

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
August 20, 2001 Session

REGINA ANN THOMPSON v. VIVRA RENAL CARE, INC.

**Direct Appeal from the Chancery Court for Obion County
No. 20,771 William Michael Maloan, Chancellor**

No. W2000-03017-WC-R3-CV - Mailed November 5, 2001; Filed December 11, 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. Although the only issue at trial was the extent of the employee's permanent disability, the employer contends in this appeal the evidence preponderates against the trial court's findings as to causation and permanency. The panel has agreed to address the issues on appeal and, as discussed below, concluded the judgment should be affirmed.

**Tenn. Code Ann. § 50-6-225(e) (2000) Appeal as of Right; Judgment of the Chancery Court
Affirmed**

JOE C. LOSER, JR., SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and ROBERT L. CHILDERS, SP. J., joined.

John D. Burlison and V. Latosha Mason, Jackson, Tennessee, for the appellant, Vivra Renal Care, Inc.

Mary Dee Allen, Cookeville, Tennessee, and George L. Morrison, III, Jackson, Tennessee, for the appellee, Regina Ann Thompson

MEMORANDUM OPINION

The employee or claimant, Regina Ann Thompson, is a licensed practical nurse. She began working for the employer, Vivra Renal Care around September 1995 in its dialysis clinic. She is also trained in the care of HIV positive and hepatitis patients. Approximately two years after beginning work for the employer, she was required to perform a treatment on an HIV positive, hepatitis infected patient. She followed the usual precautions of donning two pairs of gloves, two pairs of shoes, a coat and a cap, then began the treatment in a room secluded from other patients. After she

removed the needle from the patient, the patient made an unexpected move and the claimant accidentally stuck herself in the thumb with the dirty needle.

Although tests conducted soon after the accident reflected no evidence of infection, she received a notice from the Obion County Health Department that a letter from the Shelby County Health Department indicated that she was HIV positive. She later learned that the letter was intended for someone else with the same or similar name and that she was not infected. The tests had been conducted in Shelby County. She was given literature to read and advised of organizations available to her as her disease progressed. She became anxious about her condition and her family and other personal relationships suffered.

Her attorney referred the claimant to Dr. Elias King Bond, a psychiatrist, who established both medical causation and permanency. The record contains no countervailing medical or lay proof. At the time of the trial the claimant was taking prescription antidepressant medication. She is now working for a different employer but becomes squeamish at the sight of blood and in the use of needles.

The trial court awarded, inter alia, permanent partial disability benefits based on 15 percent to the body as a whole. Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225 (e)(2). This tribunal is not bound by the trial court's findings but instead conducts an independent examination of the record to determine where the preponderance lies. Galloway v. Memphis Drum Serv., 822 S.W.2d 584, 586 (Tenn. 1991). Where the trial judge has seen and heard the witnesses, especially if issues of credibility and weight to be given oral testimony are involved, considerable deference must be accorded those circumstances on review, because it is the trial court which had the opportunity to observe the witnesses' demeanor and to hear the in-court testimony. Long v. Tri-Con Ind., Ltd., 996 S.W.2d 173, 178 (Tenn. 1999). The appellate tribunal, however, is as well situated to gauge the weight, worth and significance of deposition testimony as the trial judge. Walker v. Saturn Corp., 986 S.W.2d 204, 207 (Tenn. 1998). The extent of an injured worker's vocational disability is a question of fact. Story v. Legion Ins. Co., 3 S.W.3d 450, 456 (Tenn. 1999).

The employer argues that the mental injuries are compensable only if they can be traced to an identifiable, stressful, work-related event producing a sudden mental stimulus such as fright, shock or excessive unexpected anxiety, citing Batson v. Cigna Property and Cas. Co., 874 S.W.2d 566, 569 (Tenn. 1994). However, mental and nervous illnesses are also compensable when causally connected to a work-related accident. Gentry v. Dupont, 733 S.W.2d 71, 73 (Tenn. 1987). The employer argues that Dr. Bond's report does not establish permanency. From our independent examination of Dr. Bond's report, we disagree.

For the above reasons and because the evidence fails to preponderate against the findings of the trial court, the judgment is affirmed. Costs are taxed to the appellant.

JOE C. LOSER, JR.

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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 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 Appellant, Vivra Renal Care, Inc., for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM