

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
April 21, 2003 Session

BONNIE GROSS v. ST. THOMAS HOSPITAL, ET AL.

**Direct Appeal from the Chancery Court for Davidson County
No. 99-2348-I Irvin Kilcrease, Chancellor**

**No. M2002-02107-WC-R3-CV - Mailed - December 23, 2003
Filed - March 26, 2004**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. Section 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The plaintiff, employee, appeals from a judgment in favor of the defendant, employer, which found employee's present medical condition and injury to her cervical spine was not a continuation of her original injury of January 18, 1999. The court, therefore, denied employee's claim for medical benefits and an increase in vocational disability. We affirm the judgment of the trial court.

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

ALLEN W. WALLACE, SR. J., delivered the opinion of the court, in which ADOLPHO A. BIRCH, JR., J. and JOE C. LOSER, JR., SP. J., joined.

Gregory Lee Groth, Cookeville, Tennessee, for appellant, Bonnie Gross

David Randall Mantooth, Nashville, Tennessee, for appellee, St. Thomas Hospital

MEMORANDUM OPINION

FACTS

On January 18, 1999, employee, a Licensed Practical Nurse, injured her neck when she helped a patient into a wheelchair. As a result of this injury, she was treated by Dr. Stanley Chunn and Dr. M. Robert Weiss operated on the C6-7 level only, and did not perform surgery on the C5-6 level.

On August 19, 1999, employee and employer, St. Thomas Hospital, filed a joint petition in the trial court seeking approval of a workers' compensation settlement agreement. Under the agreement, employee received a 20% permanent partial disability benefit and future authorized, necessary, and reasonable medical benefits relating to the injury. Employee continued to have neck pain and on a scale of 1 to 10, her pain was approximately a 4.

These were left side symptoms about 5 months after reaching maximum medical improvement. She then went to work with Home Care Solutions, and was doing repetitive work and her pain increased to 10 on a scale of 1 to 10. This was in March, 2000. Employer denied her application for benefits, and she then went back to Dr. Chunn who referred her to Dr. Leonardo Rodriguez Cruz, who performed surgery on C5-6 which relieved her pain and she went back to a pain level of 4 on a scale of 1 to 10.

This controversy has developed into differences among medical experts. Dr. Chunn, Dr. James B. Talmage and Dr. Cruz testified that the employee's medical condition is a continuation of her injury of January 18, 1999. Dr. Chunn is Board certified in internal medicine, and employee is employed as a nurse in his office. Dr. Cruz and Dr. Weiss are neurosurgeons. Dr. Talmage is also a neurosurgeon, and performed an independent medical evaluation on employee.

Dr. Weiss opined that employee's condition was not related to her injury of January 18, 1999, but was the result of a new injury or some other cause.

ANALYSES

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) (2002 Supp.). The reviewing court is required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. *Winegert v. Government of Sumner County*, 908 S.W.2d 921, 922 (Tenn. 1995). The standard of review of findings of fact by a trial court requires the Special Workers' Compensation Appeals Panel to examine in depth a trial court's factual findings and conclusions. *GAF Bldg. Materials v. George*, 47 S.W.3d 430, 432 (Tenn. 2001). 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 trial court's findings with respect to credibility and weight of the evidence may generally be inferred from the manner in which the court resolves conflicts in the testimony and decides the case. *Tobitt v. Bridgestone/Firestone, Inc.*, 59 S.W.3d 57, 61 (Tenn. 2001). Where the medical testimony in a workers' compensation case is presented by deposition, the reviewing court may make an independent assessment of the medical proof to determine where the preponderance of the proof lies. *Whirlpool Corp. v. Nakhoneinh*, 69 S.W.3d 164, 167 (Tenn. 2002). In weighing the medical evidence, the trial judge may accept the opinion of one expert over that of another, *Kellerman v. Food Lion, Inc.*, 929 S.W.2d 333 (Tenn. 1996). An

independent assessment of the medical proof by deposition in this case, we find no reason to disagree with the conclusion reached by the trial court. Having so found, the Panel does not address employee's claim for modification of her workers' compensation award.

After considering all relevant factors in this case, we find the evidence does not preponderate against the trial court's findings.

CONCLUSION

The judgment of the trial court is affirmed. The costs of this appeal are taxed to appellant, Bonnie Gross.

ALLEN W. WALLACE, SENIOR JUDGE

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JUDGMENT

This case is before the Court upon the motion for review filed by Bonnie Gross 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.

It appears to the Court that the motion for review is not well-taken and is therefore denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to Bonnie Gross, for which execution may issue if necessary.

BIRCH, J., NOT PARTICIPATING