

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE

November 24, 2008

SHARON CLARK v. SPRINT PCS et al.

Appeal from the Chancery Court for Davidson County

No. 05-771-I Claudia C. Bonnyman, Chancellor

No. M2007-02834-WC-R3-WC - Mailed - February 5, 2009

Filed - March 9, 2009

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with Tennessee Code Annotated section 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The trial court awarded appellee Sharon Clark's claim for workers' compensation benefits and held appellant Sprint PCS liable rather than Clark's successor employer, appellee Convergys. The trial court also assessed discretionary costs against Sprint. Sprint contends that the trial court erred in (1) holding it rather than Convergys liable for Clark's claim; (2) relying on medical depositions taken while Sprint was not a party; and (3) assessing discretionary costs against it. After our review of the record, we reverse the trial court's judgment against Sprint and order judgment against Convergys. We remand this matter for the reassessment of discretionary costs.

**Tenn. Code Ann. § 50-6-225(e) (2008) Appeal as of Right;
Judgment of the Chancery Court Reversed in Part; Remanded**

JON KERRY BLACKWOOD, SR. J., delivered the opinion of the court, in which CORNELIA A. CLARK, J., and ALLEN W. WALLACE, SR. J., joined.

John W. Barringer, Jr. and David M. Drobny, Nashville, Tennessee, for the appellant, Sprint PCS.

Bill Easterly and James B. Lewis, Nashville, Tennessee, for the appellee, Sharon Clark.

M. Clark Spoden and Brian C. Neal, Nashville, Tennessee, for the appellee, Convergys Customer Management Corp.

MEMORANDUM OPINION

Factual and Procedural Background

Trial Testimony

Appellee Sharon Clark (“Employee”) testified that she was born in 1964. She graduated from high school, attended Draughons Junior College for data processing, and attended beauty school to become a licensed nail technician. At the time of trial, she was studying to become a sterilizing technician for surgical instruments.

Employee began working for Sprint PCS in 2000 as a customer care advocate. She handled phone calls from customers with problems. Her work equipment included a computer with keyboard and mouse, a headset, and pencil and paper. The phone calls came in “right after each other.” There was some mandatory overtime.

As of November 26, 2003, Employee had been having some aching and pain in her hands for about a month. On that day, she reported her pain to her supervisor, who told Employee to go to an urgent care facility. She reported to Tennessee Urgent Care Associates where she was given a wrist splint and placed on restrictions against repetitive overhead work, lifting over 20 pounds, pushing/pulling over 20 pounds, and repetitive heavy gripping. She was subsequently treated by Dr. Coogan on December 11, 2003. She reported that her hands were tingling and waking her up at night. Dr. Coogan noted that she had been off work for five days. He gave her a cortisone shot and kept her on restrictions. She returned to Dr. Coogan in early January 2004, and he released her to return to work with no restrictions. Employee stated that the cortisone shot relieved her pain for “about a month or two.” When the pain gradually returned, she began compensating by using her left hand more.

Employee began seeing Dr. Lawrence in late February 2004. She testified that, at this time, her “right hand was still numb” and she was experiencing tingling and pain. She testified that “it was worse than when [she] went to see Dr. Coogan.” Her left hand had begun hurting. The pain ran to her elbow. Her right hand continued to hurt worse than her left. Dr. Lawrence sent her to therapy and gave her medication. He also placed her on some restrictions on the computer, requiring her to take additional breaks and to not work overtime. He advised her to wear splints. She stated that Dr. Lawrence’s treatment helped “a lot.”

In June 2004, Dr. Lawrence referred Employee for a second opinion. She saw Dr. Behar, who prescribed medication and put her on 30-minute breaks every hour.

Employee described her pain as follows:

Well, it’s numb and kind of like a tingling; but that’s, like, a constant. Then you will have a shooting – like, just – it could be just watching TV or you could be

on the computer or you can just be sitting there. And it's a shooting pain from your wrist down to your elbow that just takes your breath away.

The shooting pain would last a short time and then be gone.

Employee testified that she was "let go" by her employer in January 2005 because she was not meeting her quota. She agreed that she was not working at "top speed" and explained that it was the pain in her hands. If a customer's call required her to type in information or to handle her mouse, her response time was slowed. Sometimes she had to put a customer on hold so that she could take a break.

