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

# PHILIPS CONSUMER ELECTRONICS COMPANY v. KATHY A. JENNINGS

**Direct Appeal from the Circuit Court for Knox County**
**No. 1-222-98 Dale C. Workman, Judge**

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**No. E2000-00791-WC-R3-CV - Mailed - February 23, 2001**
**FILED: April 4, 2001**

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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. This workers' compensation suit was instituted by the employer. The trial judge found the employer should pay all medical care necessary for the treatment of an injury at work, that no temporary total benefits were owed, and that the employee suffered no permanent disability. We affirm the judgment of the trial court.

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

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

Jeffrey A. Cobble, Greeneville, Tennessee, for the appellant, Kathy A. Jennings.

Arthur G. Seymour, Jr, Knoxville, Tennessee, for the appellee, Philips Consumer Electronics Company.

## 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 trial judge found the employer should pay all medical care necessary for the treatment of an injury at work, that no temporary total benefits were owed, and that the employee suffered no permanent disability. The employee argues the evidence preponderates against the finding that she suffered no permanent partial disability and that the trial judge erred in allowing medical records to be introduced and used as evidence.[1]

## FACTS

The employee, age forty-eight at the time of trial, is the mother of two children and has a high school diploma. She was employed by the employer beginning in 1972. She began as a Grade 4 assembly line worker and eventually was promoted to a Grade 7 stock person. In addition to stockroom work, she assisted in receiving. Both jobs required the use of a forklift.

On January 4, 1995, the employee was injured on the job–the employer has stipulated to the injury. The employee was finishing her shift when she was caught in a set of malfunctioning automatic doors, causing her to fall on her knees, which had been previously injured in a workplace fall on snow and ice in 1985.[2] She was battered several times by the doors before other employees were able to pull her away. A supervisor witnessed the accident and filled out the First Report of Injury. The employee almost immediately began to experience soreness and stiffness, which worsened two hours after the accident.

The employee received medical care from the company nurse and company doctors; she was unhappy with this treatment and sought her own medical treatment for which she or her insurance paid. The employee's physicians testified that her continuing symptoms of pain and disability resulted from the accident; however, the employer's physicians indicated that all problems associated with the injury had resolved completely.

## MEDICAL EVIDENCE

Dr. Kenneth Mathews, M.D., a physician for Takoma Hospital Occupational Medicine Services (a facility chosen by the employer to treat injured workers), whose records were introduced, saw the employee the day following the accident. The x-rays showed no fracture of the knee. Three months after the accident, the employee began to complain of neck pain. Dr. Mathews diagnosed the neck pain as chronic and concluded it was doubtful that the condition was related to the January work-related injury. Dr. Mathews ordered spinal x-rays which were normal but did not perform an MRI, which could have indicated bulging or herniated discs. His report indicates the employee complained of lumbar pain with tingling in her toes. Dr. Mathews noted the employee exhibited a

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[1] The employee raised several sub-issues which we do not need to set out here.

[2] The employee had also suffered injury to the same knee in a 1986 car accident. She admitted at trial that the knee had bothered her to some extent since that fracture injury and it "always felt funny."

limited range of motion on direct examination but quite the opposite on indirect examination.

Dr. David Buckman, M.D., an orthopedic physician whose findings entered the record through his reports on the employee saw the employee and noted she continued to complain of back pain, neck pain and headaches that interfered with sleep. He stated he "doubted the relationship of the pain to the January injury."

Dr. Jim C. Brasfield, M.D., a treating neurologist whose findings entered the record through his reports on the employee first examined the employee on May 10, 1996, for purposes of evaluating her January 5, 1995, work-related injury. He diagnosed cervical strain and recommended non-steroidal anti-inflammatories. During his examination, Dr. Brasfield noted the employee's neck showed no cervical spasm and her range of motion was good. He found nothing to restrict her activities and found she could continue to work. He also examined the employee on October 25, 1996, and noted he saw no reason why she could not work full-time without restrictions. Dr. Brasfield noted in subsequent visits that he could see no reason for restricting the employee's activities.

**The Employee's Physicians**

Dr. Richard Aasheim, M.D., is a family physician, who testified through deposition that he followed the employee and referred her to a specialist. He indicated the employee's symptoms were consistent with the work-related accident. He also treated the employee for anxiety and depression, which he felt were exacerbated by the workplace incident. Dr. Aasheim did not determine any impairment for the employee.

