

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
May 17, 2006 Session

BRENDA WOODS VS. STATE OF TENNESSEE

**Direct Appeal from the Claims Commission of the State of Tennessee, Western Division
No. 20203740 Nancy C. Miller-Herron, Claims Commissioner**

No. W2005-02119-SC-WCM-CV - Mailed July 27, 2006; Filed October 30, 2006

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Tennessee Supreme Court in accordance with Tennessee Code Annotated section 9-8-403(a)(1) and Tennessee Code Annotated section 50-6-225(e)(1) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. On appeal, the employee contends that the trial court erred in awarding permanent partial disability workers' compensation benefits at a rate of 20% to the body as a whole and contends that the evidence preponderates in favor of a much higher award of benefit. After carefully reviewing the record, we affirm the commissioner's award.

**Tenn. Code Ann. §§ 9-8-403(a)(1) 50-6-225(e)(3) Appeal as of Right;
Judgment of the Claims Commission Affirmed**

J.S. (Steve) Daniel, Sr. J. delivered the opinion of the court, in which Janice M. Holder, J., and Joe C. Loser, Jr., Sp. J., joined.

Michell G. Tollison, Jackson, Tennessee, for the appellant, Brenda Woods.

Michael B. Schwegler, Nashville, Tennessee, for the appellee, State of Tennessee.

OPINION

I. Facts and Procedural History

Ms. Brenda Woods is an unmarried person who is the mother of three children and was forty-eight years of age when this case was tried before the Claims Commission of the State of Tennessee. She has two daughters and one son. Unfortunately one of her daughters has lupus, and her son has cystic fibrosis. Ms. Woods has and is rearing these children as a single parent. The two children with the physical disabilities lived with her at the time of the trial. Ms. Woods is a high school graduate and has taken college courses at the University of Memphis, Jackson State Community College, and the Tennessee Tech Center in Jackson, Tennessee, but has not graduated from college. She previously worked as a legal secretary for almost ten years. She then had her own consulting firm before working for Harold Ford, Sr. as a health screening coordinator. She went to work for the State in 1999 when she began her work at the West Tennessee State Penitentiary as a

Counselor I. She quickly rose in classification to Counselor III and was working in such a position at the time of the work-related accident which is the subject of this lawsuit although she was facing disciplinary action. She has not returned to work for the State subsequent to the accident which is the subject of this litigation. However, she did run for political office in 2005 but was unsuccessful in her bid to be elected mayor of the city of Bolivar, Tennessee.

Brenda Woods was injured in the course and scope of her employment on September 9, 2002, when a chair she was sitting in broke, causing her to fall to the floor and strike her left arm on her desk. The fall caused injuries to her left wrist, back and neck. The back and neck injuries ultimately resolved.

Ms. Woods filed a complaint for workers' compensation benefits with the Tennessee Claims Commission for the State of Tennessee, Western Division on August 27, 2003, seeking compensation for the left wrist. She later sought and obtained permission from the commission to amend her complaint to seek psychological damages for this work-related incident.

Proper notice of her injury was given, and at the time of the injury she was directed first to the prison infirmary then was sent home on the day of the accident. She was seen by Dr. David Erik Yakin who treated her left wrist injury. Dr. Yakin initially treated the wrist injury as a contusion, but as time passed and Ms. Woods continued to have pain and swelling, concern developed that she might have a more significant injury. It was ultimately determined by Dr. Yakin that Ms. Woods had a ligament tear in her wrist that was corrected by surgery in December 2002, when a left wrist arthroscopy was performed with debridement of the triangular fibrocartilage complex (TFCC) and debridement of a partial scapholunate ligament tear. Ms. Woods continued to experience pain and complained swelling in his wrist, and she was unable to return to work or to perform housekeeping duties. Therefore, Dr. Yakin sought a second opinion from Dr. Weiker. Dr. Weikert recommended further physical therapy but no additional surgery. Dr. Yakin opined that Ms. Woods suffered an 8% impairment of the left upper extremity based on the swelling of her joint, the mild instability of the scapholunate ligament, and her problem in the TFCC region itself. He imposed work restrictions of lifting no more than five pounds and no repetitive activities with her left upper extremity.

