IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
(June, 2000 Session)

INGRAM BOOK COMPANY V. REBECCA ROWLAND

Direct Appeal from the Chancery Court for Davidson County
No. 98-1573-III Ellen Hobbs Lyle, Chancellor

No. M1999-01233-WC-R3-CV - Mailed - August 14, 2000
Filed - November 14, 2000

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with Tenn. Code Ann. §50-6-225(e)(3) (1999) for hearing and reporting of findings of fact and conclusion of law. In this case, the employee contends the trial court erred in finding no causal connection between her injury and employment and no permanent partial disability. As discussed below, the panel has concluded that the evidence preponderates against the trial court's findings and reverses its decision.

Tenn. Code Ann. §50-6-225(e)(3) Appeal as of Right: Judgment of the Chancery Court Reversed and Remanded

TURNBULL, SP. J., delivered the opinion of the court, in which DROWOTA, J., and LOSER S. J. joined.

D. Russell Thomas and Herbert M. Schaltegger, Murfreesboro, Tennessee, for the appellant, Rebecca Rowland.

D. Brett Burrow and Delicia R. Bryant, Brewer, Krause & Brooks, Nashville, Tennessee, for the appellee, Ingram Book Company.

MEMORANDUM OPINION
Background

Rebecca Rowland ("Rowland"), the employee-appellant, is a forty-two years old mother of two who has been married for twenty-three years. She dropped out of school in the tenth grade but obtained her GED in 1984. She has worked at various unskilled jobs: Working as a waitress, cook and cashier; cleaning apartments; working as a housekeeper and supervisor for a hotel. Rowland worked for Ingram Book Company [Ingram], the employer-appellee, from 1993 to 1999. She first worked as an order puller, scanning books and placing them on shelves, and then worked as a shagger, locating books that order pullers could not locate. Her last job, prior to her alleged injury, was a job in which she was required to do forceful repetitive hand motions in cutting open cardboard boxes as well as dust mopping with a wide mop. After working in this last job four weeks, she developed carpal tunnel syndrome in April of 1997.

Rowland was also diagnosed as having hypothyroidism in November 1997 and has taken medication since December 1997. She returned to work after the surgery and worked for Ingram for one and a half years. Then she left Ingram because of her dissatisfaction with management practices. According to Rowland's own trial testimony, which is unimpeached and uncontradicted, she continued to have pain in her hands, wrists and arms and to have diminished strength in her hands with regard to gripping or twisting.

The parties submitted two medical depositions: the testimony of Dr. Martin and Dr. Gaw. Dr. David Martin, a plastic surgeon with additional training in carpel tunnel syndrome, first saw Ms. Rowland on June 19, 1997. Based on her complaints of numbness and pain, his clinical evaluation and the E.M.G. studies of Dr. Richard Lisella, Dr. Martin diagnosed bilateral carpel tunnel syndrome, greater on the left than on the right. He immediately scheduled Ms. Rowland for surgery on her left wrist which was performed on June 27, 1997. He prescribed a wrist splint for her right wrist, also on June 19, 1997. Dr. Martin released the employee to return to one-handed work on July 9,1997. Although the left wrist and hand were improved by surgery, the right handed symptoms increased with the one-handed work, and Dr. Martin scheduled and performed carpel tunnel release surgery on the right wrist on August 12, 1997. She was again released to return to one-handed duties on August 22, 1997. Some thirty-nine days after Ms. Rowland returned to work, Dr. Martin, on October 1, 1997, found that ... "her symptoms have completely resolved. She has mild, residual, right peri-incisional sensitivity which continues to improve." He kept a ten pound weight restriction in force for one month and opined that Ms. Rowland would retain a 0% [zero] permanent impairment. Dr. Martin treated Ms. Rowland under workers compensation, was paid for his services by workers compensation benefits provided by Ingram, and never made any medical note, nor does the record reveal he expressed any opinion, that the injury was not work related until he gave his deposition on July 1, 1999.

Dr. David Gaw, an orthopaedic surgeon, saw Ms. Rowland one time, February 20, 1998. His examination lasted thirty to forty-five minutes. At that time, Ms. Rowland was complaining of continued weakness, transient tingling, pain on repetitive use, and was found to have a positive Phalens test and slightly diminished perception to pin prick. Based upon the patient's history, Dr. Gaw expressed the opinion "most likely cause is the type of work she described down at Ingram Books." He further opined that there was "no real question as to causation" if her history is true. Dr. Gaw assigned a 10%impairment to each arm. Neither of the experts testified that the thyroid

condition caused Ms. Rowland's carpel tunnel syndrome, but they did agree that the thyroid condition may have pre-disposed her to , or increased her risk of developing carpel tunnel syndrome.

Ms. Rowland's testimony concerning her continued symptoms was supported by the lay testimony of her husband and seventeen year old son. Both lay witnesses confirmed that Ms. Rowland had not exhibited or complained of hand or wrist symptoms prior to her box-cutting job at Ingram.

In a seventeen page findings of fact and conclusions of law, the trial court found that Rowland had failed to carry her burden of proof to establish that her carpel tunnel syndrome was caused by her work at Ingram, or that here injury resulted in any permanent impairment. The trial court credited Dr. Martin's testimony over that of Dr. Gaw because [1] Dr. Martin was the treating physician, while Dr. Gaw only saw the employee one time; [2] Dr. Martin had added expertise in the area of carpal tunnel syndrome. Regarding causation, the trial court accepted Dr. Martin's opinion that he could not state with a reasonable degree of medical certainty that Ms. Rowland's carpal tunnel syndrome was related to her job activity. In addition, the trial court placed emphasis on the fact that Ms. Rowland had only performed the box-cutting maintenance job for three or four weeks before her symptoms appeared. The trial court was persuaded by the testimony of Dr. Martin as to impairment because he noted only minor symptoms on his last exam, October 1, 1997. Even though Dr. Gaw found increased symptoms on his exam of February 20, 1998, the trial court did not find his testimony persuasive largely because of his testimony that he would assign any person who made residual complaints a 10% permanent partial impairment.

In her findings of fact and conclusions of law, the chancellor's only specific or implied reference to the credibility of the employee was: "The court appreciates defendant's candor in testifying that she left Ingram not because of her carpal tunnel syndrome, but because of her dissatisfaction with practices there."

Issues

This case presents two issues for determination:

1. Did the trial court err in finding the employee's injury was not proven by a preponderance to have arisen out of or been caused by her employment?

2. Did the trial court err in failing to award some degree of disability to the employee?

Standard of Review

The standard of review by this Court in workers' compensation cases is *de novo* upon the record, accompanied by a presumption of the correctness of the factual findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. section 50-6-225[e] [Supp. 1995]; *Fink -v- Caudle*, 856 S.W.2d 952, 958 [Tenn. 1993]; *Spencer -v- Towson Moving and Storage, Inc.*.

922 S.W.2d 508, 509 [Tenn. 1996]. On issues involving questions of law, however, the Court is not bound by the presumption of correctness standard, but such issues are reviewed *de novo* without limitation. *Ridings -v- Ralph M. Parsons Co.*, 914 S.W.2d 79, 80 [Tenn. 1996]

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. *Hill -v- Eagle Bend Mfg., Inc.*, 942 S.W.2d 483, 487 [Tenn. 1997]. However, when the medical testimony is presented by deposition, as it was in this case, the reviewing Court is entitled to make its own independent assessment of the medical proof to determine where the preponderance of the evidence lies. *Henson -v- City of Lawrenceburg*, 851 S.W.2d 809, 812 [Tenn. 1993]; *Landers -v- Fireman's Fund Ins. Co.*, 775 S.W.2d 355, 356 [Tenn. 1989].

