

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

Assigned on Briefs November 3, 2000

**DOTTIE LOU BELL HAMPTON v. HENRY I. SEIGEL CO., INC., ET AL.**

**Direct Appeal from the Circuit Court for Carroll County  
No. 3909 Julian P. Guinn, Judge**

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**No. W2000-01272-WC-R3-CV Mailed December 15, 2001; January 26, 2001**

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This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court pursuant to Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The employer and its insurer contend the employee's disability was caused by an independent intervening cause, namely a gradually occurring injury while working for a subsequent employer, and that the award of permanent partial disability benefits is excessive. As discussed below, the panel has concluded the evidence fails to preponderate against the findings of the trial court.

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

JOE C. LOSER, JR., SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and C. CREED MCGINLEY, SP. J., joined.

Stephen D. Jackson, Huntingdon, Tennessee, for the appellants, Henry I. Seigel Company, Inc. and Royal Insurance Company.

Donald E. Parish, Huntingdon, Tennessee, for the appellee, Dottie Lou Bell Hampton.

**MEMORANDUM OPINION**

The employee commenced this action on April 1, 1999, seeking benefits for an injury that occurred while she was working for the Seigel company on April 7, 1998. The case was tried on January 6, 2000.

The employee or claimant, Hampton, is 41 years old with a ninth grade education and experience in production, food service and truck driving. It is undisputed that on April 7, 1998, she suffered a compensable injury when she fell, landing on her buttocks and fracturing her sacrum. She was referred to a general practitioner, who ordered x-rays and prescribed pain medication and rest

for a few days. The x-rays confirmed the fracture. She continued working until June 16, 1998, when she was laid off, but was not able to make production, thus suffering a reduced earning capacity.

In November of the same year, she began working for Martin Manufacturing, but the nature of the work increased her pain. She has seen a number of doctors, but continues to suffer disabling pain. There is conflicting medical evidence as to both causation and permanency. The trial judge accredited the report of Dr. Robert Barnett, who established the required causal connection between the claimant's injury and her fall of April 7, 1998 at Seigel's plant and estimated her permanent medical impairment at 7 percent to the whole body.

Upon the above summarized evidence, the trial court found that the claimant's injury was work related and awarded permanent partial disability benefits based on 35 percent to the body as a whole. The trial judge found that the claimant had not returned to work at the same or equal wage and made specific findings concerning her ability to work at jobs for which she is qualified.

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. The reviewing court is not bound by a trial court's factual findings but instead conducts an independent examination to determine where the preponderance of the evidence lies. Galloway v Memphis Drum Serv., 822 S.W.2d 584 (Tenn. 1991).

The appellants concede that the employee's back injury arose out of and in the course of employment but, relying on the employee's own testimony that her subsequent employment increased the disabling pain flowing from her compensable injury, contend the claimant suffered a second injury and that the second injury is an independent intervening cause which operates to reduce their liability. They cite Guill v. Aetna Life & Casualty Co., 660 S.W.2d 42 (Tenn. 1983) and Simpson v. H. D. Lee Co., et al., 793 S.W.2d 929 (Tenn. 1990) as authority for such defense.

In Guill, the injured worker's wife administered medication that the treating physician had repeatedly instructed the worker not to take, causing additional injury. The trial judge concluded that the action of Mrs. Guill in injecting the proscribed medication was not part of the medical treatment for Guill's on-the-job injury, but was an independent intervening cause of injury, and disallowed the claim. That finding was supported by expert medical evidence. The Supreme Court affirmed on the basis of the material evidence rule. In Simpson, the claimant died from a self-induced overdose of acetaminophen. The Supreme Court affirmed the trial court's finding that the claimant's death from a self-induced overdose of medication was not work-related.

In the present case, there is expert medical evidence that the claimant's disability naturally flowed from her admittedly compensable injury and the evidence fails to preponderate against that finding by the trial court; and we find in the record no expert medical evidence to support the appellants' resourceful theory. Moreover, it is within the discretion of the trial judge to conclude that the opinion of certain experts should be accepted over that of other experts and that it contains

the more probable explanation.. See, e.g., Story v. Legion Ins. Co., 3 S.W.3d 450 (Tenn. 1999). When the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to the claimant's own intentional conduct. See Guill at 42 and authority cited therein. The unsuccessful attempt by Ms. Hampton to work through her pain is not such intentional conduct as should be allowed to defeat her claim. The first issue is accordingly resolved in favor of the appellee.

Once the causation and permanency of an injury have been established by expert testimony, the trial judge may consider many pertinent factors, including age, job skills, education, training, duration of disability and job opportunities for the disabled, in addition to anatomic impairment, for the purpose of evaluating the extent of a claimant's permanent disability. Tenn. Code Ann. § 50-6-241(b); McCaleb v. Saturn Corp., 910 S.W.2d 412 (Tenn. 1995). As already noted, this claimant is 41 years old and has only a ninth grade education. She has no vocational training and the evidence reflects that, although she is able to work, her opportunities are limited and her capacity for earning an income has been reduced since the injury. The second issue is also resolved in favor of the appellee.

For the above reasons, the panel concludes that the evidence fails to preponderate against the findings of the trial court, whose judgment is affirmed. Costs on appeal are taxed to the appellants.

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JOE C. LOSER, JR., SPECIAL 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 fact 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 Appellants, Henry I. Siegel Company, Inc., and Royal Insurance Company, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM