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

BARBARA WALLACE,	)	
	)	
Plaintiff/Appellant,	)	TIPTON COUNTY
	)	
VS.	)	HON. JOHN HILL CHISHOLM
	)	CHANCELLOR
CADILLAC CURTAIN COMPANY,	)	
	)	No. 02S01-9510-CH-00099
Defendant/Appellant.	)	

FILED

October 30, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

FOR APPELLANT:

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FOR APPELLEE:

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MEMORANDUM OPINION

MEMBERS OF PANEL:

LYLE REID, JUSTICE
HEWITT TOMLIN, JR., SENIOR JUDGE
CORNELIA A. CLARK, SPECIAL JUDGE

AFFIRMED CLARK, SPECIAL JUDGE

This worker's compensation appeal has been referred to the special worker's

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.

Trial in this matter was conducted February 9, 1995. On May 22, 1995, the Chancellor entered a final judgment denying compensation to plaintiff and dismissing her lawsuit.

On May 15, 1989, Barbara Wallace was employed in the "paint room" at Cadillac Curtain Company. Her duties included adjusting and controlling the paint nozzles that sprayed curtains. She testified at trial that she fell and twisted her right hip, immediately feeling pain in that hip.[1] The single eyewitness was not called by either party. Plaintiff further contended that after the injury she went into the break room and told two co-employees about her injury. She left work at about 3:00 p.m. with pain and a burning sensation in her right hip and lower back.

Plaintiff did not tell the management at Cadillac Curtain of her injury on that date. This failure was in violation of a known company policy posted on the employees' bulletin board.

Plaintiff testified that by the next morning her back had "locked up" on her and she could not get out of bed. She stated that co-employee Tommy Lowe arrived at her house that morning to tell her she would be fired if she did not show up at work. However, she went instead to the local hospital emergency room. She was given a note by the treating physician at the hospital, excusing her from work.

Plaintiff first advised company representatives of her work injury on May 17, 1989. The company sent her to see Dr. Warren A. Alexander on May 18 and

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[1]In her 1991 deposition, plaintiff testified that her fall caused pain in her lower back and left hip. In her 1994 deposition she testified that the fall caused pain in her right hip, with numbness in the right leg, foot, and arm.

May 24. Dr. Alexander advised plaintiff to engage only in light work. He then referred her to Dr. Craig Clark, a neurosurgeon. Clark prescribed medication and instructed plaintiff to make another appointment. However, when her employer refused to pay for further treatment, plaintiff did not return.

Plaintiff was terminated from employment for gross misconduct on May 25, 1989. Her actions included failing to follow company policy for handling work related injuries and attempting to file a false worker's compensation claim.

No other medical testimony was introduced concerning the first few years of treatment after the May 1989 injury.[2] Plaintiff was later treated for her injuries by Dr. Steven Douglas Brandenburg, a licensed chiropractor. Dr. Brandenburg first examined plaintiff on June 22, 1993. At that time she complained of neck pain and stiffness, low back pain, and tingling in her arms and her left leg and foot. After he had treated her for some time, she said the pain became located on the right side. He initially opined that plaintiff had sustained a six percent permanent impairment to her body as a whole, but later changed his evaluation to an eight (8%) percent permanent impairment to the body as a whole. Dr. Brandenburg admitted that the only medical history he had taken was from plaintiff herself, and that a number of variables could have contributed to her alleged injuries to her left side. His permanent impairment rating was based on testing and plaintiff's complaints of constant pain, both of which he acknowledged were somewhat subjective and could be influenced by the patient.

At the request of her attorney, plaintiff was also examined by Dr. Robert P. Christopher on March 11, 1994. His notes indicate that plaintiff said she felt pain in the low back and left hip at the time of the accident. He reviewed x-rays taken

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[2]Dr. Christopher's report references a 1990 visit to Dr. Avron Slutsky. Apparently he recommended a CT scan of the lumbar spine and a possible myelogram. Plaintiff declined these tests.

of her lumbar spine and left hip one day after the alleged incident and reported them as normal. Dr. Christopher's evaluation indicated soft tissue lesion of the mid thoracic spine and some subscapular bursitis and sacroilitis on the right side. His letter also states that an MRI performed on plaintiff was negative. Based on plaintiff's subjective reports of pain to him and his single examination in 1994, Dr. Christopher assigned a seven (7%) percent permanent impairment rating to the body as a whole.

At trial plaintiff testified that since the 1989 accident she has had trouble keeping a job because her numerous physical problems affect her performance. She also testified that she was unable to dance without a great deal of pain. Her trial testimony was shown to be inconsistent with testimony given in depositions in April 1991 and December 1994. Plaintiff denied at trial ever sustaining an injury to her left hip, but did discuss left hip problems in her depositions. At trial another witness also testified that he had seen her dance several times since May 1989 and that plaintiff did not seem to be in much pain. The same witness also denied going to plaintiff's house on May 16, 1989, to tell her she would be fired if she did not return to work. Further, plaintiff testified in her 1991 deposition that she left one job because she was not needed; she denied any physical job performance problems.

Appellate review is de novo upon the record of the trial court, accompanied by a presumption of the correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. §50-6-225(e)(2). This tribunal is required to make an independent examination of the record to determine where the preponderance of the evidence lies. Galloway v. Memphis Drum Service, 822 S.W.2d 584, 586 (Tenn. 1991); Corcoran v. Foster Auto GMC, Inc., 746 S.W.2d 452, 456 (Tenn. 1988). Where a trial judge has personally 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. McCaleb v. Saturn Corporation, 910 S.W.2d 412, 415

(Tenn. 1995).

Although no doctors testified in person, the trial court had the opportunity carefully to observe the plaintiff and other co-workers presented by both plaintiff and defendant. The trial court's final judgment entered May 19, 1995, specifically found that the plaintiff was not a credible witness based on both trial testimony and depositions. The court apparently did not believe she had sustained a work-related injury.

Upon our review of the record we cannot conclude that the evidence preponderates against the findings of the trial court. We affirm the judgment of the trial court. Costs of appeal are taxed to the plaintiff/appellant Barbara Wallace.

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CORNELIA A. CLARK, SPECIAL JUDGE

CONCUR:

____
LYLE REID, JUSTICE

____
HEWITT TOMLIN, JR., SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

BARBARA WALLACE	)	TIPTON CHANCERY
	)	NO. 9701
Plaintiff/Appellant,	)	
	)	Hon. John Hill Chisholm
V.	)	Chancellor
	)	
CADILLAC CURTAIN COMPANY,	)	S. Ct. No. 02-S-01-9510-CH-00099
	)	
Defendant/Appellee.	)	Affirmed

FILED
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JUDGMENT ORDER

This case is before the Court upon motion for review 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, which are incorporated herein by reference;

Whereupon, it appears to the Court that the motion for review is not well-taken and should be denied; 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.

Cost will be paid by Plaintiff-Appellant, for which execution may issue if necessary.

It is so ordered this _____ day of _____________, 1996.

PER CURIAM

Reid, J., not participating