

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
May 24, 2001 Session

JANICE NEWMAN v. SNAP-ON INCORPORATED

**Direct Appeal from the Chancery Court for Washington County
No. 32825 Thomas J. Seeley, Jr, Judge**

**No. E2000-02531-WC-R3-CV - Mailed - July 3, 2001
FILED: September 27, 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 trial court awarded the plaintiff benefits based on a finding of 22 ½ percent impairment. We affirm.

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

WILLIAM H. INMAN, SR. J., delivered the opinion of the court, in which WILLIAM M. BARKER, J. and JOHN K. BYERS, SR. J., joined.

Steven H. Trent and Timothy B. McConnell, Johnson City, Tennessee, for the appellant, Snap-On Incorporated.

Howell H. Sherrod, Johnson City, Tennessee, for the appellee, Janice Newman.

OPINION

The plaintiff alleges that she injured her low back during the course of her employment on June 24, 1998 which resulted in a surgical correction followed by permanent impairment. The defendant raised the issue of causation, alleging that the plaintiff's condition was the result of degenerative disc disease, not work-related.

The trial court found that the plaintiff suffered a compensable injury as alleged, as a result of which she sustained a 9 percent impairment, entitling her to an award of 22 ½ percent.

The employer appeals, insisting that the judgment is contrary to the preponderance of the evidence and presents this issue for review. The plaintiff presents for review the issues of (1)

whether the trial court erred in allowing the employer to pay medical expenses under the health insurance policy, (2) whether the trial court erred in allowing the employer credit for money paid under the plaintiff's absence and sickness policy, and (3) whether the court erred in failing to award attorney fees to plaintiffs' attorney for resisting a motion to have the plaintiff examined in Knoxville.

Appellate review is *de novo* on the record with the presumption that the judgment is correct unless the evidence otherwise preponderates. Rule 13(d) T.R.A.P.

The plaintiff is 54 years old, with two years of college. She had been employed at Snap-On for 15 years when she suffered an injury to her back on June 24, 1998. She was taken to a clinic which apparently prescribed a quantity of narcotic medications. She then saw Dr. Richard Duncan, who told her that she had a pulled muscle. She continued on various narcotic medication, not prescribed by Dr. Duncan. Her family physician then referred her to Dr. Robert Hines, a neurosurgeon, whom she saw on June 17, 1999. She attended a pain clinic, and was placed on light-duty work. Eventually, Dr. Hines diagnosed a herniated disc which he corrected by a surgical procedure. She continues her light-duty employment.

Medical Evidence

Dr. Richard Duncan, orthopedic surgeon, testified that he first saw the plaintiff on June 26, 1998 when she complained of back pain. He diagnosed her condition as a lumbar strain. On July 31, 1998, he saw her again and observed her range of motion from which he suspected a magnification of symptoms. He advised her to avoid the emergency room for narcotic medications, and to continue her light-duty employment. He saw her again on November 5, 1998 and reviewed a CT scan which showed some degenerative changes but did not reveal a herniated disc. He found no permanent impairment.

Dr. Robert Hines, a neurosurgeon, testified that he saw the plaintiff on June 17, 1999 when she complained of back pain of one year's duration. He ordered an MRI scan which revealed a small lateral herniation which he believed, from the history taken, was work related. She continued to have pain in her low back and right leg and surgery was performed on December 17, 1999. She responded well, and was released to return to work on February 7, 2000. He opined that she had a 9 percent permanent partial impairment.

Analysis

The thrust of the employer's argument is directed to the reports and testimony of Dr. Hines, who, on a form submitted in support of a claim by the plaintiff for benefits under a health and sickness policy, stated, by agent, that the plaintiff's injury did not arise out of her employment. He testified, as heretofore stated, that her injury was work-related with a resultant impairment. For whatever reason, Dr. Hines was not questioned about the divergent statements and we will not further notice this issue. Suffice to state that the trial judge weighed all the evidence and was at liberty to accord greater weight to the opinion of Dr. Hines than to the opinion of Dr. Duncan. The

record reveals no reason why this finding should be disturbed. *See Kellerman v. Food Lion, Inc.*, 929 S.W.2d 333 (Tenn. 1996).

The plaintiff's first issue is whether the court erred in "allowing the defendant to pay medical bills under the health insurance policy." Since the plaintiff prevailed on this issue, we do not further notice it.

The plaintiff's second issue is whether the court erred in allowing the employer credit for money paid under the accident and sickness policy. This issue is not briefed by the plaintiff and we are referred to no authority on the point.

The plaintiff's third issue is whether the trial judge erred in failing to award a fee to her attorney in resisting the motion for an independent medical examiner. The motion of the plaintiff for an attorney's fee was summarily denied by the trial judge. Such denial was entirely proper.

The judgment is affirmed at the costs of the appellant, Snap-On Incorporated.

WILLIAM H. INMAN, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

JANICE NEWMAN, Appellee v. SNAP-ON INCORPORATED, Appellant

**Chancery Court for Washington County
No. 32825 Thomas J. Seeley, Judge**

**No. E2000-02531-WCM-R3-CV
FILED: SEPTEMBER 27, 2001**

JUDGMENT

This case is before the Court upon Applicant's motion for review 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; 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 will be assessed to the Appellant Snap-on Incorporated for which execution may issue if necessary.

PER CURIAM

Barker, J., not participating