

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
August 26, 2002 Session

LENDA T. MCCLAIN v. HOLIDAY RETIREMENT CORPORATION

**Direct Appeal from the Circuit Court for Montgomery County
No. 50000321 John H. Gasaway III, Judge**

**No. M2001-02850-WC-R3-CV - Mailed - October 11, 2002
Filed - November 12, 2002**

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 plaintiff appeals the judgment dismissing her suit for benefits she attributes to an injury sustained during the course and scope of her employment. Following the presentation of her evidence, the court granted the defendant's Rule 41.02 Motion for Involuntary Dismissal upon a finding that she failed to carry her burden of proving an accidental injury arising out of employment sufficient to establish a prima facie case of entitlement to benefits. The dispositive issue on appeal is whether the involuntary dismissal was appropriately granted.

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

WILLIAM H. INMAN, SR. J., delivered the opinion of the court, in which ADOLPHO A. BIRCH, JR., J. and JOE C. LOSER, SP. J., joined.

William L. Underhill and Michael L. Underhill, Madison, Tennessee, for the appellant, Lenda T. McClain.

Richard C. Mangelsdorf, Jr., and Mark W. Honeycutt, II, Nashville, Tennessee, for the appellee, Holiday Retirement Corporation.

MEMORANDUM OPINION

I.

The plaintiff was employed as co-manager, with her husband, of a retirement facility. In addition to a salary, she and her husband were provided an apartment in the facility together with

meals and utilities. The circumstances of the termination of her employment are not entirely clear, but we deduce that she was fired after requesting a transfer to another facility. She returned to her apartment to pack her belongings preparatory to vacating the premises and injured her back while packing personal books.

The trial judge found that the plaintiff did not sustain an on-job injury because it occurred while she was moving her personal belongings, a task not contemplated as part of the job duties of a co-manager for the retirement facility.

II.

Appellate review is *de novo* upon the record of the trial court, accompanied by a presumption of correctness of factual findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). The panel is not bound by the trial court's findings but conducts an independent examination of the evidence to determine where the preponderance of the evidence lies. *Wingert v. Government of Sumner County*, 908 S.W.2d 921, 922 (Tenn. Sp. Workers' Comp. 1995). 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, 177 (Tenn. 1999). The appellate tribunal, however, is as well situated to gauge the weight, worth and significance of deposition testimony as the trial judge. *Orman v. Sonoma, Inc.*, 803 S.W.2d 672, 676-77 (Tenn. 1991).

In the case of a motion for involuntary dismissal pursuant to Tenn. R. Civ. P. 41.02(2),¹ the trial court must impartially weigh and evaluate the evidence as it would after the presentation of all the evidence and must deny the motion if the plaintiff has made out a prima facie case. *See, Smith v. Inman Realty Co.*, 846 S.W.2d 819 (Tenn. Ct. App. 1992). Dismissal at the close of a worker's compensation claimant's proof is rarely appropriate inasmuch as a reversal of the trial court's ruling results in additional proceedings and additional delay. Instead, trial courts should hear the entire case and make appropriate findings of fact, and alternative findings when necessary, for appellate review. *See, Cunningham v. Shelton Sec. Service, Inc.*, 46 S.W.3d 131 (Tenn. 2001).

¹ After the plaintiff, in an action tried by the court without a jury, has completed the presentation of plaintiff's evidence, the defendant, without waiving the right to offer evidence in the event the motion is not granted, may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court shall reserve ruling until all parties alleging fault against any other party have presented their respective proof-in-chief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence; in the event judgment is rendered at the close of plaintiff's evidence, the court shall make findings of fact if requested in writing within three (3) days after the announcement of the court's decision. Tenn. R. Civ. P. 41.02(2).

III.

As stated in *Cunningham, supra*,

In order to be eligible for workers' compensation benefits, an employee must suffer an "injury by accident arising out of and in the course of employment which causes either disablement or death. . . . "Tenn. Code Ann. § 50-6-102(12) (1999). The statutory requirements that the injury "arise out of" and occur "in the course of" the employment are not synonymous. See *Sandlin v. Gentry*, 201 Tenn. 509, 300 S.W.2d 897, 901 (1957). An injury occurs "in the course of" employment if it takes place while the employee was performing a duty he or she was employed to perform. *Fink v. Caudle*, 856 S.W.2d 952, 958 (Tenn. 1993). Put another way, the injury must have substantially originated from the 'time and space' of work, resulting in an injury directly linked to the work environment or work-related activities." *Harman v. Moore's Quality Snack Foods*, 815 S.W.2d 519, 527 (Tenn. Ct. App. 1991) (citation omitted). Thus, the course of employment requirement focuses on the time, place and circumstances of the injury. *Hill v. Eagle Bend Mfg., Inc.*, 942 S.W.2d 483, 487 (Tenn. 1997).

In contrast, "arising out of" employment refers to "cause or origin." *Id.* An injury arises out of employment "when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. *Fink v. Caudle*, 856 S.W.2d 958 (Tenn. 1993).

It is clear from the testimony of the plaintiff that she was not performing a duty related to her employment responsibilities. Packing her personal belongings in her private apartment was a personal mission performed off-duty and for her own benefit. She was not rendering a service for her employer and thus her injury did not occur in the course of employment. *Fink v. Caudle, supra*; *Travelers Ins. v. Googe*, 397 S.W.2d 368 (Tenn. 1965); *Legions v. Liberty Mutual Ins. Co.*, 703 S.W.2d 620 (Tenn. 1986). This conclusion results from the plaintiff's testimony, and we therefore cannot hold that the evidence preponderates against the judgment, giving due consideration to the caveat expressed in *Cunningham, supra*.

The judgment is affirmed at the costs of the appellant.

WILLIAM H. INMAN, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL

LEND A T. MCCLAIN v. HOLIDAY RETIREMENT CORPORATION

**Circuit Court for Montgomery County
No. 50000321**

No. M2001-02850-WC-R3-CV - Filed - November 12, 2002

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 appellant, Lenda T. McClain, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM