 2-9-96. She agreed to come to my office on Monday 2-12-96 to discuss her future employment with our company.

Mr. Bowser testified that Dr. Friedman's note prevented him from offering the plaintiff a job at their meeting. The plaintiff did not contact Mr. Bowser on February 12; nor was he aware of any attempts by the plaintiff to contact anyone else at Shoe City about returning to work. Mr. Bowser testified that he submitted a list of stores where the plaintiff could work to the corporate office. The plaintiff was to be offered a position as an assistant manager, since all manager positions were full at that time. The physical requirements of the job were to be based on the doctor's statement. Mr. Bowser stated that the plaintiff's previous training and experience with the company would have allowed her to do light work in the form of running the cash register, handling transactions and other paperwork, as well as straightening shoes on upper racks, depending on what the doctor's restrictions were. Her pay would remain the same.

The witness recognized the signature of Minnie Canty,[3] Director of the Benefits Department in Charlotte, North Carolina, on a letter dated March 20, 1996, that was addressed to the plaintiff. The letter stated:

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[2]Mr. Bowser testified that he is employed by Pick & Pay Stores, Inc., of which Shoe City, Inc. is a part.

[3]The transcript of the hearing mistakenly has Ms. Canty's last name as "Kenton."

> We have received notification from your doctor that you have been fully released, [sic] from your Workers' Compensation leave, [sic] to your normal duties as of March 26, 1996. David Bowser[,] your District Manager, talked to you and offered you the job as Assistant Manager in store 2722. Please report to work Tuesday[,] March 26, 1996[,] at 12:30. If you do not return to work, we will assume that you have abandoned your job.

During the plaintiff's testimony, she stated that this letter had the wrong address on it. It was addressed to "1589 Ride Street," whereas the plaintiff's address was 1599 Rice Street. The zip code was correct. She denied ever receiving this letter.

Mr. Bowser identified a second letter from Ms. Canty dated July 11, 1996, that was correctly addressed to the plaintiff and stated in part:

> You were placed on medical leave of absence on July 7, 1995. As stated in the Employee Handbook, your maximum leave of absence time is 1 year. Your leave expired July 7, 1996. When you receive a full release from your doctor, you will be considered for re-employment based on the position(s) available at that time and your qualifications.

Mr. Bowser testified that he never made a specific job offer to the plaintiff but was not given the opportunity to do so, since she never contacted him as agreed after their meeting of February 6. He stated that he did not know in July of 1995 that the plaintiff had ever been released from her doctor and felt that she had an obligation to have contacted him one way or the other as to what her doctor's statement was.

Three doctor's depositions were introduced into evidence at trial. Dr. Harry Friedman, the plaintiff's neurosurgeon, first saw her on July 7, 1995. The plaintiff had been taken to the emergency room with back pain that radiated into her left leg. She related this to the June 14, 1995, incident in which she lifted the box at work. After an examination and tests, the plaintiff was diagnosed with a disk rupture. Dr. Friedman performed surgery on July 11, 1995. He found quite a bit of arthritic spurring at the T3 level, along with a mildly abnormal disk, and a ruptured disk at the T4 level. According to Dr. Friedman, the arthritic spurring preexisted the accident by a long period of time.

By August 17, 1995, the plaintiff was doing quite well and was not having any of the pre-operative leg pain. She continued to have some back pain and numbness in her foot but did not need daily medication for either. Dr. Friedman recommended that the plaintiff increase her physical activity, as well as lose weight. He did not want her to return to work at this point.

At her September 21, 1995, visit, the plaintiff was still having pain in her back and was now complaining of right leg pain. Although most of her neurological exam was normal, Dr. Friedman recommended strict bed rest for seven to ten days and suggested that the plaintiff try to go back to

light duty work in two weeks. He had been assured by the rehabilitation nurse that the plaintiff could work without doing any lifting.

Dr. Friedman next saw the plaintiff on December 28, 1995. She was complaining of worsening lower back pain from the right side across the lower back, as well as left calf pain. The plaintiff was not doing all of the exercises she had been given to do and was under a lot of strain, because her husband was hospitalized with terminal cancer. Bending and driving back and forth to the hospital aggravated the pain. The plaintiff told Dr. Friedman that she had not returned to work, because there was no light duty work available. Tests on her back reported to Dr. Friedman by the rehabilitation nurse were normal. He again put the plaintiff on strict bed rest with muscle relaxants and pain medications and suggested she try to return to light duty work in three weeks.

The plaintiff returned to Dr. Friedman on January 30, 1996, after getting no relief from bed rest. She had not had any physical therapy and had not returned to work, due to the pain and the fact that her husband had just died. Dr. Friedman recommended that the plaintiff attend a work-hardening program and return in two months.

On February 27, 1996, the plaintiff returned with lower back pain and pain in the left calf when walking. She had not had any physical therapy, because her blood pressure became elevated on the third day of the program. Dr. Friedman discussed the plaintiff with Dr. Jesse McGee, the plaintiff's cardiologist, and stated that Dr. McGee emphasized to him the stressful impact that her husband's recent death was having on the plaintiff. Dr. Friedman suggested an MRI of the lower back and that the plaintiff start physical therapy. He also suggested that she return to light duty in two weeks with a twenty (20) pound lifting restriction and no bending or stooping. The plaintiff declined to participate in the physical therapy. He did not place any permanent restrictions on the plaintiff at that time and rated her with a 9 percent permanent partial disability to the left leg with reference to the body as a whole, using the most recent edition of the AMA Guides. Dr. Friedman released the plaintiff from his care at the February 27 appointment.

The MRI performed on March 12, 1996, showed no evidence of nerve root entrapment by scars or current disk rupture, and there were no objective findings of any kind of neurological defect. The previously noted preexisting arthritic changes were still present primarily at the T3 level.

Dr. Jesse McGee, the plaintiff's cardiologist, testified that he saw the plaintiff with complaints of back and knee pain on November 23, 1993. The doctor had noted in his records on April 3, 1992, three years prior to the accident at Shoe City, that the plaintiff had degenerative arthritis. He had referred her to a rheumatologist on November 22, 1993, because the plaintiff's arthritis was severe. Dr. McGee was also treating her for high blood pressure.

On March 14, 1994, Dr. McGee's records reflected that the plaintiff got relief from her symptoms and was being followed by the rheumatologist. On July 6, 1995, Dr. McGee saw the plaintiff after her accident at work with back pain, abdominal pain, headaches, urinary tract infection, and hypertension. Dr. McGee yielded a number of times throughout his deposition to the treating

neurosurgeon concerning the plaintiff's back. X-rays taken of the plaintiff's spine in November of 1995, some three months after her surgery, revealed degenerative arthritic changes and degenerative disk disease in the lumbar region.

Dr. McGee's records of February 8, 1996, reflect that the plaintiff was very stressed over the death of her husband. Dr. Friedman recommended an MRI in March of 1996, and this was performed on March 12, 1996. The results showed abnormal facet degenerative changes where the two disks had been removed. Dr. McGee stated that this condition could easily be a progression of the plaintiff's preexisting arthritis; however, it was his opinion on April 11, 1996, that she was permanently and totally (100 percent) disabled, due to the facet changes and the pain. He did not refer to the AMA Guides in making this assessment. The doctor was unable to testify as to what percentage of the plaintiff's impairment was related to the accident at work or to what degree the accident caused the pre-existing condition. He stated, however, that the plaintiff's arthritis in the lumbar spine may have been aggravated by lifting boxes or the surgery, since "any trauma can aggravate arthritis."

The plaintiff's lawyer sent her to Dr. Samir R. Dawoud, an orthopedic surgeon, for an evaluation on December 18, 1997. The plaintiff's chief complaints were low back pain and right leg numbness and cramps. Dr. Dawoud conducted a neurological examination, x-rayed the plaintiff's lower spine, and reviewed a report that compared an MRI performed in January of 1998 with the one done on March 12, 1996. The report found unchanged findings at L3-4 and 5-6 where the surgery was performed and no new disk herniations. Degenerative disk disease at L4-5 had slightly increased and a slight increase in the spondylolisthesis. Bilateral L3-4, L4-5, and left L5-S1 facet disease was unchanged over almost two years between the MRIs. It was Dr. Dawoud's opinion that the plaintiff had a permanent partial disability due to lumbosacral disk disease, osteoarthritis, and surgery. Using page 3-113 of the AMA Guides, he rated the plaintiff with a 15 percent disability to the body as a whole. Dr. Dawoud broke this rating down into 10 percent for the lumbar disk disease and 5 percent for the spondylolisthesis and arthritis together. He also restricted the plaintiff from lifting more than fifty (50) pounds, spinal bending, stooping, kneeling, climbing ladders or multiple stairs, or working in extreme temperatures. It was Dr. Dawoud's opinion that the plaintiff's surgery and injury could have aggravated the osteoarthritic process.

STANDARD OF REVIEW

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 & Supp. 1998); Henson v. City of 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 & Cas. Co., 812 S.W.2d 278, 282 (Tenn. 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); Thomas, 812 S.W.2d at 283. However,

when the determination of factual issues involves medical testimony derived solely from depositions, so all impressions regarding weight and credibility must be drawn from the contents of the documents, rather than an evaluation of live witnesses. Thomas, 812 S.W.2d at 283. Therefore, this Court may draw its own conclusions about the weight, credibility, and significance of such testimony. Seiber v. Greenbrier Indus., Inc., 906 S.W.2d 444, 446 (Tenn. 1995). With these principles in mind, we turn to the issues at hand.

PLAINTIFF'S MEANINGFUL RETURN TO WORK

The defendants argue that Shoe City made a reasonable attempt to return the plaintiff to work, and it was the plaintiff herself who made a unilateral decision not to return to work after she was released by her doctor to do so. The plaintiff argues that she could not have refused to return to work, because a specific job offer was never made by Shoe City that she could refuse. She contends that the two and one-half (2.5) multiplier does not apply. After careful review of the record, we find that the two and one-half (2.5) multiplier in Tennessee Code Annotated § 50-6-241(a)(1) does apply.

Tennessee Code Annotated § 50-6-241 governs the maximum award that an employee is able to receive for a permanent partial disability. § 50-6-241(a)(1) provides a cap of two and one-half (2.5) times the medical impairment rating where "the 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…." Conversely, when "the pre-injury employer does not return the employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of injury. . .," § 50-6-241(b) raises the cap to six (6) times the medical impairment rating.

In Newton v. Scott Health Ctr., 914 S.W.2d 884 (Tenn. 1995), the panel construed § 50-6-241(a)(1) as requiring the employee to have a meaningful return to work before the two and one-half (2.5) times cap can be applied. Id. at 886 (citing Bailey v. Krueger Ringier, Inc., No. 02S01-9409-CH-00061 (Tenn. May 17, 1995)). The determination of whether there has been a meaningful return to work turns on the facts of each case. Newton, 914 S.W.2d at 886. Particularly relevant is the reasonableness of the employer in attempting to return the employee to work and of the employee in failing to return to work. The court explained:

> If the offer from the employer is not reasonable in light of the circumstances of the employee's physical ability to perform the offered employment, then the offer of employment is not meaningful and the injured employee may receive disability benefits up to six times the amount of the medical impairment. On the other hand, an employee will be limited to disability of two and one-half times the medical impairment if his refusal to return to offered work is unreasonable. The resolution of what is reasonable must rest upon the facts of each case and be determined thereby.

In Hale v. ABB Combustion Eng'g., No. 03S01-9506-CH-00062, 1996 WL 99298 (Tenn. Mar. 7, 1996), a panel decision adopted and affirmed by the Supreme Court,[4] the panel discussed both Bailey and Newton and stated that a court must determine if the employee has the ability to perform the duties to which he returns. The mere fact that an employer offers a return to work, or that the employee does not return at all, or that the employee returns and later leaves, is not controlling. Hale, 1996 WL 99298, at *2. In the same vein, an injured employee cannot increase the maximum award by unreasonably refusing to return to work in a position for which he is qualified and able to perform within his medical restrictions. Brown v. Campbell Bd. of Educ., 915 S.W.2d 407, 420 n.12 (Tenn. 1995). The Hale court set out several relevant factors for the court to weigh in making its assessment of the return to work, such as:

> the employer's offer to return to work, the nature of the work to be performed in relation to the restrictions, if any, placed on the employee by a doctor, whether the refusal of an employee to return to work is reasonable or unreasonable in light of the nature of the work offered vis-a-vis the medical restrictions placed on the employee and, if the employee returns and then leaves, the reason for leaving the job.

Hale, 1996 WL 99298, at *2. We are persuaded of the soundness of weighing such factors.

The trial court in the present case found that the plaintiff did not have a meaningful return to work and awarded her four and one-half (4.5) times the medical impairment rating of 15 percent, or 67.5 percent vocational disability. In a letter to the attorneys outlining her findings, the trial judge stated:

> Defendant did not effectively offer to return plaintiff to any job. A letter was sent but to the wrong address. Even though Plaintiff came to talk with a representative of Defendant, because she was still under medical treatment, he did not offer her a job at that time. There was no proof that Defendant ever conveyed to Plaintiff an offer of employment. ***They only stated that they were willing to re-employ her***, not that this offer was made to [P]laintiff. Therefore the 2.5 multiplier does not apply. (emphasis added).

We must respectfully disagree with the trial court's findings. The questions that we must ask ourselves in the present case are how far an employer must go to return a restricted employee to the workforce, and what should be reasonably expected of the employee in returning to work? It was clearly conveyed to the plaintiff at the February 6, 1996, meeting with Mr. Bowser that she could return to work once she was released by her doctor. Mr. Bowser's handwritten notes made close to the time of the meeting with the plaintiff reflect that Dr. Friedman would release the plaintiff to return to work after she completed a work-hardening program. She was to contact Mr. Bowser on

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[4]This unpublished Panel opinion is not binding but we consider it as persuasive pursuant to Supreme Court Rule 4(H)(1), as amended Nov. 1, 1999.

