IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE

FILED

June 24, 1997

Cecil W. Crowson
Appellate Court Clerk

DARLA GAIL FARMILOE,	)	MAURY CIRCUIT
	)	
Plaintiff/Appellee	)	NO. 01S01-9610-CV-00199
	)	
v.	)	HON. JIM T. HAMILTON,
	)	JUDGE
SATURN CORPORATION,	)	
	)	
Defendant/Appellant	)	

For the Appellant:

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

Members of Panel:

Justice Lyle Reid
Senior Judge William H. Inman
Special Judge William S. Russell

MODIFIED

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.

This complaint was filed June 23, 1994. The plaintiff alleged that she sustained various job-related injuries arising from her employment, the first being November 21, 1991 involving upper back and shoulder pain which developed gradually. The defendant admitted the report of these injuries.

Trial of the case in February 1996 resulted in a finding that the plaintiff's job duties advanced the severity of her pre-existing conditions and that she had sustained a 75 percent occupational disability with benefits payable in a lump sum. The employer appeals, and presents for review the issues of (1) whether the plaintiff sustained a compensable injury to her neck, back and left upper extremity, (2) whether the award is excessive, and (3) whether the award should be paid in a lump sum. We will consider these issues jointly.

Our review of the findings of fact made by the trial court is *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). *Stone v. City of McMinnville,* 896 S.W.2d 584 (Tenn. 1991).

Where testimony is presented by deposition, this Court is able to make its own independent assessment of the proof to determine where the preponderance of the evidence lies. *Cooper v. INA,* 884 S.W.2d 446 (Tenn. 1994).

The plaintiff is 48 years old, and a high school graduate. She applied for employment at Saturn in March, 1990 and revealed in her application that she was injured in a traffic accident in 1986, suffering pulled muscles in her back; that she had been in another accident "a few months before," and was having back and neck problems; and that she had a carpal tunnel release performed in 1986.

Before 1990 she worked in restaurant management, studied computer software applications and medical laboratory technology, and managed a business forms supply company for three years.

She did not reveal to Saturn that in addition to the two automobile accidents mentioned, she sustained neck and back injuries in another automobile accident

twenty years earlier and had since suffered persistent pain in her neck and back. She also failed to reveal that she had refused to undergo carpal tunnel release to her left arm notwithstanding medical advice to do so contemporaneously with the carpal tunnel release to her right arm.

She began work on January 3, 1991 and within ten weeks complained of pain in her lower back. Four weeks later, she complained of left wrist pain.

On September 24, 1991, she saw her personal physician with a complaint of neck pain that had persisted since 1990, relating it to her latest automobile accident. She was treated and released.

On November 12, 1991, she complained of pain in her upper back which she attributed to lifting and bending at her work station. She was treated and released.

In February 1992 she complained of neck and back pain, and was again treated and released.

In October 1992, she complained of pain in her right hip which she attributed to stepping and bending on her job.

The Medical Proof

She was referred to Dr. Jeffrey Adams, an orthopedic surgeon, on January 21, 1993. She complained of pain in her right hip of three months' duration, and stated to Dr. Adams that she was born with dysplasia, but did not tell him about her other injuries and complaints. Dr. Adams diagnosed her hip pain as caused by meralgia paresthetica, an inflammation of a nerve. He treated the plaintiff for the ensuing nine months, but she never mentioned to him any problems about her shoulder, back or neck. Dr. Adams released her in October, 1993 with some temporary restrictions as to lifting, bending and walking.

On November 2, 1995, he performed an independent medical evaluation of the plaintiff. He attributed her neck pain to a bulging disc and cervical spondylosis, with a history of neck injuries, with a five percent impairment. He declined to attribute her neck problems with employment since she never mentioned these problems to him during the eight months of his treatment. He saw her eleven times for her hip problems, which he attributed to the repetitive physical actions of her job, and assessed her impairment at one (1) percent to her whole body. For her left arm

he assessed a six percent impairment to her whole body, or, in toto, a 12 percent impairment to her whole body.

Plaintiff sought treatment by Dr. Jimmy Wolfe, a neurologist. He first saw her on January 25, 1994. She complained of pain in her right hip and shoulder, which she represented as job-related. Dr. Wolfe diagnosed her neck pain as being caused by a pinched nerve for which he assigned a 15 percent impairment to her whole body; for the lumbar sacral area he assigned a ten percent impairment to her whole body; for the carpal tunnel a six percent impairment; for the right hip a two percent impairment, and in combination an impairment to her whole body of 28 percent.

Appellant argues that Dr. Wolfe was unaware of the plaintiff's extensive history of pre-employment injuries. Perhaps so; his deposition does not reveal that he was questioned about her various traumas, and the argument thus has a lessened impact. He attributed his impairment rating of 28 percent to injuries sustained on the job, with no reference to aggravation of pre-existing conditions. *See, Smith v. Smith's Transfer,* 735 S.W.2d 221 (Tenn. 1987).

We have carefully reviewed the deposition of Dr. Wolfe and can but impermissibly speculate about his testimony had the plaintiff's admitted medical history been spread before him. His admitted recourse to certain diagnostic procedures that bear scrutiny affects the weight of his evaluations to an extent, keeping in mind that he was not an approved physician but was employed by the plaintiff for reasons unnecessary to be articulated since the defendant does not question his charges.

The primary treating physician, Dr. Adams, was also kept in the dark about the plaintiff's pre-existing problems. As already observed, he treated her complaints of hip pain for eight months during which time she never mentioned any injury or problems with her shoulder, back, or neck, a singularly strange behavioral mode, to say the least. The circumstances of the treatment by experts, and the information available to them, are important to consider, *Orman v. Williams Sonoma, Inc.,* 803 S.W.2d 672 (Tenn. 1991), and this rule, born of experience, has a peculiar application to the case at hand.

We are of the opinion that the evidence does not support a finding of 75 percent occupational disability. We find a preponderance of the evidence supports a

finding of 45 percent disability or 180 weeks at the rate of $294.00 per week, and the judgment is modified accordingly.

This complaint was filed June 23, 1994. The judgment shall be paid in a lump sum pursuant to T. C. A. 50-6-229. Costs are evenly divided and the case is remanded for all appropriate purposes.

_____
William H. Inman, Senior Judge

CONCUR:

_____
Lyle Reid, Justice

_____
William S. Russell, Special Judge

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DARLA GAIL FARMILOE,	}	*MAURY CIRCUIT*
	}	*No. 6133 Below*
Plaintiff/Appellee	}	
	}	*Hon. Jim T. Hamilton,*
vs.	}	*Judge*
	}	
SATURN CORPORATION,	}	*No. 01S01-9610-CV-00199*
	}	
Defendant/Appellant	}	*MODIFIED.*

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 evenly between the Plaintiff and the Defendant, for which execution may issue if necessary.

IT IS SO ORDERED on June 24, 1997.

PER CURIAM