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

MARTHA G. MYERS,	)	
	)	BLOUNT CIRCUIT
Plaintiff/Appellant	)	
	)	HON. W. Dale Young,
v.	)	Judge
	)	
ALUMINUM COMPANY OF AMERICA	)	NO. 03S01-9509-CV-00102
	)	(No. E-16271 Below)
	)	
Defendant/Appellee	)	

For the Appellant:

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For the Appellee:

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MEMORANDUM OPINION

Members of Panel:

Justice Penny J. White
Senior Judge William H. Inman
Special Judge Joe C. Loser, Jr.

AFFIRMED **INMAN, Senior Judge**

_____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 alleged that on May 15, 1983, she injured most of her body as a result of a job-related accident. She returned to work in November 1990 and allegedly sustained two additional injuries which aggravated her pre-existing condition resulting in total disability for which she seeks benefits. The defendant generally denied that the injuries complained of were serious and denied that the plaintiff suffered any degree of disability. The trial judge ruled that the plaintiff failed to carry her burden of proof and dismissed her case.

Our review is *de novo* on the record with the presumption that the findings of fact are correct unless the preponderance of the evidence is otherwise. TENN. CODE ANN. § 50-6-225(e)(2). *Henson v. City of Lawrenceburg*, 851 S.W.2d 809, 812 (Tenn. 1993).

The plaintiff is 44 years old. She started work at ALCOA in 1978, but five years later suffered a pulled muscle in a vaguely defined manner which caused some cervical discomfort, exacerbated the following day in another vaguely defined manner. She complained of continuing discomfort and was seen by Dr. Haralson, an orthopedic specialist. Two days later, she returned to work for a brief period. She then left work for about six months, returned, and left again. This pattern continued for eleven or twelve years. In October or November 1990, she testified that she tripped over some cables which "aggravated my problem," and shortly afterwards caught her foot in a table leg which "hurt my low back right instantly then." She said that in December, "I had to quit, go out," and never returned to work. In the interim, she was injured in a traffic accident which seemingly contributed to her discomfort.

She received workers' compensation benefits in 1983. After her departure in December 1990, she received Sickness and Accident benefits for two years, following which she was laid off. Her treatment history is remarkable. She was seen by 22 physicians, including Dr. Edward A. Dannelly, III, of Galax, Virginia, who, after seeing her on one occasion, testified that "she came for another opinion about her neck" and that she had a 30% whole body impairment. Dr. Alan Whiton, of Sevierville, Tennessee, saw the plaintiff in May 1993 for complaints of neck and low back pains. He diagnosed a disc herniation at C-6, and later did a one-level fusion from L5-S1. He expressed the opinion that the plaintiff had a 15% impairment rating.

The contrary proof consisted of (1) the testimony of a physical therapist, Baron P. Johnson, (2) the testimony of Dr. Edward S. Ellis, an internist, and (3) the testimony of Dr. Wm. K. Bailey, an orthopedic specialist, who elaborated at length about plaintiff's lack of finesse in symptom magnification and testified that she was able to return to her "normal work activities." Dr. Ellis also testified that jobs which the plaintiff was capable of holding were available at ALCOA, if she was properly motivated, and that she had no disability.

This record amply supports the argument of the appellee that ALCOA has a substantial number of jobs which the plaintiff is capable of performing. The record also reveals unusual employer largesse and patience. Its argument that "the appellant simply refuses to go back to work" finds considerable support in the record. And superimposed upon all this is the credibility of the plaintiff--concerning which the trial court is the well-nigh exclusive judge--a significant element in this case.

We are unable to find that the evidence preponderates against the judgment. *Henson*, 851 S.W.2d at 812, which is affirmed at the cost of the appellant.

William H. Inman, Senior Judge

CONCUR:

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Penny J. White, Justice

_____
Joe C. Loser, Judge