Employee testified that she still has numbness and dull pain. She also experiences the sharp pain on occasion but she cannot predict when or how often. The pain is still in the same areas. The right continues to be worse than the left; still no pain above the elbows. She has problems with her grip.

On cross-examination by counsel for Sprint, Employee acknowledged that Convergys took over the call center around March 2004¹ but she continued to answer customer calls on behalf of Sprint. Her work environment continued to be the same and she continued to do the same type of work. She returned to Dr. Lawrence on April 1, 2004, complaining of pain in both wrists with numbness and tingling and shooting pain up into her elbow. She returned to Dr. Lawrence a few days later and he placed her on a restriction of no overtime. On April 28, he placed her in occupational therapy. At that time, she was still having soreness and swelling in her wrists and forearms. Her right side was worse than her left. On May 12, she reported to Dr. Lawrence that she was having weakness, tenderness, and burning and tingling sensations. She agreed on cross-examination that her condition was getting worse. She attributed her symptoms to working on the keyboard. She last saw Dr. Lawrence on June 9, 2004. At that time, she still had the burning sensation and shooting pain; it was becoming more regular and was keeping her up at night. It was affecting her work.

In May 2004, Dr. Lawrence told her to take 10 minute breaks every hour. On break, she would shake out her wrists and put ice packs on her hands. The breaks caused a drop in her productivity. On June 9, 2004, Dr. Lawrence advised her to seek a second opinion from Dr. Behar. She saw Dr. Behar on July 13, 2004. The pain in her right wrist had become persistent. Dr. Behar put her on restrictions of 30 minute breaks every hour. She was unable to meet her selling quota and was in significant pain. Her last visit with Dr. Behar was in August 2004. Her pain persisted during the subsequent months and was worse than in November 2003. She acknowledged that, the longer she did her job, the worse the pain became. She further acknowledged that her condition continued

¹ In its answer to Employee's amended complaint, Convergys stated that it "took over" the call center "on or around March 1, 2004" and that Employee "began her employment with Convergys on March 1, 2004."

to get worse after March 1, 2004.²

On cross-examination by Convergys counsel, Employee acknowledged that she had been having soreness in her arms before she initially reported her injury in November 2003. The pain had already affected her ability to sleep. It had also affected her productivity at work. When she initially reported it, she stated that she had been having the pain for several months.

On redirect, Employee stated that, as far as she was concerned, she had suffered a single injury.

Amaryllis Lee testified that she began her work for Sprint at the same job as Employee's shortly after Employee began. After Convergys took over, she said, there was "more of an emphasis on the timeframe that you had to spend with your customer, along with upselling during that timeframe." In other words, "less time covering more issues." Convergys was making an attempt at more efficiency and the job became more intense. The facility was closed in March 2005.

Debbie Buckingham began working for Sprint in December 1999 as a customer care advocate. She continued working in that position after Convergys took over. After the takeover, she said, the computer work became more intense. She acknowledged that the call center had different positions that had different requirements. She did not know Employee and did not know which section Employee was in.

Kaley Schweikart testified that she is the senior employee relations manager for Convergys in the Clarksville call center. She never worked in the Nashville call center where Employee worked. She stated that the call centers were very similar, however. She dealt with workers' compensation matters and reviewed Employee's workers' compensation file. She explained that the date they use for a gradually occurring injury is the date the injury is reported.

Medical Depositions

Dr. Jeffrey Lawrence, an orthopedic surgeon, was initially deposed on January 10, 2007. Sprint was not a party to this action at this time and so was not present. During his first deposition, Dr. Lawrence testified that he first saw Employee on February 26, 2004, for pain in her wrists and upper forearms. She reported that they had been bothering her for three months. She had some tenderness on the undersurface of her forearms. He diagnosed her with tendinitis of both forearms. He placed her on light-duty (no overtime) and sent her for physical therapy.

Employee returned on March 19, 2004. She reported some progress but that she still had deep pain in the muscles of her right forearm worse than her left. She was experiencing a lot of pain at work. Dr. Lawrence administered a cortisone injection and oral cortisone and kept her on work

² The transcript of the trial reflects that counsel for Sprint referred to March 1, 2007. The context of the questioning makes clear that this reference to 2007 is either a misstatement or a typographical error and that counsel was in fact referring to March 1, 2004.

restrictions. Those restrictions were that she not work any overtime.

