IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
December 14, 2000 Session

ANSLEY DARLENE ELDRIDGE v. TRI-STATE COMPREHENSIVE CARE, CTR., ET AL.

Direct Appeal from the Chancery Court for Claiborne County
No. 12,417 Billy Joe White, Chancellor

No. E2000-00564-WC-R3 - Mailed - January 26, 2001
FILED: MAY 16, 2001

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 found the plaintiff had suffered a permanently disabling injury in the course and scope of her employment that rendered her permanently and totally disabled with a combined physical and psychological impairment of forty-five percent. We affirm the judgment of the trial court and remand the case thereto for entry of any order necessary to carry out the judgment set forth in this opinion.

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

JOHN K. BYERS, SR. J., delivered the opinion of the court, in which WILLIAM M. BARKER, J. and HOWELL N. PEOPLES, SP. J., joined.

B. Chadwick Rickman, Knoxville, Tennessee, for appellant, Tri-State Comprehensive Care Center.

Roger L. Ridenour, Clinton, Tennessee for appellee, Ansley Darlene Eldridge.

OPINION

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 findings, 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).

The defendant questions whether the evidence preponderates against the trial court's finding of permanent total disability; whether the applicable cap should be two and one-half times the impairment rating; whether the trial court erred in considering the psychiatric evidence. The plaintiff has requested sanctions be imposed against the defendant for an allegedly frivolous appeal.

FACTS

The plaintiff, age thirty-six at the time of trial, has an eleventh grade education and a general education diploma or GED. She is divorced with three children: ages seventeen, fourteen and six. She is a certified nursing assistant ("CNA"). Her work history includes data entry clerk, hostess in a restaurant, receptionist in a doctor's office and cashier.

Her duties with the defendant as a CNA included dressing, showering and feeding dependent patients at the defendant's facility. Prior to her injury, she had never missed any work; she had worked overtime, cared for her three children and cleaned her home, doing both inside and outside maintenance. Before her injury, she had never experienced back problems or seen a mental health professional.

On November 22, 1997, the plaintiff had finished showering a patient when she returned to the bathroom and slipped on some liquid soap that had leaked onto the floor from a defective soap dispenser. She fell and landed on her left side, injuring her back.

Following the injury, the plaintiff never returned to work without restrictions. Eventually she could not tolerate the work, and December 2, 1998, was the last day she worked.

MEDICAL EVIDENCE

Dr. Dennis G. Harris, M.D., a chronic pain management specialist, testified by deposition. Dr. Harris testified he first saw the plaintiff on May 26, 1998 at which time she was working light duty for the defendant. The plaintiff told him the position was very good, and she stated she felt competent doing the work. Dr. Harris performed a discograph which revealed a torn disc with leakage into the epidural space at L5-S1. He felt her pain was chronic in nature and felt she was not a good candidate for surgery; he did feel the plaintiff could work with accommodations. Dr. Harris deferred any questions regarding psychiatric impact to Dr. Catron.

Dr. Robert E. Finelli, M.D., a neurosurgeon, testified by way of deposition. Dr. Finelli treated the plaintiff for her back injury. He placed her at maximum medical improvement on July 8, 1999. He assessed a permanent medical impairment of twelve percent to the whole body. He testified the plaintiff could return to work but for the psychiatric concerns. He felt surgery might be beneficial but felt the plaintiff did not have the mental stability to understand the complexities of the surgery. He did link her condition to her work-related fall and opined she would not be able to return

to work. Eventually, Dr. Finelli referred the plaintiff to Dr. Catron.

Dr. Donald E. Catron, M.D., a psychiatrist, testified by deposition. Dr. Catron first saw the plaintiff on July 21, 1998. He diagnosed mild anxiety and a moderate impairment. He initially placed her at maximum medical improvement in May of 1999; however, he later changed his opinion, stating she had a Class III impairment and placed her maximum medical improvement at July 21, 1998, saying her condition had not changed since he first saw her. He assessed a permanent medical impairment of thirty-three percent; however, he acknowledged the rating was not according to the latest AMA Guidelines. He stated that at one time he felt the plaintiff would benefit from returning to work. On July 10, 1999, he took her off work until her court case had concluded–he did so at the plaintiff's request. He also testified the plaintiff would not likely be able to return to work.