During a visit in December 2002, Ms. Woods made statements that were considered an expression of suicidal ideations by members of Dr. Yakins' staff who referred her to Pathway Psychiatric Unit in Jackson, Tennessee, for psychological care. She was then seen in January 2003 by Dr. Elias King Bond who specializes in psychiatry and who treated Ms. Woods sporadically over an extended period of time for depression. After seeing Ms. Woods in January, Dr. Bond next saw her in April 2003 for depression and in October 2003 for depression and sleep disorder, and he saw her some eleven months later in September of 2004 for depression. Dr. Bond primarily treated Ms. Woods with various medications. Our review of the record reveals that on many occasions, Ms. Woods missed her appointments. Dr. Bond was of the opinion that Ms. Woods had depression related to continued pain and inability to use her left wrist. Ms. Woods is left-hand dominant. Dr. Bond made no diagnosis of Ms. Woods' psychological problems but concluded that she had sustained a permanent impairment of moderate intensity for depression. He estimated the impairment at about "15% to the body as a whole" and listed the areas that she was impaired in as "self-care, personal hygiene, travel, communication and sleep."

On July 13, 2004, Ms. Woods was seen by Dr. Joseph C. Boals, III for an orthopedic evaluation of her wrist injuries. Dr. Boals concluded that Ms. Woods had suffered a 15% impairment to her left upper extremity. After Ms. Woods sought and received the right to amend her complaint to seek psychological damages, the State obtained an independent medical examination of Ms. Woods by Dr. Stephen A. Montgomery, an assistant professor of psychiatry at Vanderbilt University and a forensic psychiatrist. Dr. Montgomery was of the opinion that Ms. Woods suffered from dysthymic disorder, a chronic low grade form of depression that had persisted for many years. He also found that she suffered from a pain disorder and had a history of post-traumatic stress disorder and paranoid personality traits. Dr. Montgomery concluded that "[c]onsidering that injury alone from September 2, 2002, that that injury did not significantly contribute to any psychiatric impairment in Ms. Woods and so I would say regarding that injury alone, she has zero percent psychiatric impairment."

The claims commissioner found that Ms. Woods had suffered a permanent injury to her left upper extremity and that she had suffered an aggravation of a pre-existing psychological condition as a result of her work related injury. The commissioner found that the depression was closely related to the fact that she had a physical injury and awarded Ms. Woods benefits based on 20% whole body impairment.

Ms. Woods has appealed this award and contends that the evidence preponderates in favor of a much higher award of workers' compensation permanent disability benefits than the 20% to the body as a whole as determined by the claims commission.

II. Standard of Review

Review of the findings of fact made by the trial court is de novo upon the record of the trial court, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). The reviewing court is required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. The standard governing appellate review of the findings of fact of a trial judge requires this panel to examine in depth the trial court's factual findings and conclusions. GAF Bldg. Materials v. George, 47 S.W.3d 430, 432 (Tenn. Workers' Comp. Panel 2001). When the trial court has seen the witnesses and heard the testimony, especially where issues of credibility and the weight of testimony are involved, the appellate court must extend considerable deference to the trial court's factual findings. Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 167 (Tenn. 2002). Our standard of review of questions of law is de novo without a presumption of correctness. Perrin v. Gaylord Entm't Co., 120 S.W.3d 823, 626 (Tenn. 2003). When medical testimony is presented by deposition, this court is able to make its own independent assessment of the medical proof to determine where the preponderance of the evidence lies. Cleek v. Wal-Mart Stores, Inc., 19 S.W.3d 770, 774 (Tenn. 2000).

III. Analysis

To recover benefits under the Tennessee's Workers' Compensation Law, an employee must prove that she has suffered an "injury by accident arising out of and in the course of employment."

Tenn. Code Ann. § 50-6-102(12) (1999). An injury is considered to be "by accident" when it is "produced by an 'unusual combination of fortuitous circumstances.'" Brown Shoe Co. v. Reed, 350 S.W.2d 65, 69 (Tenn. 1961). An injury is deemed to arise out of the employment "when there is apparent to the rational mind . . . a causal connection between the conditions under which the work is . . . performed and the resulting injury, . . . and occurs in the course of one's employment if it occurs when an employee is performing a duty he was employed to do." Fink v. Caudle, 856 S.W.2d 952, 958 (Tenn.1993). Mental injuries which either form the independent basis of a worker's compensation claim or which accompany a work-related physical injury and aggravate the preexisting mental problems of the worker have been difficult to advance because of the difficulty in determining the exact cause of the injury. In Jose v. Equifax, 556 S.W.2d 82, 84 (Tenn. 1977), the court stated that it

is not inclined to limit recovery to cases involving physical, traumatic injury or to impose any other artificial limitation upon the coverage afforded by the compensation statutes. In proper cases, we are of the opinion that a mental stimulus, such as fright, shock or even excessive, unexpected anxiety could amount to an "accident" sufficient to justify an award for a resulting mental or nervous disorder.

However, workers' compensation "does not embrace every stress or strain of daily living or every undesirable experience encountered in carrying out the duties of a contract of employment. Workmen's compensation coverage is not as broad as general, comprehensive health and accident insurance." Id. at 84. Tennessee has allowed compensation for a mental injury when that injury has been caused by either (1) a compensable physical injury, or (2) a sudden or unusual mental stimulus, such as a fright, shock, or even excessive, unexpected anxiety. Cutler-Hammer, a Division of Eaton Corp. v. Crabtree, 54 S.W.3d 748 (Tenn. 2001). However, worry, anxiety, and stress "within the bounds of the ups and downs of emotional normal human experience" are insufficient to support an award. Allied Chem. Corp. v. Wells, 578 S.W.2d 369, 373 (Tenn. 1979).

In the present case, the claims commissioner found that the mental injury accompanied the compensable physical injury. The only complaint that Ms. Woods raises on appeal is that the award is insufficient and that the proof preponderates in favor of a much greater award of permanent disability benefits.

Our review of the trial court's findings of fact as to the amount of the award is de novo upon the record accompanied by a presumption of correctness of the finding, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). The review that we perform is an independent review to determine where the preponderance of the evidence lies. Cleek, 19 S.W.3d at 773-74. In making this review, no deference is extended to the trial court in the review of documentary proof, such as expert medical testimony presented by deposition, because the appellate court stands in as good a position as the trial court in that type of determination. McIlvain v. Russell Stover Candies, Inc., 996 S.W.2d 179, 183 (Tenn.1999). Considerable deference is extended to the trial court's factual findings where the trial court has seen and heard witnesses and issues of the credibility or weight of oral testimony are involved. Gray v. Cullon Mach., Tool & Die, Inc., 152 S.W.3d 439, 442 (Tenn. 2004). In cases such as this one, once causation and permanence have been established by expert medical testimony, the issue for the trial court is a determination of the extent

of vocational disability. In determining the extent of vocational disability a court must consider all the relevant evidence including both expert and lay testimony. Nelson v. Wal-Mart Stores, Inc., 8 S.W.3d 625, 629 (Tenn. 1999). Factors include the employee's age, education, job skills and training, the extent and duration of anatomical impairment, local job opportunities, and the employee's capacity to work at the kinds of employment available to one in the employee's disabled condition. McIlvain, 996 S.W.2d at 183.

With these principals in mind, we have reviewed the medical testimony, all of which was received in documentary form from Drs. Yakin, Boals, Bond, and Montgomery and the lay testimony. Dr. Yakin and Dr. Boals opined that Ms. Woods suffered an 8% percent and 15% permanent partial disability to the left upper extremity respectively for the physical injury that resulted from her fall. Dr. Bond found a permanent impairment of moderate intensity associated with depression caused by not being able to perform left arm activities when one was left-arm dominate. Dr. Bond made no in depth inquiry into the personal life, relationships, and history of Ms. Woods nor were any psychological tests employed in his care. His impairment rating was "about 15% to the body as a whole." When asked how reliable his impairment rating was he indicated that it was not reliable and that he believed a judge would make the final determination as to what percentage of disability existed.

Dr. Montgomery was perceived by Ms. Woods as being rude during the time in which he conducted an independent medical evaluation of her. However, our review of the record demonstrates that Dr. Montgomery engaged in a complete clinical assessment of Ms. Woods, and this assessment included both psychological testing as well as an in depth interview of Ms. Woods' background. Dr. Montgomery found that Ms. Woods did suffer from a psychiatry disorder but that it was unrelated to her work place injury. His conclusions were buttressed by his interview that showed that Ms. Woods had had a form of low grade depression for many years and that she suffered from chronic paranoid personality traits that colored much of her experiences through her lifetime and, in Dr. Montgomery's words, "caused her to misperceive events and feel victimized more often than a person would without such paranoid personality traits." Dr. Montgomery concluded that the cause of Ms. Woods' history of depression was that she had endured many stressors across her lifetime which had produced this condition. He articulated some of these stressors as being one of nine children, experiencing the premature deaths of two siblings, and having an unplanned pregnancy when she was very young and was not in a stable relationship with the child's father. The child which she had as a result of this relationship was raised by Ms. Woods' mother at a time when Ms. Woods was not in a state where she could raise the child on her own. Ms. Woods had made attempts at higher education but had not been able to complete the courses. Ms. Woods attended nursing school during which Ms. Woods asserted that she was singled out by an instructor who conspired against her to expel her from nursing school because she appeared to be too professional.

Dr. Montgomery also ascribed part of her depression to prior relationships with men. One such relationship was with the man whom she had two children by but this relationship did not last and in fact the man married another woman. Following that relationship, Ms. Woods had been engaged in an abusive relationship with a highway patrol officer with whom she lived with for nearly five years. This relationship involved Ms. Woods being threatened and struck, and her partner physically forced himself sexually upon her. As a result of these events, Dr. Montgomery concluded

that Ms. Woods suffered from post-traumatic stress disorder. In addition to these stressors, apparently Ms. Woods has been wrongfully arrested for shop lifting. She successfully proceeded through the criminal court to have those matters dismissed and initiated successful civil litigation against her accusers. She has also been the victim of a brutal police attack in her mind because of her political activities. She has had other criminal charges associated with that police attack filed against her which she defended successfully. During her tenure as an employee with the state at the West Tennessee Penitentiary, Ms. Woods felt victimized and alleged that she had been the victim of workplace sexual harassment as well as vandalism. She filed grievances against her supervisors for various reasons, and the employer had disciplinary issues with her at the time of her fall. Superimposed on all of the stressors above-mentioned are the stressors of children who have serious illnesses. Dr. Montgomery found that Ms. Woods had experienced previous accidents, automobile and otherwise, that had formed the basis for different types of injuries in which she had perceived chronic pain in her back, neck, and wrist for many years preceding her work-related incident that contributed to her depression.

The commissioner's findings are accompanied by a presumption of correctness. We cannot find from our in depth review of this record that the preponderance of the evidence would be other than the commissioner's award. Therefore, we affirm the commissioner's findings and award. Costs of this appeal are assessed against the appellant, Brenda Woods, and her surety in which execution may issue if necessary.

J. S. DANIEL, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON
May 17, 2006 Session

BRENDA WOODS v. STATE OF TENNESSEE

**Tennessee Claims Commission
No. 20203740**

No. W2005-02119-SC-WCM-CV - Filed October 30, 2006

ORDER

This case is before the Court upon the motion for review filed by Brenda Woods 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 Brenda Woods, for which execution may issue if necessary.

PER CURIAM

Holder, J., not participating