Causation

Recent decisions of the Supreme Court have made it abundantly clear that the Worker's Compensation Act must be liberally construed and any reasonable doubt as to whether an injury was caused by work, must be resolved in favor of the employee. *Hill -v- Eagle Bend Mfg., Inc.*, 942 S.W.2d 483 [Tenn. 1997]; *Reeser -v- Yellow Freight Systems, Inc.*, 938 S.W.2d 690 [Tenn. 1997] Medical testimony which is equivocal in nature may be sufficient to raise such a reasonable doubt as to causation where there is also lay testimony from which it reasonably may be inferred that the injury was caused by the work. Eg. *Reeser*, 692.

There are several reasons we find Dr. Martin's testimony regarding causation not especially persuasive. First, the hypothetical question to which Dr. Martin expressed his opinion that he could not state with reasonable medical certainty that Ms. Rowland's carpal tunnel syndrome was related to her job activity was both incomplete and misleading.[1] The nature of the work being performed by the employee prior to her symptoms was not accurately or fully described.

Second, he admitted he had no reason to disbelieve the employee in any way when she related her symptoms to her job activity.

---

[1] Q. Doctor, would you please assume for purposes of my next question that the facts that I related to you are true and accurate? If the proof in this case were to show that in April of 1997 Ms. Rowland began performing a new maintenance job at her employment which involved cutting down boxes and the use of a knife and things of that nature – some general sweeping, mopping, things of that nature, given the short time period in which we're talking about, are you able to state within a reasonable degree of medical certainty that her carpal tunnel syndrome is related to that type of job activity?

A. No.

Third, his opinion was expressed in the negative, he could not say with certainty that the work caused the injury, but he expressed no opinion that the injury was not caused by the work.

Fourth, Dr. Martin treated Ms. Rowland as a patient covered by worker's compensation medical benefits. Dr. Martin made no medical note, wrote no letter or other expression of opinion that the injury was not job related during his entire treatment of Ms. Rowland which included seven office visits and two surgeries. The first and only time Dr. Martin expressed the opinion that he could not relate the injury to the work was during his deposition. Query, if he really had a question as to causal relationship between injury and work, did not Dr. Martin have a duty to express that opinion before he performed surgery and caused the employer to expend substantial medical payments?

Against Dr. Martin's opinion weighs the clear and definite opinion of Dr. Gaw "the most likely cause is the type of work she described doing at Ingram Books," and there is "no real question as to causation" if her history is true. Both opinions were expressed with reasonable medical certainty.

In addition, the history related by the employee is not impeached or contradicted in the record. Neither is here any discrepancy in her testimony or that of the lay witnesses. The trial court made no statement nor implication in her findings of fact indicating that she found any lack of credibility. Therefore, we must conclude that the history given by the employee was true. From all the above, we find there is more than a reasonable doubt as to causation. Ms. Rowland proved by a preponderance of the evidence her injury was caused by her work.

Disability

We also conclude that the medical and lay evidence preponderates in favor of an award of disability to the employee. Since the medical witnesses testified by deposition, we are entitled to make our own assessment of the medical proof to determine where the preponderance of the evidence lies. *Henson -v- City of Lawrenceburg*, 851 S.W.2d 809, 812 [Tenn. 1993] We must make this assessment, however, in full light of any credibility findings of the trial court with reference to history or subjective findings related by witnesses who have testified in person before the trial court. Here, no adverse credibility findings have been interated or implied by the trial court.

We first note that Dr. Martin last saw Ms. Rowland on October 1, 1997, only 39 days after her second surgery. Dr. Martin had released the employee to return to one-handed work on August 22, 1997, and on September 8, 1997, he had released her to light duty using her right hand. On the date he expressed his opinion of zero percent impairment, October 1, 1997, Dr. Martin still had Ms. Rowland under a ten pound weight restriction and continued that restriction for one additional month. Dr. Gaw, on the other hand, saw Ms. Rowland on February 20, 1998, some six months after her right wrist surgery and almost eight months after her left wrist surgery. In the meantime, with use at work, the hand symptoms had become more pronounced. Both doctors testified that the full healing period and time for determination of whether scar tissue may cause additional symptoms is

between six to eighteen months. Accordingly, in this instance, the examining doctor was in a better position to determine what residual symptoms and disabilities would be retained by the employee.

In his testimony, Dr. Martin agreed that the symptoms Ms. Rowland described to Dr. Gaw, and later to the court at trial, would be inconsistent with a zero percent permanent impairment rating. He admitted that it was possible her condition could have deteriorated with activity after he last saw Ms. Rowland. Dr. Martin agreed if the symptoms Ms. Rowland had when last seen by Dr. Gaw were accurate, they did not "vary much at all" from the example on page 56 of the A.M.A. Guides to the evaluation of permanent impairment which called for the 10% permanent impairment to the arm assigned by Dr. Gaw. [2] Finally, Dr. Martin conceded that the post operative E.M.G. on the left wrist continued to show a distal motor latency of the left median nerve. All of these facts were taken into account by Dr. Gaw in assigning a ten percent permanent partial impairment to each arm. Dr. Gaw has added expertise in applying the A.M.A. Guides, in that he has been trusted by his profession to conduct seminars for other physicians on the appropriate application of the Guides. Since neither doctor made any additional rating based on loss of grip strength, the example of page 56 of the A.M.A. Guides [footnote 2] fits hand in glove with the residual symptoms suffered by Ms. Rowland. We find that the proof preponderates in favor of a 10% permanent partial impairment to each arm. We find no disparity in the qualifications of the medical experts.

The ultimate issue is not the extent of anatomical impairment, but that of vocational disability, "the percentage of which does not definitely depend on the medical proof regarding a percentage of anatomical disability." *Hill -v- Royal Ins. Co.*, 937 S.W.2d 873, 876 [Tenn. 1996]. In determining the extent of the worker's vocational disability, the court is to consider such factors as age, education, training, job skills, work experience and job opportunities in light of and in conjunction with any anatomical impairment and residual restrictions, e.g., *Perkins -v- Enterprise Truck Lines, Inc.*, 896 S.W.2d 123, 127 [Tenn. 1995].

Ms. Rowland's residual symptoms, although persistent, are not severe. She remains able to capably perform several of her prior work assignments, and was able to continue her work at Ingram for one and one-half years before she quit for other reasons. Ms. Rowland is 42 years old, has a tenth grade education, and completed her G.E.D. She is restricted in her ability to perform hand intensive activities such as continual gripping, squeezing or twisting with the hands. Considering all the

---

[2] "A 35-year-old forklift mechanic had a two-year history of median nerve compression in the right hand with abnormal results of median nerve conduction studies an abnormal electromyogram. Seven months after surgical decompression of the median nerve in the right carpal tunnel, followed by a change of occupation to salesman, the man's only symptoms were infrequent, transient episodes of numbness in the thumb and index finger after 40 minutes of driving. Examination showed a full range of movement of all joints and normal two-point discrimination sensory testing. Compared to the left hand, the right hand had a 60 percent strength loss index. The upper extremity impairment, due to mild residual carpal tunnel syndrome, is 10 percent or 6 percent of the whole person. No additional impairment is allotted for loss of grip strength."

pertinent factors, we find the evidence preponderates in favor of an award of vocational disability of thirty percent [30%] to both arms. Since the record does not contain her worker's compensation rate, we remand to the chancery court for calculation of the award and discretionary costs.

The costs on appeal are assessed to the appellees.

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

INGRAM BOOK COMPANY v. REBECCA ROWLAND

Chancery Court for Davidson County
No. 98-1573-III

No. M1999-01233-SC-WCM-CV - Filed November 14, 2000

ORDER

This case is before the Court upon motion for review filed by the appellant, Ingram Book Company, 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.

It appears to the Court that the motion for review should be granted for the purpose of reversing the Panel's ruling in part and remanding the case to the Davidson County Chancery Court for a determination of the workers' compensation award including the impairment rating. The Chancery Court shall rule within sixty days of this order. We also strongly encourage trial courts, when dismissing a workers' compensation case, to make alternative findings on the issue of disability to allow all issues to be addressed fully on appeal.

Costs of the appeal are taxed to the appellant, Ingram Book Company.

It is so ORDERED.

PER CURIAM

Drowota, J., not participating