

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT KNOXVILLE  
(August 5, 1996 Session)

**FILED**  
**December 17, 1996**  
**Cecil Crowson, Jr.**  
Appellate Court Clerk

PATRICIA D. WOODWARD, )  
)  
Plaintiff-Appellant, )  
v. )  
AMERICAN GENERAL LIFE & )  
ACCIDENT INSURANCE COMPANY, )  
)  
Defendant-Appellee. )

WASHINGTON CIRCUIT  
Hon. Thomas J. Seeley, Jr.,  
Judge.  
No. 03S01-9512-CV-00138

For Appellant:

Donald F. Mason, Jr.  
D. Bruce Shine  
Shine & Mason  
Kingsport, Tennessee

For Appellee:

Walter O. Waddey  
Kingsport, Tennessee

MEMORANDUM OPINION

Members of Panel:

E. Riley Anderson, Associate Justice, Supreme Court  
William H. Inman, Senior Judge  
Joe C. Loser, Jr., Special Judge

AFFIRMED

Loser, Judge

## MEMORANDUM OPINION

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. section 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. In this appeal, the employee or claimant, Woodward, contends the evidence preponderates against the trial court's finding that her fibromyalgia was not causally related to her injury. The panel concludes the judgment should be affirmed.

On July 23, 1992, the claimant was involved in a car wreck arising out of and in the course of her employment as a debit agent for the employer, American General. She suffered a mild strain of the neck, superimposed upon preexisting osteoarthritis. She was first seen by Dr. Sherrod, who made the diagnosis, then followed by Dr. Calvin Johnson at Wautauga Orthopedics. Dr. Johnson provided conservative care and assigned minimal permanent impairment.

She was further treated by Dr. David Lurie, a rheumatologist, who diagnosed fibromyalgia but expressed no opinion as to whether her condition was causally related to the accident. The claimant was under Dr. Lurie's continuing care at the time of the trial.

Her attorney referred her to Dr. Mark T. McQuain, a specialist in physical medicine and rehabilitation. Dr. McQuain's impression, as reflected in his notes, was:

1. Cervical degenerative disc disease, maximum at C4-5 and C5-6.
2. Generalized fibromyalgia/tension myalgia, post traumatic.
3. Patellofemoral degenerative joint disease, bilaterally.
4. Tendency for pain magnification.

In his testimony, the doctor was equivocal as to the cause of the claimant's fibromyalgia.

The trial judge found that the probative evidence failed to establish a causal connection between the work-related accident and the claimant's fibromyalgia, but awarded benefits for her neck injury. Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. section 50-6-225(e)(2).

Unless admitted by the employer, the employee seeking benefits under the Workers' Compensation Act has the burden of proving, by competent evidence, every essential element of her claim. Mazanec v. Aetna Ins. Co., 491 S.W.2d 616 (Tenn. 1973). Ms. Woodward had the burden of proving, in this case, that her fibromyalgia arose out of her employment.

In order to prove that an injury was one arising out of the employment, the medical cause of the injury must be proved. Except where the cause is obvious, causation must be established by expert medical testimony based on reasonable medical certainty or probability. Harris v. Kroger Co., Inc., 567 S.W.2d 161 (Tenn. 1978). An award may not be based on conjecture or speculation. Collins v. Liberty Mutual Ins. Co., 561 S.W.2d 456 (Tenn. 1978).

From our examination of the medical proof and the entire record, the evidence fails to preponderate against the trial judge's finding that the claimant's fibromyalgia was not causally related to the automobile accident. The judgment of the trial court is accordingly affirmed. Costs on appeal are taxed to the plaintiff-appellee.

---

Joe C. Loser, Jr., Judge

CONCUR:

---

E. Riley Anderson, Justice

---

William H. Inman, Judge

IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE

PATRICIA D. WOODWARD	)	WASHINGTON	)
CIRCUIT	)	No.	)
16585T.D. Below	)	Appellant,	)
	)		)
vs.	)	Hon. Thomas J. Seeley, Jr.	)
	)	Judge	)
	)	.	)
	)		)
AMERICAN GENERAL LIFE &	)	03S01-9512-CV-00138	)
ACCIDENT INSURANCE	)	.	)
COMPANY.	)		)
	)		)
Appellee.	)		)

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 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.

Costs on appeal are taxed to the plaintiff-appellant.

IT IS SO ORDERED this \_17\_ day of Dec. 1996.

PER CURIAM

Anderson, J. -Not participating.