February 12, 1996, after completing the program. The plaintiff denied that she agreed to contact Mr. Bowser, but it seems reasonable to expect her to have done so at some point after she was released for work. The plaintiff knew after the February 6 meeting that Mr. Bowser was waiting for her MRI results and word from her doctor specifying work restrictions before offering her a specific position. She had also been in management with the company for several years and was used to scheduling and directing employees. A reasonable person with that experience who wanted to return to work would have or should have contacted the company when the MRI results came in and her restrictions were determined by her doctor. The plaintiff denied receiving either letter from the company concerning her re-employment, but there is no dispute that the letter dated July 11, 1996, was sent to the correct address. The company's efforts were reasonably designed to return the plaintiff to work when her doctor said she was ready and under the restrictions ordered by him. Mr. Bowser's testimony and notes from the meeting with the plaintiff show that he was prepared to offer the plaintiff an assistant manager position at store #2722 but was unable to do so at that time because of the note from Dr. Friedman. Mr. Bowser testified that the plaintiff also told him she could not return to work at that time. Apparently, Dr. Friedman released her to return to work on February 27, 1996, but the plaintiff never contacted the company. The company attempted to contact her by letter in March and July of that year but got no response.

We do not believe that an employer should be required to relentlessly pursue an injured employee in order to return the employee to work. At some point, the employee has to take the initiative to go back to work, and that point is logically when he or she is released to go back to work by the doctor. We find, under the circumstances of this case, that the plaintiff had an obligation to notify the employer of her release by the doctor and of her work restrictions. The company had already left that door open for the plaintiff but never had the opportunity to talk to her about the assistant manager position. The restrictions that Drs. Friedman and Dawoud gave the plaintiff would have allowed her to do the assistant manager position as described by Mr. Bowser at trial.

Therefore, we find that the evidence preponderates against the trial court's judgment that the plaintiff did not have a meaningful return to work. The plaintiff's award is limited to two and one-half (2.5) times the anatomical rating.

PERCENT DISABILITY

It is well-established that the plaintiff in a workers' compensation case has the burden of proving causation and permanency of his injury by the preponderance of the evidence using expert medical testimony. See Thomas v. Aetna Life & Cas. Co., 812 S.W.2d 278, 283 (Tenn. 1991); Roark v. Liberty Mutual Ins. Co., 793 S.W.2d 932, 934 (Tenn. 1990). However, such testimony is not evaluated in total isolation but must be considered in conjunction with the employee's testimony as to how his injury occurred and his subsequent physical condition. Thomas, 812 S.W.2d at 283. In determining where the preponderance of the evidence lies, this Court may choose which expert's view to believe among differing opinions and may consider the experts' qualifications, circumstances of their examination, what information was available to them, and how important that

information was to other experts. See Orman v. Williams Sonoma, Inc., 803 S.W.2d 672, 676 (Tenn. 1991).

Upon our de novo review, we find that the evidence does not preponderate against the trial court's findings that the plaintiff sustained a 15 percent medical impairment rating. Her treating surgeon rated her with only a 9 percent disability rating under the AMA Guides, but he did not take into account any aggravation of the osteoarthritic condition that was connected to the injury in varying degrees by Dr. McGee and Dr. Dawoud. The trial court apparently credited the plaintiff's own evaluating physician, Dr. Dawoud's, rating of 15 percent as the most reliable, and we have no reason to disagree. Taking into account the plaintiff's level of education, skills, age, and other relevant factors, we find that she is entitled to the maximum two and one-half (2.5) multiplier pursuant to § 50-6-241(a)(1). We, therefore, modify the trial court's judgment and find that the plaintiff sustained a 37.5 percent permanent partial disability to the body as a whole.

CONCLUSION

For the above reasons, we find that the two and one-half (2.5) times cap does apply. We modify the trial court's judgment and find that the plaintiff sustained a 37.5 percent permanent partial disability to the body as a whole. This case is remanded to the trial court for disposition consistent with this opinion. As modified, the judgment of the trial court is affirmed.

Costs will be shared equally between the plaintiff and defendants.

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

ERNESTYNE M. WEBB v. SHOE CITY, INC., ET AL.

Circuit Court for Shelby County
No. 79201 T.D.

No. W1998-00741-SC-WCM-CV - Filed September 20, 2000

ORDER

This case is before the Court upon motion for review of Ernestyne M. Webb 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 equally between the plaintiff and the defendants, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM

HOLDER, J.- NOT PARTICIPATING