

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

September 15, 2006 Session

TINA LYNN WYATT v. IVY HALL NURSING HOME, INC.

**Direct Appeal from the Circuit Court for Carter County
No. C9773 – Honorable Jean A. Stanley, Judge
Filed January 31, 2007**

No. E2006-00227-WC-R3-WC - Mailed December 21, 2006

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel pursuant to Tenn. Code Ann. § 50-6-225(e)(3) (2005) for hearing and reporting of findings of fact and conclusions of law. The employee appeals from a judgment of non- compensability. We affirm.

**Tenn. Code Ann. § 50-6-225(e)(3) (2005) Appeal as of Right; Judgment
of the Carter County Circuit Court is Affirmed.**

T. E. FORGETY, JR., Special Judge, delivered the Opinion of the Court, in which WILLIAM M. BARKER, CHIEF JUSTICE, and THOMAS R. FRIERSON, II, Special Judge, joined.

Angela Vincent Jones, Johnson City, Tennessee, for the Appellant, Tina Lynn Wyatt.

J. Eddie Lauderback, Johnson City, Tennessee, for the Appellee, Ivy Hall Nursing Home, Inc.

MEMORANDUM OPINION

Facts

The Employee, Tina Lynn Wyatt filed her complaint for workers' compensation benefits on May 13, 2005. Ivy Hall Nursing Home answered and denied that she had suffered a compensable injury. On November 8, 2005, Ms. Wyatt filed a Motion seeking to have the trial court order the institution of temporary total benefits and medical treatment. The Court conducted a hearing on December 7, 2005, and denied benefits. At the request of Ms. Wyatt, the Court entered its Order pursuant to Tenn. R. Civ. P. 54 as a final order on the issue of compensability. From this Order, the Employee has appealed.

At the hearing of December 7, 2005, Ms. Wyatt, a housekeeper at Ivy Hall, testified that she was mopping on July 30, 2004 when she felt a "pop," and subsequent pain in her right shoulder. According to Ms. Wyatt, she told her supervisor, Dorothy Maupin, of the incident, and was sent to physical therapy on-site. She left work early because of the alleged injury, and later that same day, went to the Johnson City Medical Center Emergency Room. The "Initial History and Assessment Note" taken by the emergency room contains a notation under the heading of "Chief Complaint" which indicates a problem with Ms. Wyatt's right shoulder; an "unknown injury"; and that the shoulder "pops times one week". Ms. Wyatt testified that she had told the Emergency Room she hurt her shoulder while mopping at work. She had no explanation as to why the treatment note was written up as it was. Ms. Wyatt also denied any previous injury to her shoulder, and specifically denied that she had been injured while wrestling with her husband, or in an altercation with her sister's boyfriend. However, her supervisor Ms. Maupin, and another co-worker, testified that Ms. Wyatt told them earlier that she had injured herself while "horseplaying" with her husband, and/or in an altercation with her sister's boyfriend. It also appeared that Ms. Wyatt had been treated at Sycamore Shoals Hospital on May 1, 2004, although she initially denied having been there. The treatment notes from Sycamore Shoals indicate that Ms. Wyatt was suffering from back pain, and that she had been wrestling with her husband the day before.

The Trial Court considered the deposition (an Exhibit to Ms. Wyatt's Motion for Benefits) of Dr. Robert Nelson, an orthopedic surgeon who treated the Plaintiff. At first, Dr. Nelson opined that Ms. Wyatt had suffered an injury to her shoulder as a result of the on-the-job incident of July 30, 2004. However, on cross examination, he was presented with the Emergency Room note from the day of the alleged injury. After examining the note (which stated "right shoulder, unknown injury . . . pops times one week") he testified that this was not consistent with the history he had received from Ms. Wyatt. He also admitted that if this history were true, he would not be able to say that the July 30, 2004 incident had caused Ms. Wyatt's injury. As noted above, the Trial Court denied benefits, and the Plaintiff appealed.