Employee returned on April 1, 2004. She was still having pain and also reported some numbness and tingling in her arms, right worse than left. She reported shooting pain up to her elbow. Because of the numbness and tingling, he ordered nerve conduction studies. Those tests came back normal and negative for carpal tunnel syndrome. Dr. Lawrence therefore did not change his diagnosis of tendinitis. Employee returned on April 14, 2004, still complaining of pain in her forearms. Dr. Lawrence ordered occupational therapy and added a restriction that she take a ten-minute break every hour. Asked about the change in restrictions, Dr. Lawrence stated that she was “not getting any better . . . [so] we were just trying to see if something could help her.” He added, “I think she is about the same, you know, and it probably just fluctuates from day-to-day but I think basically she is pretty much the same as when I first saw her.”

On April 28, Dr. Lawrence ordered an additional two weeks of therapy and maintained her restrictions. On May 12, he saw her again and explained to her that her tendinitis was something that her body had to heal. When she returned on June 9, 2004, and reported no improvement, he advised her to seek a second opinion. He did not see her after the June 9 visit.

With respect to Employee’s condition overall, Dr. Lawrence’s diagnosis did not change over the course of his treatment of her. When asked if her symptoms or complaints of pain worsened since he first saw her, he answered, “No. I don’t think so. I mean, she – typically with a tendinitis you may have some better days and worse days, but I really didn’t see that it was trending, you know, towards improving or trending towards getting worse from what she told me.” He increased her restrictions from no overtime to no overtime plus a 10 minute break every hour not because she was getting worse but because she was not improving.

In response to specific questions of whether there was a significant change in Employee’s condition, a progression of her symptoms, or a deterioration in her condition during her course of treatment with Dr. Lawrence, Dr. Lawrence responded, “No.”

Dr. Lawrence was deposed again on September 7, 2007, with Sprint present. During his second deposition, and on cross-examination by counsel for Sprint, Dr. Lawrence testified that tendinitis could be, but was not necessarily, a gradually occurring condition. He stated that it could result from repetitive work or overuse. His notes did not reflect that Employee told him in February that the pain in her arms was waking her up at night. She did not complain of numbness, tingling, or burning in her fingers during those February visits. According to his notes, she first reported on March 29, 2004, that she was awakened with pain. Her first report to him of numbness and tingling in her fingers was on April 1, 2004.

Dr. Lawrence agreed that there is no objective way to measure the amount of pain and numbness and tingling a patient is suffering as a result of tendinitis.

On cross-examination by counsel for Convergys, the following colloquy occurred:

Q: In between February 26, 2004 and your last visit on June 9th, 2004, did [Employee's] condition significantly change in your opinion?

A: No.

Q: Between February 26th, 2004 and the last visit on June 9th, 2004, did [Employee's] condition progress in any way in your opinion?

A. Well, her symptoms did. And basically, I mean, that's what – there is no really objective indications of a disease process. But that's not unusual, you know, with any kind of tendinopathy or tendinitis if you go by someone's symptoms.

So her symptoms went from some pain in the forearms to numbness and tingling in the hands and fingers and some burning sensation. So the symptoms seemed to increase some, but those are all kind of normal symptoms that you can get.

There wasn't – you know, it's hard to really say whether there was more pain or less pain, I mean, just going on her symptoms. And she related more symptoms as the months went on.

So objectively there wasn't anything, but subjectively, what she says is that there was, you know, more symptoms there.

Dr. Lawrence clarified that there was “no way to know” whether there was actual degeneration of Employee's tendons absent biopsy. Rather, Employee simply reported that her symptoms worsened. Dr. Lawrence testified that “she was experiencing what I think is tendinitis the whole time. All these symptoms are suggestive of some tendinitis.”

On further cross-examination by counsel for Convergys, Dr. Lawrence testified;

Her symptoms increased during the course of the treatment as far as describing more symptoms of burning, tingling and numbness. So her symptoms seemed to [progress or worsen]. Did the actual pathologic condition worsen? You know, I don't know about that and I can't really – I can't really comment on that. Her symptoms, what she reports, worsened.