Dr. Bob Hartman, is a chiropractor who first saw the employee on May 9, 1995, at which time she complained of cervical and lumbar pain. X-rays were taken and reviewed and spinal adjustments made. The employee saw Dr. Hartman four times over the next ten days and reported improvement. However, on May 26, 1995, she indicated she had suffered a jarring incident when the forklift she was using at work ran into a hole, causing her to experience additional pain between her shoulder blades and in her neck. On June 10, 1995, Dr. Hartman's examination revealed low back pain, neck pain, and taut and tender fibers on the employee's left side. Additional visits were prompted by continued pain in the employee's lower back and neck. Dr. Hartman's records revealed the employee's chief complaints were headaches, cervical pain, left hip pain, and lumbar pain, varying according to work schedule, work environment, routine and daily job demands. The employee was not restricted from her work duties and missed no work.

Dr. William Kennedy, M.D., is an orthopedic surgeon who testified by deposition. He examined the employee and felt her behavior was consistent with malingering and symptom magnification. He did indicate the employee had suffered an eleven percent impairment to the whole body due to her back condition, twelve percent due to the neck and twenty-two percent when the ratings were combined. Dr. Kennedy, like Dr. Mathews, noted limited range of motion on direct examination but not on indirect examination.

Dr. John Hamilton, a chiropractor, testified at trial that the employee was not malingering or engaging in symptom magnification; he stated the employee was a believable patient. Dr. Hamilton's report indicated causation and relatedness to the work-related injury. He diagnosed cervical strain/sprain; general upper extremity pain and numbness; cervicogenic headaches; and periodic sciatica. Dr. Hamilton did not assign a medical impairment rating tor the employee's injury.

**Independent Medical Examiner/Employer**

Dr. Neal Jewell, M.D., an orthopedic doctor, performed an independent medical exam at the behest of the employer. He examined the employee and performed x-rays approximately seven months after the work-related injury. He found abnormalities at C-6 and C-7 and mild spondylosis; however, he found no evidence of nerve impingement. He concluded the employee's cervical sprain had resolved, as had her lumbar strain, and he felt the employee had returned to pre-injury status.

Overall, evidence from one of the employer's doctors and from two of the employee's doctors indicated the employee was magnifying her symptoms.

## DISCUSSION

Little discussion on the weight of the testimony is needed in this case. The medical evidence contained in the record and set out in the trial court's opinion is sufficient to show the reasons for the findings of the trial court and our determination that the evidence does not preponderate against the trial court's judgment.

Conflicting opinions were expressed by the physicians for the employer and employee. However, only one of the physicians, Dr. Kennedy, assigned any medical impairment rating to the employee as a result of the injury.

In weighing the medical testimony of various experts, the trial judge may accept the opinion of one or more medical experts over the testimony of other experts. *Johnson v. Midwesco, Inc.*, 801 S.W.2d 804 (Tenn. 1990).

The trial court made extensive findings of fact based on the medical evidence. Clearly the trial judge conscientiously weighed the medical testimony presented by both the employer's and the employee's experts. Based upon this in-depth weighing of the evidence, the trial judge made a well-reasoned determination regarding where the greater weight of the medical evidence lay. The trial judge did not, as the employee asserts, become a medical expert and substitute his opinion as to medical matters. What the trial judge did was determine where the weight of the medical evidence lay. That is the trial judge's function.

**Entry of Medical Records into Evidence**

Counsel for the employee goes into great detail about how the employee was wronged by the introduction of medical records into this case in lieu of a deposition or in person testimony.

The employee was represented by another attorney prior to the entry of current counsel in this case. The employer's attorney and the employee's first attorney stipulated the records could be introduced as evidence. The records were filed in the trial court in December 1998, well before the trial of this case, which appears to have been held on November 22, 1999. The employee's current counsel officially entered the case on October 12, 1999, when an order of substitution of counsel was entered.

The employee's counsel does not show that he raised any objection to these records prior to trial nor did he make any effort to depose or otherwise cause any of the physicians whose reports were in the record to testify in person in this case. Furthermore, at the time the records were moved into evidence, the employee's counsel responded that he had not seen them. He did not, however, object to their entry into evidence.

The employee's counsel assigns a variety of criticisms to the conduct of the trial judge in reaching his conclusions in this case. None of the criticisms have any merit, as the record clearly shows. We reject each of them based upon their total lack of support in the record.

The cost of the appeal is taxed to the employee.

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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 employee, Kathy A. Jennings and surety Jeffrey A. Cobble, for which execution may issue if necessary.

04/043/01