IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
April 28, 2000 Session

TOMMIE A. DRUMWRIGHT v. ANDERSON HICKEY COMPANY AND TRAVELERS INSURANCE COMPANY

Direct Appeal from the Chancery Court for Lauderdale County
No. 11,070 Martha B. Brasfield, Chancellor

No. W1999-00817-WC-R3-CV - Mailed December 11, 2000; Filed February 7, 2001

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. The plaintiff, Tommie A. Drumwright, appeals the judgment of the trial court which found the plaintiff failed to carry her burden of proving a work-related injury and dismissed her claim. For the reasons stated in this opinion, we affirm the judgment of the trial court.

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

W. MICHAEL MALOAN, SP. J, delivered the opinion of the court, in which JANICE M. HOLDER, J., and Henry D. BELL, SP. J, joined.

Thomas H. Strawn, Dyersburg, Tennessee, for the Appellant, Tommie A. Drumwright

S. Newton Anderson and Marc A. Sorin, Memphis, Tennessee, for the Appellees, Anderson Hickey Company and Travelers Insurance Company

MEMORANDUM OPINION

The plaintiff, Tommie Drumwright was forty (40) years old at the time of trial. She worked for the defendant, Anderson Hickey Company, for sixteen (16) years. On June 15, 1998, she picked up a two drawer file and "felt something in my back like real sharp." She told her fellow employee, Linda Climer, that she had hurt her back. Climer told her to go tell the company nurse who gave her pain pills and told her to come back the next day if she was not any better.

On June 17, 1998, plaintiff left work to see her doctor, Dr. Jerald White. Dr. White's family nurse practitioner, Donna Paige Clement, testified by deposition that plaintiff told her she hurt her back a year ago at work and had problems off and on since then. The records of Kathy Smith, the intake nurse, showed "no recent injury." Plaintiff testified Clement did not ask her any questions and she was hurting so bad she couldn't tell her anything. Plaintiff did testify she told Dr. Stewart she hurt her back at work. Dr. White performed x-rays, gave her pain medication, and referred her to Dr. Gary Kellett, a neurosurgeon. Dr. Kellett's notes of June 22, 1998, state "She states that she has done some heavy lifting and straining at the job, but she doesn't feel this is a workman's compensation injury. She feels that she has had some pain going back a year." Dr. Kellett returned her to work.

Plaintiff continued to work for two weeks. She continued to have pain and the company nurse referred her to Dr. Charles Stewart in Jackson. Dr. Stewart referred her to Dr. Joseph Rowland who first saw her on July 22, 1998. He ultimately performed surgery for a ruptured disc on August 19, 1998. Plaintiff told Dr. Joseph Rowland she hurt her back at work on June 17, 1998, but she had also injured her back six months before and had back pain on and off. Dr. Rowland's outpatient summary of August 20, 1998, indicates plaintiff had a life long history of back pain and left leg pain.

Plaintiff testified she never had any serious problems with her back before June 1998, only strained muscles. After returning to work on January 18, 1999, she says she can do her job at Anderson Hickey, but gets tired faster and her left leg gets numb.

Linda Climer testified plaintiff hurt her back lifting a four drawer cabinet at the end of 1997 or the first of 1998. Plaintiff had not complained of back pain to Climer before this incident.

Ron Cannon, the human resource manager at Anderson Hickey, testified the company did not treat the injury as compensable. Plaintiff told him her back hurt, but said she did not know how it happened. He could not find a first report of injury and plaintiff's supervisor was unaware of any injury.

Martha Coffee was plaintiff's supervisor. Coffee testified plaintiff came in one morning and told her her back was killing her and she was going to the doctor, but did not say she hurt herself at work. Coffee did remember plaintiff hurt her back pushing a five drawer GSA file and that was the reason she had surgery, but "that was a different incident completely." This was three to four weeks after plaintiff told her her back was killing her.

Donna Pugh, the plant nurse, could not remember if plaintiff ever came to her about a back injury, but if she did she would have completed a First Report of Work Injury. No report was ever filed in this case. Ms. Pugh, however, was on medication and suffered from short term memory loss.