Issues

The Plaintiff's issues are as follows:

- (Whether) the evidence preponderates against the findings of the Trial Court . . .
- (A.) (Whether) the Plaintiff sustained a compensable injury . . .
- (B.) (Whether) the Plaintiff is entitled to receive temporary total disability benefits . . .
- (C.) (Whether) the Plaintiff is entitled to receive medical benefits . . .
- (D.) Witness credibility

Standard of Review

This Court reviews factual issues *de novo* upon the record, with a presumption of correctness as to the trial court's findings, unless the evidence preponderates otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2005); *Phillips v. A & H Const. Co., Inc.*, 134 S.W.3d 145, 149 (Tenn. 2004); *Scales v. Oak Ridge*, 53 S.W.3d 649, 652 (Tenn. 2001). However, questions of law are reviewed with no presumption of correctness. *Hollingsworth v. S & W Pallet Co.*, 74 S.W.3d 347, 353 (Tenn. 2002). The Employee has the burden of proving every essential element of his/her claim. *Roark v. Liberty Mut. Ins. Co.*, 793 S.W.2d 932, 934 (Tenn. 1990). We must accord considerable deference to the conclusions of the trial court as to the credibility of live witnesses, since that court has had the opportunity to see and hear those witnesses. *Jones v. The Hartford*, 811 S.W.2d 516, 521 (Tenn. 1991). But, where the testimony is presented by deposition – as is ordinarily the case with medical experts – this Court may exercise its own judgment as to the credibility of the witness. *Hollingsworth*, 74 S.W.3d at 356.

Discussion

The critical questions here involve the credibility of the Plaintiff/Employee, and the preponderance of the evidence.

The Trial Judge specifically found that the case boiled down to a question of credibility. And, she referred to a number of inconsistencies in the Plaintiff's testimony. For example, Ms. Wyatt testified she told Ms. Maupin she injured her shoulder at work; that she had been on the same hall as Ms. Maupin; and that Ms. Maupin checked her shoulder – all of which Ms. Maupin denied. Mrs. Wyatt further testified that after leaving work early, she arrived at the emergency room at 6:30 p.m. – but the hospital records show it was closer to 11:30 p.m. She said that she did not tell the emergency room nurse her shoulder had been popping for a week – yet, that notation is in the treatment notes. She testified she could not remember the May 2004, emergency room visit – although the records clearly show it occurred, and that the precipitating event had been an incident where she had been wrestling with her husband. With regard to these (and other) inconsistencies, the Trial Judge remarked:

"I'm not sure if there's another Tina Wyatt supposedly roaming around or if someone simply has amnesia or if there's something about it you don't want known there are just, there are so many differences in the testimony you would almost think you were at two different movies ... so there's, there's a number of just a, an enormous number of discrepancies in the proof...Ms. Wyatt, I don't know if you're lying to me or I don't know if you have a horrible, horrible memory. but in this case the Court has to find that the medical record from July the 30th of '04 is more reliable than the witness' testimony and/or memory . . ."

As noted above, we must give considerable deference to the findings of the trial court as to the credibility of live witnesses. *Jones*, 811 S.W.2d at 521. With this in mind, we are unable to say that the lower court erred in its findings on credibility.

The trial court also found that, based upon the medical evidence, Ms. Wyatt had simply not proven her claim. Again, the Employee has the burden of proof as to her claim. *Roark*, 793 S.W.2d at 934. The only medical testimony which was before the court was the deposition of Dr. Robert Nelson. He testified that if the history contained within the Emergency Room treatment note (which the trial court found more reliable than the Plaintiff) were correct, he could not relate Ms. Wyatt's condition to the incident of July 30, 2004. To reiterate, we must presume the findings of the trial court correct, unless we find that the evidence preponderates otherwise. Tenn. Code Ann. § 50-6-225 (e)(2) (2005); *Phillips*, 134 S.W.3d at 149. On the record here, and especially in light of the findings as to Plaintiff's credibility, we are unable to so conclude.

Conclusion

For the foregoing reasons, we AFFIRM the Judgment of the trial court and REMAND the case for any further proceedings which may be appropriate. Costs are taxed against Tina Lynn Wyatt and her surety.

TELFORD E. FORGETY., JR., SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE, TENNESSEE

TINA LYNN WYATT V. IVY HALL NURSING HOME, INC.
Carter County Circuit Court
No. C9773

February 2, 2007

No. E2006-00227-WC-R3-WC

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 facts and conclusions of law are adopted and affirmed and the decision of the Panel is made the Judgment of the Court.

The costs on appeal are taxed to the appellant, Tina Lynn Wyatt, and her surety for which execution may issue if necessary.