Dr. Ted Behar, a plastic and reconstructive surgeon³, was first deposed on November 21, 2006. Sprint was not present because it was not then a party to this action. During his initial deposition, Dr. Behar testified that he first saw Employee on July 13, 2004. He took a history

³ Dr. Behar's curriculum vitae indicates that his practice is “limited to plastic and reconstructive surgery including: aesthetic surgery, reconstructive surgery, *hand surgery* and microsurgery.” He testified that he had been in practice, including hand surgery, for thirteen years.

“related to persistent bilateral wrist pain and weakness.” Employee related that “it had been present for about six months” and that her right wrist was worse than her left. Employee described the pain as “radiating from the palmar, or volar surface of the wrist, radiating upward into the ulnar forearm. Intermittently, it was sharp-shooting type pain that eventually became more unrelenting over time.” Upon performing a physical exam, he determined that Employee’s grip strength was “relatively intact,” that her finger spread was fully intact, and that there was no muscle atrophy. She had ganglions on the dorsum of each wrist which were mildly tender. There was mild tenderness at the volar wrist and on the forearms, right worse than left. He diagnosed “chronic tendinitis of both forearms and wrists.” He assigned restrictions of keyboarding and repetitive activity of the hand to no more than 30 minutes every hour.

Dr. Behar saw Employee again on August 3, 2004. There was no change in the physical exam. In his opinion, Employee’s “burning residual pain was from repetitive stress and overuse.” Significant improvement required her to change those activities. Employee reached MMI as of August 17, 2004. He assigned a permanent impairment rating of 10% for each upper extremity. He testified that “it was within reason to conclude that the repetitive activities at work could certainly have contributed to this impairment.” Dr. Behar stated that Employee indicated to him that her condition had become more persistent and unrelenting since onset. He also stated that tendinitis is not repairable through surgery.

During his second deposition on September 4, 2007, at which Sprint was present, Dr. Behar acknowledged that tendinitis symptoms can appear slowly and gradually and gradually worsen in intensity and/or frequency. Employee’s history indicated to him that her symptoms were increasing in frequency. He also stated that her tendinitis had “progressed” during the six month period before he saw her. He also believed that Employee’s work at the call center caused an ongoing repetitive trauma to Employee’s tendons. Dr. Behar subsequently clarified that Employee’s tendinitis progressed “[i]f the definition of progression is to go from intermittent to no longer intermittent but persistent.”

Dr. David Gaw was hired by Sprint and examined Employee on May 24, 2005, for evaluation of both upper extremities. He diagnosed her as having “[o]veruse syndrome involving both upper extremities with slight decreased sensation in the median nerve distribution on both sides.” He agreed with her diagnosis of tendinitis. He opined that her tendinitis was a gradual injury. He agreed that, “with an overuse syndrome like tendinitis like [Employee] had,” that the condition would progress the longer she engaged in the repetitive activity. He agreed that it would be fair to say that “every day she engaged in that repetitive activity brought about a new worsening of her condition.”

Dr. Gaw gave Employee a “3% impairment to each upper extremity based on a mild decreased sensation in the median nerve.” Dr. Gaw acknowledged that it was “certainly possible” that Employee’s chronic tendinitis did not “worsen” over the time period that she was experiencing symptoms. He also stated that, as he understood her history, “her symptoms got worse.”

Trial Court's Ruling

The trial court determined that Employee suffered a gradually occurring work-related injury and awarded Employee benefits based on a 25% permanent partial vocational disability to each of her arms for a total award of \$39,664. The trial court held Sprint liable for Employee's award. The trial court stated that Dr. Lawrence's two depositions

persuaded the Court that in his carefully considered opinion the plaintiff's tendinitis did not worsen, had not been aggravated, and had not advanced. Instead, the symptoms persisted and the plaintiff simply did not get better.

The fact that there were further restrictions as time went on indicates to this Court that they were put into effect to move the plaintiff off of what appeared to be a stable and persistent injury.

The trial court also relied on Employee's testimony that all of her symptoms had appeared early on.