DISCUSSION

The defendant offered no evidence in this case to refute the plaintiff's claims. Rather, the defendant relies upon the supposed weakness of the plaintiff's medical proof on the issue of lack of evidence to support a finding that the plaintiff is totally and permanently disabled, that the recovery should be less than the award given and that it should be limited by two and one-half percent of the medical impairment rating given for the injury to the plaintiff, in accordance with Tennessee Code Annotated § 50-6-241(a)(1).

When the medical testimony is presented by deposition, as it was in this case, this Court is able to make its own independent assessment of the medical proof to determine where the preponderance of the evidence lies. *Cooper v. INA,* 884 S.W.2d 446, 451 (Tenn. 1994); *Landers v. Fireman's Fund Ins. Co.,* 775 S.W.2d 355, 356 (Tenn. 1989).

We have reviewed the medical and non-medical evidence in this case and conclude the evidence that supports the ruling of the trial court is strong, not weak.

The defendant wishes to diminish the medical evidence of Dr. Catron because of some discrepancies in his testimony concerning an early opinion that the plaintiff could return to work, which he later determined she could not do. We do not find this to be significant.

We read Dr. Catron's testimony to be that the plaintiff's psychiatric condition continued to deteriorate with time because of the pain she suffered as a result of the physical injury.

The defendant further claims the rating of thirty-three percent permanent total medical disability found by Dr. Catron as a result of the psychiatric impairment should be disregarded because the AMA Guidelines no longer assign a specific percentage to mental disorder. These conditions are not capable of a usable degree of certainty according to the AMA Guidelines.

The trial judge did rely upon the thirty-three percent impairment rating testified to by Dr. Catron, however, a fair reading of Dr. Catron's testimony shows he in fact testified the plaintiff

would not likely be able to return to work. This testimony shows the plaintiff to be totally and permanently disabled without resorting to a numerical assessment. This is consistent with the testimony of Dr. Finelli, who did not think the plaintiff could return to work.

Beyond this, when the evidence establishes the plaintiff is totally and permanently disabled, the use of an outdated edition of the AMA Guidelines is not error. *See Davenport v. Taylor Feed Mill*, 784 S.W.2d 925 (Tenn. 1990).

The defendant's argument that the plaintiff should be limited to two and one-half times the medical impairment rating in this case is based upon the assertion that the plaintiff is not totally and permanently disabled and upon the fact she returned to work for about one year with the defendant.

To reach the result sought by the defendant, we would have to discard the testimony of Dr. Catron and find Dr. Finelli's twelve percent impairment rating for the physical injury was applicable. After doing this, we would then be required to find the defendant had a meaningful return to work in accordance with the holding in *Newton v. Scott Health Care Center*, 914 S.W.2d 884 (Tenn. 1995).

The evidence in this case shows the defendant tried diligently to keep the plaintiff employed. The failure of the defendant's effort was due to the pain which the plaintiff continued to suffer as a result of her physical injury, which led to her depression, which in turn led to her permanent disability. Although the defendant's conduct is laudable, as noted by the trial judge, the consequences of the plaintiff's condition resulting from the physical injury are inescapable, and the plaintiff is entitled to recover under the Workers' Compensation Act.

We find the defendant's appeal in this case presented a real issue to be determined by this Court;the appeal is not frivolous as the plaintiff claims. We, therefore, hold that sanctions against the defendant are not appropriate in this case.[1]

We affirm the judgment of the trial court and remand the case thereto for entry of any order necessary to carry out the judgment.

The cost of this appeal is taxed to the defendant.

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JOHN K. BYERS, SENIOR JUDGE

[1] The plaintiff is entitled to interest on the amount of accrued and unpaid benefits from the date of the judgment in the trial court.

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JUDGMENT ORDER

This case is before the Court upon motion for review filed by the appellant, Tri-State Comprehensive Care Center, 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.

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 are taxed to the defendant-appellant, Tri-State Comprehensive Care Center, and its surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

Barker, J., not participating