

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT KNOXVILLE  
AUGUST 30, 2000 Session

**DARLENE MOORE COLLINS v. CMH MANUFACTURING, INC. (ALSO  
REFERRED TO AS "NORRIS, INC.")**

**Direct Appeal from the Circuit Court for Grainger County  
No. 6628 Ben W. Hooper, III, Judge**

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**No. E1999-01225-WC-R3-CV - Mailed -November 14, 2000  
Filed: December 28, 2000**

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This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The trial court awarded the plaintiff sixty-five percent impairment due to occupational asthma and awarded prejudgment interest to accrued benefits. The defendant argues the trial court's award was excessive because the plaintiff failed to adequately prove through medical testimony the causation and extent of her impairment. The defendant also appeals the amount of prejudgment interest. We affirm the judgment of the trial court as to the impairment award and remand for further findings of facts with regard to the prejudgment interest award.

**Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Grainger  
County Circuit Court is Affirmed in Part and Remanded.**

JOHN K. BYERS, SR. J., delivered the opinion of the court, in which E. RILEY ANDERSON, C.J. and ROGER E. THAYER, SP. J., joined.

Linda J. Hamilton Mowles, Esq., Knoxville, Tennessee, for the appellant, CMH Mfg., Inc. (also referred to as "Norris Inc.")

James E. Davis, Morristown, Tennessee, for the appellee, Darlene Moore Collins.

**OPINION**

**FACTS**

The plaintiff, age forty-one at the time of trial, does not have a high school diploma but can read, write, do math and handle her own personal and financial affairs. The plaintiff smoked a pack

of cigarettes a day for some time and is still exposed to secondhand smoke by her husband regularly. Her work history includes waiting tables, cashiering, “tailing a ripsaw” which involved working around sawdust, and temporary work.

The plaintiff began working for the defendant, a mobile home manufacturer, as a cleaner. Performing her job duties required using various chemicals to clean finished mobile homes. She eventually transferred into the “final finish” department where she cleaned tubs and trailers using an adhesive remover to clean glue and residue from the showers and tubs. The work was such that she was exposed to the chemical fumes. She remained in this position for four or five months.

In the fall of 1995, the plaintiff developed cold/flu symptoms with aches, fever and breathing difficulty. She was off work for a week, and when she returned, she still had a cough. She was then transferred to a position that required application of putty and continued use of spray chemicals. She became ill again in September of 1996 and, at that point, linked her illness to her use work-related use of chemicals. She continued to work, but was moved to different positions. She eventually obtained a medical leave due to breathing difficulty and has not worked for the defendant since October 21, 1996. She has been diagnosed and treated for asthma.

### **Medical Evidence**

Dr. Ernesto Mejia, M.D., a pulmonary specialist, treated the plaintiff for her lung problems. He first saw her the day after she left her employment with the defendant. He found decreased breath sounds and wheezes. A chest x-ray showed some diffuse reticular infiltrate in bases that could be associated with hypersensitivity pneumonitis or exposure to chemicals. Other tests were consistent with early small airway disease—a condition associated with occupational asthma. Dr. Mejia diagnosed occupational asthma and prescribed medication and avoidance of chemicals and smoke. Dr. Mejia opined she must permanently avoid the chemicals used in her work and if she did her condition would not progress. He provided no impairment under the Guides but testified he was unfamiliar with the use of the Guides and had never even given a deposition in a lawsuit.

Dr. John Kinser, M.D., a general practitioner, did an independent medical examination and relied on the testing of Dr. Mejia. He assessed a medical impairment of twenty-five percent to the body as a whole due to occupational asthma contracted while working for the defendant.

Dr. Norman Hankins, Ph.D., a vocational disability expert, reviewed the plaintiff’s medical records and performed IQ and aptitude tests. He felt the plaintiff should only perform light work that did not expose her to chemicals, fumes and cleaning agents. He found her to be in the normal range for most areas tested and assessed a sixty percent vocational disability.

Dr. Arnold Hudson, M.D., a pulmonary disease specialist, saw the plaintiff on one occasion at the defendant’s request. He reviewed her records and performed some test of his own including a methacholine test which is used to determine whether asthma is present. The results were negative.

Dr. Hudson testified the plaintiff would have a zero percent impairment. He opined the plaintiff did not suffer from occupational asthma.

### Discussion

Review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise. TENN. CODE ANN. § 50-6-225(e)(2). *Stone v. City of McMinnville*, 896 S.W.2d 548, 550 (Tenn. 1995). The application of this standard requires this Court to weigh in more depth the factual findings and conclusions of the trial courts in workers' compensation cases. *See Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988).

### Causation

In order to be eligible for workers' compensation benefits, an employee must suffer "an injury by accident arising out of and in the course of employment which causes either disablement or death." TENN. CODE ANN. § 50-6-102(a)(5). The phrase "arising out of" refers to causation. The causation requirement is satisfied if the injury has a rational, causal connection to the work. *Reeser v. Yellow Freight Sys., Inc.*, 938 S.W.2d 690, 692 (Tenn. 1997) (citations omitted); *Fink v. Caudle*, 856 S.W.2d 952 (Tenn. 1993). In all but the most obvious cases, such as the loss of a member, expert testimony is required to establish causation. *Thomas v. Aetna Life & Casualty Co.*, 812 S.W.2d 278 (Tenn. 1991).

Although causation cannot be based upon merely speculative or conjectural proof, absolute certainty is not required. Any reasonable doubt in this regard is to be construed in favor of the employee. We have thus consistently held that an award may properly be based upon medical testimony to the effect that a given incident "could be" the cause of the employee's injury, when there is also lay testimony from which it reasonably may be inferred that the incident was in fact the cause of the injury. *Reeser v. Yellow Freight Sys., Inc.*, 938 S.W.2d 690, 692 (Tenn. 1997) (citations omitted). Only a medical expert may testify as to whether a given disability is permanent. *Bolton v. CNA Ins. Co.*, 821 S.W.2d 932 (Tenn. 1991). In this case, Dr. Mejia diagnosed the plaintiff with occupational asthma and expressed the opinion that if the plaintiff continued in her work with the defendant, her condition would progress.

In this case, as in all workers' compensation cases, the claimant's own assessment of his physical condition and resulting disabilities is competent testimony and cannot be disregarded. *Tom Still Transfer Co. v. Way*, 482 S.W.2d 775, 777 (Tenn. 1972). The plaintiff provided lay testimony as to the effects of the chemicals on her breathing and general health. Finally, a compelling fact for this Court is that a pre-employment physical showed normal breathing functions. Causation in this matter has been adequately proven via expert and lay testimony; we will not disturb the trial judge's findings in this regard.

In this case, the medical proof was presented by deposition, and the trial court chose to credit the deposition testimony of Dr. Kinser. The trial court has the discretion to accept the opinion of one medical expert over another medical expert. *Kellerman v. Food Lion, Inc.*, 929 S.W.2d 333 (Tenn. 1996); *Johnson v. Midwesco, Inc.*, 801 S.W.2d 804, 806 (Tenn. 1990). Several cases have indicated that the trial court should give more weight to the opinions of treating physicians than those of evaluating physicians, *See e.g., Crossno v. Publix Shirt Factory*, 814 S.W.2d 730 (Tenn. 1991), however, the trial judge is not required to do so. Moreover, we are not inclined to reject the finding of the trial judge on such basis unless there is something inherent in the deposition testimony which convinces us the opinion expressed is not reliable. We do not find any unreliability present in the depositions in this case, and we do not find the trial judge abused his discretion in accepting the opinion of Dr. Kinser. This case is somewhat unique in that the treating physician was unfamiliar with the AMA Guidelines and had never even given a medical opinion deposition before this case; he obviously felt himself unqualified to provide the court with a rating. He did, however, provide rather substantial restrictions and stated the plaintiff would be unable to return to her previous positions without worsening her medical condition.

The ultimate issue in a workers' compensation case is not medical impairment but rather vocational disability. The extent of vocational disability is a question of fact to be determined from all of the evidence, including lay and expert testimony. TENN. CODE ANN. § 50-6-241(c); *Worthington v. Modine Mfg. Co.*, 798 S.W.2d 232, 234 (Tenn. 1990). In making determinations, the court shall consider all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's disabled condition. TENN. CODE ANN. § 50-6-241(c); *Roberson v. Loretto Casket Co.*, 722 S.W.2d 380, 384 (Tenn. 1986). The lay and expert testimony show the plaintiff has no specialized skills or job training, no high school diploma or GED and is unable to return to her pre-employment position because of her breathing problems. The expert testimony placing the plaintiff's vocational disability at sixty percent supports the trial judge's finding as well.

### **Pre-judgment Interest**

The defendant argues the trial court erred in awarding pre-judgment interest in this case where the evidence of liability was highly disputed and when the trial court did not render a decision for seventeen months. The defendant also notes that from the outset there was no way of knowing what the plaintiff was owed and since it is not responsible for the delay in the rendering of the decision, it should not have to pay the interest. The plaintiff points out that she, unlike the defendant, was denied the use of the money during the delay and argues the interest award should stand.

Tennessee Code Annotated § 47-14-123 provides for pre-judgment interest as an element of, or in the nature of, damages in accordance with the principles of equity. The award must be equitable under the circumstances and must be designed to compensate the injured party rather than

punish the other party. *Id.*; *Myint v. Allstate*, 970 S.W.2d 920, 927 (Tenn. 1998).

The standard of review regarding an award of pre-judgment interest is abuse of discretion—a “manifest and palpable abuse of discretion.” *See Davis v. Inman*, 974 S.W.2d 689 (Tenn. 1998).

The issue of liability in this case was strongly and legitimately questioned. The trial judge took the case under advisement for a period of seventeen month before entering a judgment.

The record is silent with respect to the award of prejudgment interest. When the record is silent as to the reasons the trial judge awarded prejudgment interest, we are unable to determine whether the award is justified or whether the trial judge abused his discretion in making the award. We therefore remand the issue of the award of prejudgment interest to the trial court for a statement of fact. Either side may appeal from the decision of the trial court on this issue after the findings of the trial court are issued on remand.

We affirm the judgment of the trial court on the finding of compensability and the amount awarded and remand on the issue of prejudgment interest. The cost of the appeal is taxed to the defendant.

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JOHN K. BYERS, SENIOR JUDGE

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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 facts and conclusions of law are adopted and affirmed and the decision of the Panel is made the Judgment of the Court.

Costs on appeal are taxed to the Defendant, CMH Manufacturing, Inc. and Linda J. Hamilton Mowles, surety, for which execution may issue if necessary.

12/28/00