STANDARD OF REVIEW

We review factual issues in a workers' compensation case de novo upon the record of the trial court, accompanied by a presumption of correctness of the trial court's factual findings, unless the preponderance of the evidence is otherwise. See Tenn. Code Ann. § 50-6-225(e)(2) (2008); see also Rhodes v. Capital City Ins. Co., 154 S.W.3d 43, 46 (Tenn. 2004); Perrin v. Gaylord Entm't Co., 120 S.W.3d 823, 825 (Tenn. 2003). This standard requires us to weigh carefully the trial court's factual findings and conclusions against the proof in the record in order to determine where the preponderance of the evidence lies. See Vinson v. United Parcel Serv., 92 S.W.3d 380, 383-84 (Tenn. 2002). 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 court on appeal must extend considerable deference to the trial court's factual findings. Houser v. Bi-Lo, Inc., 36 S.W.3d 68, 71 (Tenn. 2001). When expert medical testimony differs, it is within the trial judge's discretion to accept the opinion of one expert over the other. Hinson v. Wal-Mart Stores, Inc., 654 S.W.2d 675, 676-77 (Tenn. 1983). This Court, however, may draw its own conclusions about the weight and credibility to be given to expert medical testimony when it is presented by deposition. Krick v. City of Lawrenceburg, 945 S.W.2d 709, 712 (Tenn. 1997). With these principles in mind, we review the record to determine whether the evidence preponderates against the findings of the trial court.

ANALYSIS

Is Sprint (prior employer) or Convergys (successor employer) Liable?

We agree with the trial court that Employee suffered a gradually occurring injury rather than an acute injury. Gradually occurring injuries are subject to the "last injurious injury" rule. Mahoney v. NationsBank of Tenn., N.A., 158 S.W.3d 340, 346 (Tenn. 2005), overruled on other grounds,

Bldg. Materials Corp. v. Britt, 211 S.W.3d 706, 713 (Tenn. 2007). The Tennessee Supreme Court recently addressed the last injurious injury rule and its application to gradually occurring injuries:

The last injurious injury rule requires an employer to “take an employee as he finds him.” Baxter v. Smith, 211 Tenn. 347, 364 S.W.2d 936, 942 (1962). . . . It is neither the last employment nor the last exposure to the hazards of the disease which impose liability on an employer; rather, it is the last such exposure that is injurious to the employee. Morell v. ASARCO, Inc., 611 S.W.2d 830 (Tenn. 1981). Thus, in order for the rule to apply, there must be some showing that the employee’s condition worsened due to the working conditions at the second employer, either by *advancement or aggravation of the injury*. See Mahoney v. NationsBank of Tennessee, N.A., 158 S.W.3d 340, 346 (Tenn. 2005) (emphasis added) Conversely, liability will not attach to an injured employee’s last successive employer if the employee’s symptoms experienced while at the first employer merely persist. Barker v. Home-Crest Corp., 805 S.W.2d 373, 373-74 (Tenn. 1991). An aggravation or exacerbation of the employee’s injury must occur at the second employer. Id. at 375.

Crew v. First Source Furniture Group, 259 S.W.3d 656, 667-68 (Tenn. 2008) (considering a claim resulting from employee’s carpal tunnel syndrome); see also Little v. Aerospace Center Support, No. M2006-00471-WC-R3-CV, 2007 WL 1385959, at *4-5 (Tenn. Workers’ Comp. Panel May 10, 2007) (applying Mahoney to affirm trial court’s holding that prior employer was liable for employee’s carpal tunnel syndrome because her work for subsequent employer did not aggravate or advance her condition). In determining whether an employee’s work at a subsequent employer aggravated her preexisting injury, we must remember that “[i]t is not enough that the employee continued to suffer from the effects of an injury while employed by a second employer; rather, to be compensable, there must be a progression of the employee’s injury.” Mahoney, 158 S.W.3d at 346.

There is no contention in this case that Employee demonstrated any objectively measurable aggravation or progression of her bilateral tendinitis after Convergys took over the call center. Rather, her subjective complaints persisted. Sprint contends that her complaints over the course of her treatment from November 2003 through the summer of 2004 establish that she suffered an increase in symptoms and pain related to her continuing bilateral tendinitis after she began working for Convergys. This increase in symptoms/pain is sufficient, according to Sprint, to support a finding that her condition “was aggravated or advanced” due to her work for Convergys and that Convergys should therefore be liable for her workers’ compensation benefits.

