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

FILED

November 25, 1996

Cecil W. Crowson
Appellate Court Clerk

ALVA MARIE REYNOLDS,	)	
	)	
Plaintiff/Appellant,	)	**COFFEE CHANCERY**
	)	
VS.	)	**Hon. John W. Rollins, Judge**
	)	
WAL-MART STORES, INC.,	)	**No. 01S01-9509-CH-00172**
	)	
Defendant/Appellee.	)	

For Appellant:

Joseph M. Dalton
Nashville, Tennessee

For Appellee:

G. David Allen, Jr.
Leitner, Warner, Moffitt,
Williams, Dooley, Carpenter &
Napolitan
Chattanooga, TN 37402

M E M O R A N D U M O P I N I O N

Members of Panel:

Adolph A. Birch, Jr., Chief Justice
Jerry L. Smith, Special Judge
Joe C. Loser, Jr., Special Judge

AFFIRMED Smith, Special Judge

OPINION

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated Section 50-6-225 (e)(3) for hearing and reporting findings of fact and conclusions of law to the Supreme Court. Alva Marie Reynolds, the plaintiff-employee, appeals the decision of the Coffee County Chancery Court denying her relief on her worker's compensation claim. On appeal, the sole issue is whether the trial court erred in finding that the plaintiff failed to carry the burden of proving that she sustained an injury arising out of her employment. The trial court found plaintiff's injury was the result of a pre-existing idiopathic condition.

On January 5, 1993, the plaintiff, who was at that time sixty-two years old, sustained an injury to her ankle when she fell at her place of employment, Wal-Mart. The plaintiff had worked at Wal-Mart in diverse capacities for eleven years before her accident, and at the time of her injury, she had been working in the fitting room area for a couple of years. In addition to monitoring the clothing which was brought in and out of the fitting room, she answered Wal-Mart's incoming calls, made announcements, and paged employees within the store. Regarding her fall, the plaintiff testified that, after being told to take a hurried break, she rushed out of the fitting room and fell at the point that the floor changed from carpet to tile. She testified that she had not previously experienced numbness in her legs nor had she ever fallen at work or home before this incident. The plaintiff worked the remainder of the day and did not see a doctor until the next day when her ankle was diagnosed as being broken.

On cross-examination, the plaintiff acknowledged that in two depositions taken after the accident, she did not mention that she was in a hurry at the time that she fell. She explained that she did not remember this until later. However, in a deposition

taken one year and nine months following the accident, the plaintiff said that she just walked across the floor and fell.

The testimony of Dr. Gary Stevens was entered into evidence by deposition. Dr. Stevens first saw the plaintiff on January 7, 1993 -- two days after her fall. He recalled that she had told him that her ankle or her knee gave, and that she did not mention that she had fallen at a place where carpet bordered tile. Dr. Stevens also remembered that the plaintiff had told him that she had been diagnosed as having degenerative joint disease -- a pre-existing condition which develops over time and is not necessarily related to trauma. He stated that degenerative joint disease might cause a person, as he or she is walking, to experience pain and fall. He referred her to a neurologist after her EMG indicated that there was some nerve involvement in certain nerve roots.

The medical records of Dr. Lawrence Pass were entered into evidence by stipulation. It was his impression, upon the examination of the plaintiff in June of 1993, that she had bilateral hip and thigh claudication or Leriche's syndrome. Claudication, as defined by Dr. Stevens, is a vascular problem in which the blood vessel gives only intermittent blood supply.

Dr. David Gaw did not see the plaintiff until June of 1994. It was his opinion, as expressed during a deposition which was entered into evidence, that the plaintiff had degenerative lumbar disc disease which pre-dated but was aggravated by her fall. Although Dr. Gaw was unaware that the plaintiff had been diagnosed as having Leriche's syndrome , he was not surprised. He testified that he would expect her to have some kind of obstructive vascular disease as she had no pulses in her feet. During the depositions of both Dr. Gaw and Dr. Stevens, each doctor gave his opinion that, as Leriche's syndrome affects the blood supply to the legs, a person with this disease might experience tingling, pain, or numbness in his or her lower extremities

which might cause him or her to fall.

Bruce Calloway and Jeff Preston were assistant managers of Wal-Mart at the time of the plaintiff's accident. They both approached the plaintiff while she was still on the floor where she had fallen. They testified that she was on a completely tiled area of the floor approximately six feet from the carpeted area. Mr. Calloway stated that the plaintiff told him that her leg gave out because she had arthritis. She stated she had experienced similar problems at home. He said that she did not indicate that she fell as a result of walking from carpet to tile. Mr. Preston also testified that the plaintiff told him that her legs had become numb, that she had fallen, and that this had happened before.

Bob Pleasant and Rena Anderson, two of the plaintiff's co-workers, testified that they had a conversation with the plaintiff in the Wal-Mart employee lounge on January 5 soon after her fall. According to both witnesses, the plaintiff explained that she did not fall over any object, but instead stated, that she had arthritis in her legs which would cause her legs to go numb resulting in her occasionally falling. Mr. Pleasant recalled that the area where the plaintiff fell was tiled but that carpeted floor was near. Ms. Anderson reported that the plaintiff stated her legs often become numb. Ms. Anderson also recounted that she had been aware that the plaintiff had leg problems due to the plaintiff's behavior at work. Another Wal-Mart co-worker, Kathy Sherrill, testified that she too spoke with the plaintiff in the lounge. She reported that the plaintiff "said in the break room that her legs gave way with her and they do that sometimes."

On rebuttal, the plaintiff called Margaret Rogers, a woman who described herself as having been a very good friend of the plaintiffs for the past eight years. She testified that she had no knowledge that the plaintiff possessed any physical limitations or conditions. She had never talked with the plaintiff regarding problems with her back,

legs, hips or ankles. Lastly, Ms. Rogers was unaware that the plaintiff was under the care of a doctor for any of these conditions.

The trial court ruled against the plaintiff finding that she had "failed to carry her burden of proving that she sustained an injury arising out of and in the course and scope of her employment and that the condition for which she claims benefits did indeed occur as a result of a pre-existing idiopathic condition and not as a result of any hazard incident to the employment."

Our "[r]eview of findings of fact by the trial court shall be de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise." Tenn. Code Ann. § 50-6-225(e)(2) (Supp. 1995); Henson v. City of Lawrenceburg, 851 S.W.2d 809, 812 (Tenn. 1993). This standard of review requires the Court to examine in depth a trial court's factual findings and conclusions. Galloway v. Memphis Drum Serv., 822 S.W.2d 584, 586 (Tenn. 1991). The Court is not bound by these findings but instead can conduct an independent examination to determine where the preponderance of the evidence lies. Corcoran v. Foster Auto GMC, Inc., 746 S.W.2d 452, 456 (Tenn. 1988).

The Worker's Compensation statute covers "injury by accident arising out of and in the course of employment." Tenn. Code Ann. § 56-6-102(5) (Supp. 1995). Tennessee courts have addressed the question of whether an injury arises out of employment when it is the result of a fall occasioned by an idiopathic condition -- a condition which arises out of a disease of unknown origin. See Stedman's Medical Dictionary 690 (5th ed. 1982) (defining idiopathic). Addressing the issue of "whether the effects of an idiopathic fall to the level ground or bare floor should be deemed to arise out of employment," this Court in Sudduth v. Williams, 517 S.W.2d 520, 522-23 (Tenn. 1974), cited Larson, Workmen's Compensation Law, § 12.14 (1972):

> "Inevitably there arrive cases in which the employee suffers an idiopathic fall while standing on a level surface, and in the course of his fall, hits no machinery, bookcases, or tables. At this point there is an obvious temptation to say that there is no way of distinguishing between a fall onto a table and a fall onto a floor, since in either case the hazard encountered in the fall was not conspicuously different from what it might have been at home. A distinct majority of jurisdictions, however, have resisted this temptation and have denied compensation in level-fall cases. The reason is that the basic cause of the harm is personal, and that the employment does not significantly add to the risk."

Distinguishing between cases involving idiopathic injuries and falls occurring in the course of employment which are totally unexplained, the Court stated that "[i]n the latter instance, compensation is usually allowed but, while there is some division of authority on the point, benefits have generally not been allowed where the cause of the fall has been found to be due to some diseased or other idiopathic condition personal to the employee, absent some 'special hazard' of the employment." Sudduth 517 S.W.2d at 523. See also Greeson v. American Lava Corp., 392 S.W.2d 931, 934 (Tenn. 1965).

More recently, the Court cited the rule of Sudduth to deny recovery to a plaintiff who fell as result of an idiopathic condition under circumstances in which "there was no condition of employment that presented a peculiar or additional hazard to the plaintiff." McClain v. Allied-Bendix, Inc., No. 03S01-9211-CH-00100, 1994 WL 902486, at *3 (Tenn. April 5, 1994). In McClain, as the plaintiff "walked in a normal manner around a corner the building [at his place of employment], his knee just 'went out.' " Id. at *1. The plaintiff had injured his knee some six years before, and medical testimony was presented to the effect that his old injury was a preexisting condition which predisposed him to have the new injury. Id. at *2.

We find that the circumstances in the case sub judice are very similar to those in McClain. At least one doctor diagnosed the plaintiff as having, at the time of her fall, Leriche's syndrome. Another doctor agreed that this diagnosis was consistent with her

symptoms. Doctors Gaw and Stevens agreed that Leriche's syndrome might bring about pain or numbness of the legs which could cause a person to fall. Five of Appellant's co-workers testified that she told them that her knees and legs had given way on previous occasions as was the case in this instance. Though there was conflicting testimony on this point, such as that offered by the plaintiff and her friend, this Court neither re-weighs the evidence nor determines the credibility of witnesses. Those issues are to be resolved by the trial judge. Johnson v. Midwesco, Inc., 801 S.W.2d 804, 806 (Tenn. 1990); Carr v. Klopman Mills, 665 S.W.2d 719, 721 (Tenn.1984). The trial court found that the plaintiff failed to carry her burden of proof that her injuries arose out of and in the course and scope of her employment. The evidence in the record preponderates in favor of the finding that the plaintiff's fall was occasioned by a pre-existing idiopathic condition. Tennessee law does not allow worker compensation under these circumstances. Accordingly, the judgment of the trial court is affirmed.

____
JERRY L. SMITH, SPECIAL JUDGE

CONCUR:

____
ADOLPH A. BIRCH, JR., CHIEF JUSTICE

____
JOE C. LOSER, JR., SPECIAL JUDGE

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ALVA MARIE REYNOLDS,	}	*COFFEE CHANCERY*
	}	*No. 94-57 Below*
Plaintiff/Appellant	}	
	}	*Hon. John W. Rollins,*
vs.	}	*Judge*
	}	
WAL-MART STORES, INC.,	}	*No. 01S01-9509-CH-00172*
	}	
Defendant/Appellee	}	*AFFIRMED.*

JUDGMENT ORDER

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 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 plaintiff and surety, for which execution may issue if necessary.

IT IS SO ORDERED on December 8, 2000.

PER CURIAM