

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
KNOXVILLE, FEBRUARY 1997 SESSION

**FILED**

April 23, 1997

Cecil Crowson, Jr.  
Appellate Court Clerk

JOY G. JOHNSON, )  
 )  
Plaintiff/Appellant )  
 )  
v. )  
 )  
GOODWILL INDUSTRIES-KNOXVILLE, )  
INC., )  
 )  
Defendant/Appellee )

ANDERSON CIRCUIT )  
 )  
Hon. James B. Scott, Jr. )  
Circuit Judge )

NO. 03S01-9610-CV-00101

**For the Appellant**

Garry W. Ferraris  
P.O. Box 259  
Knoxville, TN 37901-0259

**For the Appellee:**

Elizabeth Townsend  
Gerald L. Gulley, Jr.  
P.O. Box 1708.  
Knoxville, TN 37901-1708

**MEMORANDUM OPINION**

**Members of Panel:**

E. Riley Anderson, Justice  
John K. Byers, Senior Judge  
Roger E. Thayer, Special Judge

**AFFIRMED**

**THAYER, Special 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.

The appeal has resulted from the action of the trial court in dismissing the employee's claim for benefits. The Circuit Judge found plaintiff had failed to establish her injury was caused by an accident which arose out of and in the course of her employment.

The sole issue on appeal is whether the evidence preponderates against the conclusion of the trial court.

Plaintiff, Joy G. Johnson, testified on October 2, 1993, she stepped into a drainage hole while performing her work-related duties. She reported the incident to several management representatives and signed an accident report which indicated she did not receive any treatment for an injury. She did not miss any work and did not see a doctor until July 1994. Her family doctor then referred her to Dr. Gregory M. Mathien, an orthopedic surgeon. She saw Dr. Mathien on September 15, 1994, which was almost a year after the incident at work. In giving a history, she said she fell about a year earlier and had a second fall about eight months earlier. She never indicated either fall occurred at work.

Dr. Mathien's testimony was by deposition and his diagnosis was a torn meniscus with secondary tendinitis. He said the articular cartilage lesion was not work-related but was due to the degenerative process. As to the torn meniscus, he testified causation was hard to say; she only told him she had pain about two and one-half months prior to seeing him, and he could not determine which fall caused the problem or if either event was the cause. Dr. Mathien performed surgery and continued to see her saying the result was not as good as expected. He did not assess any medical impairment as he had no reason to do so.

The record indicates plaintiff incurred substantial medical expenses and all bills were submitted to her husband's medical insurance carrier. No medical expenses were ever submitted to defendant employer. She also admitted she never

requested her employer to furnish a physician for medical treatment. She terminated her employment with Goodwill on March 28, 1995 and became employed with a hospital.

On January 24, 1996, she saw another orthopedic surgeon, Dr. Gilbert L. Hyde. His testimony was presented by deposition, and he said plaintiff gave him a history of having fallen at work. Dr. Hyde was of the opinion her fall at work caused her condition and that she had a 10% medical impairment to her left leg.

A witness for Goodwill told the trial court the first they were aware she was asserting a claim for a compensable injury was when they were served with the suit papers.

The review of the case is *de novo* accompanied by a presumption of the correctness of the findings of fact unless we find the preponderance is otherwise. T.C.A. § 50-6-225(e)(2).

An employee has the burden of proving every element of the case, including causation and permanency by a preponderance of the evidence. *Tindall v. Waring Park Ass'n*, 725 S.W.2d 935, 937 (Tenn. 1987).

In choosing which medical testimony to accept, the trial court may consider the qualifications of the experts, the circumstances of their examination, the information available to them and the evaluation of the importance of that information by other experts. *Orman v. Williams-Sonoma, Inc.*, 803 S.W.3d 672, 676 (Tenn. 1991).

In applying these general rules of law to the facts of the instant case, we cannot conclude the evidence preponderates against the conclusion and decision of the trial court. Therefore, the judgment entered below is affirmed. Costs of the appeal are taxed to plaintiff and sureties.

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Roger E. Thayer, Special Judge

CONCUR:

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E. Riley Anderson, Justice

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John K. Byers, Senior Judge

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AT KNOXVILLE

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Plaintiff/Appellant, )  
 )  
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 ) Judge  
 )  
GOODWILL INDUSTRIES-KNOXVILLE, )  
INC. )  
Defendant/Appellee. ) 03S01-9610-CV-00101

JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Worker' Compensation 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 act 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 and surety, Gary W. Ferraris, for which execution may issue if necessary.

04/23/97