IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE

(January 23, 1997 Session)

FILED

April 25, 1997

Cecil W. Crowson
Appellate Court Clerk

MARY W. SCOTT,	)	
	)	DAVIDSON CIRCUIT
Plaintiff/Appellee,	)	
	)	Hon. Marietta M. Shipley,
	)	Judge
VS.	)	
	)	No. 01S01-9607-CV-00140
	)	
KENNY PIPE & SUPPLY, INC.	)	
and ROYAL INSURANCE	)	
COMPANY OF AMERICA,	)	
	)	
Defendants/Appellants.	)	

For the Appellants:

David T. Hooper
HOOPER & HOOPER
Brentwood, Tennessee

For the Appellee:

M. Linda Hughes
Nashville, Tennessee

MEMORANDUM OPINION

Members of Panel:

Adolpho A. Birch, Jr., Chief Justice, Supreme Court
Robert S. Brandt, Senior Judge
Joe C. Loser, Jr., Special Judge

AFFIRMED

Brandt, Senior 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 only issue raised in this appeal is whether the evidence supports the trial court's award of permanent partial disability. We conclude that it does and affirm the decision.

The plaintiff, Mary W. Scott, a then fifty-six-year-old clerical worker, injured herself in September 1992 when she fell because the back of her secretarial chair came off. She came under the care of Dr. Greg Lanford, a neurosurgeon. He hospitalized her for a few days and then treated her conservatively. She returned to work for several months and then left her job, but there is no explanation in the record as to the cause of her termination.

Dr. Lanford had treated the plaintiff before for the same condition. In fact, he operated on her back in October 1991 to attempt to repair degenerative changes in discs C3 through C7. Following that surgery, the plaintiff returned to work.

The employer's argument is straightforward. The plaintiff's condition was no worse after the fall than it was before the fall.

Dr. Lanford found the plaintiff to be in about the same condition after the fall as she was before the fall. When asked to compare the plaintiff's condition on July 30, 1992 - the last time he saw her before her work injury - to her condition on August 30, 1993 - the last time he saw her *after* the work injury - the doctor responded: "I really don't see a lot of difference in the two visits." Dr. Lanford concluded that she had a 14% impairment before the fall and a 14% impairment after the fall.

The plaintiff testified that she had neck pain before the fall and neck pain after the fall. She testified that she had arm pain before the fall and after the fall. Her arm pain had improved by the time of the fall, and maybe even gone away - the record is unclear - and her arm pain had improved or even gone away by the time Dr. Lanford last saw her after the fall at work.

The defendant's position overlooks one critical bit of evidence. After her 1991 surgery, Dr. Lanford released the plaintiff to return to work with no restrictions. After her 1992 fall, however, the doctor recommended permanent restrictions - no frequent lifting over ten pounds and no occasional lifting over twenty pounds. He instructed the plaintiff to minimize repetitive overhead work. And most importantly, he instructed the plaintiff not to stand, walk, or sit more than six hours in a day and not to stand, walk, or sit more than two hours continuously.

Since her graduation from high school in 1954, the plaintiff has always worked in clerical and secretarial jobs. For seventeen years, she was a secretary and receptionist at Werthan Industries. At Cutters Exchange, she worked in accounts payable. At R. L. Polk Company, she was a secretary. When she injured herself, she was working in billing. Each of these jobs required sitting longer than allowed by Dr. Lanford's restrictions.

Before her on-the-job injury, the plaintiff could perform normal household chores such as cooking and cleaning. After the injury, she can do very little of it. She has lost the feeling in her right thumb and a finger. She has no grip. The plaintiff, whose credibility is not questioned, testified that she cannot perform the clerical jobs that she did in the past.

The defendant's position based upon Dr. Lanford's before-and-after diagnosis is not unreasonable. But there is other evidence, including Dr. Lanford's restrictions, restrictions that he did not impose before the fall at work. We conclude that the judgment of the trial court should be affirmed. Costs are taxed to the defendant-appellant.

____
Robert S. Brandt, Senior Judge

CONCUR:

____
Adolpho A. Birch, Jr., Chief Justice

____
Joe C. Loser, Jr., Special Judge

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MARY W. SCOTT,	}	*DAVIDSON CIRCUIT*
	}	*No. 93C-2627 Below*
Plaintiff/Appellee	}	
	}	*Hon. Marietta M. Shipley,*
vs.	}	*Judge*
	}	
KENNY PIPE & SUPPLY, INC. and	}	
ROYAL INSURANCE COMPANY OF	}	
AMERICA,	}	*No. 01S01-9607-CV-00140*
	}	
Defendants/Appellants	}	*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 Defendants/Appellants and their Surety, for which execution may issue if necessary.

IT IS SO ORDERED on April 25, 1997.

PER CURIAM