The trial court found plaintiff had failed to carry her burden of proving a work-related injury

and dismissed her claim. The only issue presented on appeal is whether the trial court erred in finding plaintiff's injury was not work-related.

ANALYSIS

The scope of review of issues of fact is *de novo* upon the record of the trial court, accompanied by a presumption of correctness of the findings, unless the preponderance of evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). *Lollar v Wal-Mart Stores, Inc.*, 767 S.W.2d 143 (Tenn. 1989). When a trial court has seen and heard witnesses, especially where issues of credibility and weight of oral testimony are involved, considerable deference must be accorded the trial court's factual findings. *Humphrey v David Witherspoon, Inc.*, 734 S.W.2d 315 (Tenn. 1987). However, where the issues involve expert medical testimony which is contained in the record by deposition, as it is in this case, then all impressions of weight and credibility must be drawn from the contents of the depositions, and the reviewing court may draw its own impression as to weight and credibility from the contents of the depositions. *Overman v Williams Sonoma, Inc.*, 803 S.W.2d 672, 676-77 (Tenn. 1991).

The plaintiff in a worker's compensation case has the burden of proving every element of his case by a preponderance of the evidence. *Elmore v. Traveler's Ins. Co.*, 824 S.W.2d 541, 543 (Tenn. 1992). An accidental injury arises out of one's employment when there is apparent to the rational mind, upon a consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury, and occurs in the course of one's employment if it occurs when an employee is performing a duty he was employed to do. *Fink v. Caudle*, 856 S.W.2d 952 (Tenn. 1993). As to causation, our Supreme Court stated in *Tindall v. Waring Park Ass'n*, 725 S.W.2d 935, 937 (Tenn. 1987) as follows:

> This Court has consistently held that causation and permanency of a work-related injury must be shown in most cases by expert medical evidence. Furthermore, by "causal connection" is meant not proximate cause as used in the law of negligence, but cause in the sense that the accident had its origin in the hazards to which the employment exposed the employee while doing his work. Although absolute certainty is not required for proof of causation, medical proof that the injury was caused in the course of the employee's work must not be speculative or so uncertain regarding the cause of the injury that attributing it to the plaintiff's employment would be an arbitrary determination or a mere possibility. If, upon undisputed proof, it is conjectural whether disability resulted from a cause operating within employment, there can be no award. If, however, equivocal medical evidence combined with other evidence supports a finding of causation, such an inference may nevertheless be drawn by the trial court under the case law.

The trial court considered the many contradictions in the record concerning plaintiff's account of when and how she injured her back. The trial court resolved these conflicts in favor of the defendants and stated in her order of August 24, 1999, as follows:

> It should be obvious to any reader that the testimony is full of contradictions which are impossible to reconcile. For example, the plaintiff recalls specifically hurting her back and being barely able to walk to her car on June 16, 1998; however, doctor's records up to July 13, 1998, either indicate no trauma or no worker's compensation injury as stated by the Plaintiff to healthcare providers. No statements or arguments were given to explain this contradiction. It is the plaintiff's burden to prove by a preponderance of the evidence that she sustained a work-related injury at the time she says she sustained it. She has simply failed to meet her burden. Unfortunately, this claim must be denied.

This panel must give considerable deference to the trial court's findings regarding the weight and credibility of any oral testimony received unless we find the evidence preponderates against the trial court's findings. *McIlvain v. Russell Stover Candies, Inc.*, 996 S.W.2d 179, 183, (Tenn. 1999).

After a careful review of the entire record in this case, we find the evidences fails to preponderate against the trial court's finding that the plaintiff failed to carry her burden of proof that she was injured by accident growing out of and in the course of her employment for the defendant, Anderson Hickey Company.

CONCLUSION

The judgment of the trial court is affirmed. The costs of this appeal are taxed to the plaintiff, appellant, Tommie Drumwright.

_____

W. MICHAEL MALOAN, SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
April 28, 2000 Session

TOMMIE A. DRUMWRIGHT v. ANDERSON HICKEY COMPANY AND TRAVELERS INSURANCE COMPANY

Chancery Court for Lauderdale County
No. 11,070

No. W1999-00817-WC-R3-CV - Filed February 7, 2001

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 Plaintiff/Appellant, Tommie A. Drumwright, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM