IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
June 3, 2002 Session

KECIA L. HILL v. CALSONIC YOURZU CORPORATION, ET AL.

Direct Appeal from the Circuit Court for Warren County
No. 9217 Charles D. Haston, Judge

No. M2001-01314-WC-R3-CV - Mailed - July 23, 2002
Filed - August 26, 2002

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) for hearing and reporting of findings of fact and conclusions of law. In this appeal, the employer contends the evidence preponderates against the trial court's finding of a permanent injury related to the claimant's incident at work and the award of seven and one-half percent disability to the body. As discussed herein, the panel has concluded the judgment should be affirmed.

Tenn. Code Ann. § 50-6-225(e) (2001 Supp.) Appeal as of Right; Judgment of the Circuit Court Affirmed

JOE C. LOSER, JR., SP. J., delivered the opinion of the court, in which FRANK F. DROWOTA, III, C. J., and TOM E. GRAY, SP. J., joined.

Mary B. Little and Timothy B. Pirtle, McMinnville, Tennessee, for the appellants, Calsonic Yorozu Corporation and ITT Specialty Risk Services, Inc.

Eric J. Burch, Manchester, Tennessee, for the appellee, Kecia Hill

MEMORANDUM OPINION

The employee or claimant, Kecia Hill, is thirty-seven years old and has a high school education, one semester of college, and a CDL license in welding. Most of her work experience has been in factory production, which involves repetitive motions.

On September 30, 1996, while running an assembly line for the employer, the claimant was hit on the head by an eight to twelve pound metal part. The metal part fell out of a basket that was three feet above the claimant's head. The impact of the metal part addled the claimant, causing her to report the accident to another employee. The next day the claimant was seen by Dr. Bryan Chastain. Dr.

Chastain ran a CT scan and diagnosed her with a concussion. He prescribed medicine for pain and dizziness. Thereafter, the claimant sought additional medical attention from a neurologist, Robert Weiss, who ordered another CT scan. Dr. Weiss did not restrict the claimant's activities or diagnose her with a permanent injury. Subsequently, the claimant was evaluated by another neurologist, W. Garrison Strickland. Dr. Strickland did not find the claimant's injury to be a permanent partial impairment, but referred her to a neurological therapy center for evaluation.

On June 3, 1997, Dr. Richard Thomasson, a family practitioner, performed a neurological and physical evaluation of the claimant. Dr. Thomasson concluded the claimant would retain a five-percent permanent impairment as a result of her persistent headaches and pain in the distribution of the trigeminal nerve. The claimant's symptoms included nausea, dizziness, unsteadiness, headaches, and a numb/tingling feeling on the left side of her head and face. During the course of her evaluation with Dr. Thomasson, the claimant did not report that she had a history of headaches prior to her work injury.

At the time of the trial, the claimant continued to have problems with dizziness when she turned or moved too quickly. In addition, she lacked sensation on parts of her facial area and experienced numbness. This condition had not improved since the accident and the injury slowed her down at her new job as a delivery person for Robert Seeding and Sod. When the claimant experienced dizzy spells, she had to stop for a few minutes to get her bearings.

From the above summarized evidence, the trial court awarded permanent partial disability benefits based on seven and one-half percent to the body as a whole. Our review is de novo accompanied by a presumption of correctness unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2).

By Tenn. Code Ann. § 50-6-241(a)(1), where an injured person is eligible to receive permanent partial disability benefits, the maximum permanent partial disability award that the employee may receive is two and one-half times the medical impairment rating. In making such impairment determinations, the court should consider all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's disabled condition. Id.

The determining factor in this case is the weight given to the testimony of the treating and evaluating physicians. Such determinations are within the discretion of the trial judge. Kellerman v. Food Lion, 929 S.W.2d 333, 335 (Tenn. 1996). The trial court has the discretion to accept the opinion of one medical expert over another medical expert. Johnson v. Midwesco, Inc., 801 S.W.2d 804, 806 (Tenn. 1990).
No rule or law requires the trial court to accept the testimony of a treating physician when there is conflicting testimony by an evaluating physician as to the degree of permanent impairment. In Orman v. Williams Sonoma, Inc., this court explained that "when medical testimony differs, the trial judge must obviously choose which view to believe." 803 S.W.2d 672, 676. We are not inclined to discredit the finding of the trial judge unless there are circumstances inherent in the testimony

which convince us that the opinion is not reliable.

The employer argues that the medical proof preponderates against the trial court's findings that Hill suffered a permanent work injury. The employer relies heavily on the diagnosis of Dr. Strickland, the claimant's treating physician who concluded that the injury resulted in no permanent partial impairment. The employer contends that Dr. Strickland's diagnosis is supported by the rehabilitative assessment that the employer received from a neurological therapy center. This assessment contained inconsistencies that led Dr. Strickland to conclude that no objective evidence of neurologic disease existed even though the claimant complained of subjective symptoms.

The employer further contends that Dr. Thomasson's opinion is not entitled to as much weight as the treating neurologists' opinion because Dr. Thomasson is only a family practitioner. The employer adds that Dr. Thomasson's opinion does not pass the threshold test of expert testimony because Hill did not reveal her prior history of headaches, dizziness, and CT scans to Dr. Thomasson.

We find the employer's arguments highly problematic. First, the fact that Dr. Thomasson is only a family practitioner is not particularly relevant in this case. As demonstrated in Johnson, the trial court may use its discretion when deciding which expert opinion to accept. Further, we find no rule or law that prevents a trial court from accepting the opinion of a general practitioner over that of a specialist.

Finally, the employer asserts that the claimant's oral testimony discredits her complaint of a permanent injury. We note, however, that it does not necessarily follow that the claimant does not have the impairment rating that Dr. Thomasson diagnosed her with merely because she engaged in physical activities such as softball and was a delivery person in her new job. In addition, Dr. Strickland stated in his deposition that, although he disagreed with Dr. Thomasson's medical opinion, a blow such that the claimant described *could conceivably* cause damage to the trigeminal nerve which could result in numbness. These factors, coupled with Dr. Thomasson's testimony, discredit the employer's assertion that the medical proof in this case preponderates against the trial court's finding that the claimant suffered a permanent injury. Therefore, the trial court properly used its discretion in basing its ruling on Dr. Thomasson's testimony. The employer presents no compelling reason for us to disturb that conclusion.

Based on the foregoing and the record as a whole, we affirm the judgment of the trial court. Costs on appeal are taxed to the appellants, Calsonic Yorozu Corporation and ITT Specialty Risk Services, Inc.

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 will be paid by the appellants, Calsonic Yorozu Corporation and ITT Specialty Risk Services, Inc., for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM