IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE

(October 22, 1996 Session)

PREMIER MANUFACTURING SUPPORT SERVICES, INC. and LUMBERMAN'S UNDERWRITING ALLIANCE,	)	MAURY CIRCUIT
Plaintiffs/Appellees,	)	Hon. William B. Cain, Judge
VS.	)	No. 01S01-9605-CV-00102
PATRICIA L. COTHRAN,	)	
Defendant/Appellant.	)	

For the Appellant:

William Carter Conway
Franklin, Tennessee

For the Appellees:

Richard C. Mangelsdorf, Jr.
Nashville, Tennessee

MEMORANDUM OPINION

Members of Panel:

Frank F. Drowota, III, Associate Justice, Supreme Court
Robert S. Brandt, Senior Judge
Joe C. Loser, Jr., Special Judge

AFFIRMED

Brandt, 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. § 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law.

The trial court found that the plaintiff failed to carry her burden of proving that she sustained a permanent disabling injury, a finding based upon assessing the credibility of the witnesses. Given the considerable deference we must give to the trial court's credibility determinations, *McCaleb v. Saturn Corp.*, 910 S.W.2d 412 (Tenn. 1995) and the presumption of correctness of the trial court's findings, Tenn. Code Ann. § 50-6-225(e)(2), we affirm the trial court's decision.

The plaintiff worked for Premier Manufacturing Support Services, Inc., a contractor at the Spring Hill Saturn automobile assembly plant. The company performed a variety of services for Saturn, including cleaning the interiors of buildings and maintaining the grounds. The plaintiff worked at several inside and outside jobs before she sought and received a job driving cars off the assembly line. On January 14, 1994, the car the plaintiff was driving backed into a light pole. She was taken to a Columbia hospital where she was treated and released.

The company sent the plaintiff to Dr. Larry Laughlin, an orthopedic surgeon, who diagnosed her as having back and neck strain. He referred her to Pinnacle Rehabilitation for physical therapy. On the plaintiff's second visit to Laughlin, he conducted a test that indicated that the plaintiff was magnifying her symptoms. The finding of a MRI was normal. Pinnacle conducted a symptom magnification test on the plaintiff, and she scored a four out of five, which means positive for symptom magnification. Laughlin testified that he could not find any significant problems with the plaintiff and he found no permanent impairment. He placed no physical restrictions on her work.

The plaintiff saw Dr. Richard S. Lisella, a neurologist, about a month after the accident. He thought she had post-trauma head and neck pain, which he expected to improve, and he did not find any permanent impairment. He gave her no restrictions and testified that she could perform all the jobs she had performed in the past.

The medical records of neurosurgeon Vaughn A. Allen were introduced in evidence. The plaintiff saw Dr. Allen from June 1994 through February 1995. He filled out a form indicating that the plaintiff suffers a 4% whole body impairment. At the same time, though, he noted that he could not find any good reason for the difficulty the plaintiff was describing.

In contrast the this benign medical evidence, the plaintiff testified to considerable disability. She testified that she is in constant pain. Her leg "gives way." She cannot drive for as much as thirty minutes. She cannot cut the grass on a riding lawn mower. She has bad headaches and numbness on the left side of her body. She cannot do the ground maintenance she was doing when she was discharged. She cannot even vacuum her house. She cannot pick up her five-year-old daughter. The plaintiff testified she could not do her previous work as a bartender, convenience store assistant manager, and floor person at a department store. Two of the plaintiff's friends testified to their observations of the plaintiff's physical limitations.

Substantial evidence contradicts the plaintiff's testimony regarding disability. First, of course, is the minor nature of the accident. She was only traveling five miles per hour when the car she was driving hit the pole. Then there is the testimony of doctors Laughlin and Lisella who saw the plaintiff shortly after the accident. Neither of them found any permanent impairment. And Laughlin and Pinnacle Rehabilitation found that the plaintiff was magnifying her symptoms.

When the plaintiff returned to work a little over a month following the accident, she did strenuous outside grounds maintenance until she was discharged for other reasons. Then she used the grievance process to try to get back the job

she testified she could no longer perform. The plaintiff drew unemployment benefits, for which she certified she was physically able to work.

William Thomas Fuller, a private investigator, filmed the plaintiff at her home on November 22-23, 1994, and his testimony and video tape were introduced in evidence. Fuller testified that he observed the plaintiff bend fully at the waist, pick up a rug, and shake it. He saw her sweep her front porch and steps with a broom. He saw her pick up a barbeque grill and move it. She threw something to her dogs. She cleaned out a car.

The images on the video tape are not of the best quality, but they clearly show an vigorous, active person working around the outside of her house. She repeatedly bends over at the waste. She sweeps. She shakes what looks like a welcome mat. She plays with the dogs. She moves the grill. She hops up the front steps and later bounces down the steps. No one could conclude that the person on the tape is significantly impaired.

In the final analyses, it is for the trial court to assess the credibility of the witnesses, including the plaintiff when she testified about her disability. We cannot conclude the trial court made the wrong decision. Accordingly, the trial court decision is affirmed at the plaintiff's costs.

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Robert S. Brandt, Judge

CONCUR:

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Frank F. Drowota, III, Associate Justice

_____
Joe C. Loser, Jr., Judge

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

PREMIER MANUFACTURING SUPPORT SERVICES, INC. and LUMBERMAN'S UNDERWRITING ALLIANCE,	}	*MAURY CIRCUIT*
	}	*No. 6292 Below*
Plaintiffs/Appellees	}	
	}	*Hon. William B. Cain,*
vs.	}	*Judge*
PATRICIA L. COTHRAN,	}	*No. 01S01-9605-CV-00102*
Defendant/Appellant	}	*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 Defendant/Appellant and Surety for which execution may issue if necessary.

IT IS SO ORDERED on January 17, 1997.

PER CURIAM