This a close case. There is medical and lay testimony to support both positions. Nevertheless, the record appears to demonstrate that Employee was able to do her job for most of each hour during the early (Sprint) months of her affliction, while she was reduced to working for no more than half of each hour during her tenure with Convergys. It is uncontested that Convergys eventually fired Employee because she was unable to keep up with the demands of her job. Employee’s decreasing ability to do the same job supports Sprint’s claim that Employee’s symptoms

became worse and her condition progressed during her tenure with Convergys.

On balance, we hold that the preponderance of the evidence tips in favor of Sprint and against Convergys. Employee's symptoms did progress. Also, we note that her initial treatment of cortisone in December 2003 relieved her pain for "a month or two." She was given another cortisone injection on March 19, 2004, but was still complaining of pain, numbness and tingling on April 1, 2004. The reduced efficacy of the subsequent cortisone injection implies that Employee's condition had worsened. Even Dr. Lawrence eventually conceded that Employee's symptoms became worse. Dr. Behar acknowledged that Employee's condition progressed insofar as her symptoms went from intermittent to persistent. And Dr. Gaw agreed that the repetitive nature of Employee's work caused a worsening of her condition. Dr. Gaw's opinion is supported by Employee's testimony that, the longer she did her job, the worse her pain became. The proof therefore supports application of the last injurious injury rule to hold Convergys liable for Employee's workers' compensation award.

Admissibility of Dr. Lawrence's First Deposition

Prior to trial, Sprint filed a motion in limine to exclude Dr. Lawrence's first deposition, taken while Sprint was not a party. The trial court granted the motion as follows:

(a) That counsel for Sprint PCS shall have the ability to review the deposition testimony of both Dr. Lawrence and Dr. Behar to determine whether any questions phrased by either counsel for Plaintiff or counsel for Convergys were formed improperly. Counsel for Sprint shall be granted the opportunity to object to such testimony as contained therein.

(b) That, should any counsel for [Employee] or Co-Defendants deem it necessary, the depositions shall be reconvened and such questions as phrased by counsel for [Employee] or Convergys that are objected to will be given the opportunity to rephrase the question.

(c) That counsel for Sprint PCS shall have the opportunity to cross examine both Dr. Behar and Dr. Lawrence in accordance with the Tennessee Rules of Civil Procedure and the workers compensation statute.

Following the trial court's order, Drs. Lawrence and Behar were redeposed with Sprint in attendance.

Sprint argues that the trial court erred in relying on Dr. Lawrence's first deposition because Sprint was not a party to the lawsuit at the time the deposition was taken. Employee responds that Sprint has waived this issue because Sprint allowed the deposition to be entered into evidence without objection. Convergys also argues waiver on the basis that Sprint did not object to questions posed during the first deposition. Convergys also argues that, even if the trial court erred, the error is harmless.

Given our disposition of Sprint's appeal on the merits, it is not necessary that we address Sprint's claim of error regarding Dr. Lawrence's first deposition.

*Costs of Employee's Deposition and
First Depositions of Drs. Lawrence and Behar*

The trial court assessed Employee's and Convergys' discretionary costs against Sprint, including the cost of the depositions taken while Sprint was not a party. Sprint maintains this is error. In accordance with our holding that Convergys is liable for Employee's workers' compensation claim, we agree that Sprint should not bear the discretionary costs in this case. We therefore remand this matter to the trial court for a reassessment of discretionary costs.

CONCLUSION

We hold that the evidence preponderates against the trial court's conclusion that Employee's bilateral tendinitis did not advance, progress, or worsen during the course of her employment with Convergys. Accordingly, we reverse the judgment of the trial court insofar as it assessed liability and discretionary costs against Sprint. Judgment in favor of Employee is entered against Convergys. This matter is remanded to the trial court for reassessment of discretionary costs. The costs of this cause are taxed to Convergys, for which execution may issue if necessary.

JON KERRY BLACKWOOD, SENIOR JUDGE

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

NOVEMBER 24, 2008 SESSION

SHARON CLARK v. SPRINT PCS ET AL

Chancery Court for Davidson County

No. 05-771-I

No. M2007-02834-WC-R3-WC - Filed - March 9, 2009

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 appeals 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 Convergys, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM