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

FILED

August 28, 1997

Cecil W. Crowson
Appellate Court Clerk

JOAN MARIE GRIFFIN, Plaintiff/Appellee v. NATIONAL MEDICAL HOSPITAL OF TULLAHOMA, INC., with an assumed name of HARTON REGIONAL MEDICAL CENTER, Defendant/Appellant	)	COFFEE CHANCERY NO. 01S01-9606--CH-00130 HON. JOHN W. ROLLINS, CHANCELLOR

For the Appellant:

Vanessa A. Jackson
Ray, Van Cleave & Jackson, P. C.
P. O. Box 1027
Tullahoma, TN 37388

For the Appellee:

Russell D. Hedges
Moore & Hedges
105 N. Atlantic St.
P. O. Box 1810
Tullahoma, TN 37388

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

M e m b e r s of P a n e l

Justice Frank F. Drowota, III
Senior Judge William H. Inman
Special Judge William S. Russell

AFFIRMED as 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.

The plaintiff is 29 years old, married, and has a young child. She is learning-disabled on account of a stroke when she was only four months old; she was born with congenital heart disease, and developed a pronounced scoliosis at age 12 which required the surgical implantation of rods in her back. Notwithstanding, she has held several jobs: attendant at a day care center, counter clerk at a fast-food eatery, sales clerk and cashier at a J. C. Penney store.

She was employed by the defendant in August, 1992 in furtherance of its special employment program called Overcoming Challenges which was established to employ afflicted persons.

Her initial job with the defendant was working in the cafeteria making sandwiches and serving food. Some of this work was difficult for her, and ambition lagged; the defendant constantly provided encouragement, and at the time of her alleged injury she had been assigned duties as a cashier.

She was often absent from work owing to illness or to the pre-emptive care of her young child. She commonly experienced pain and fatigue as a result of standing or sitting for extended periods, or whenever she lifted objects. Her previous jobs at the day care center, fast food restaurant and the J. C. Penney Store also caused pain and fatigue.

The injury from which this complaint arises occurred March 30, 1994 when the plaintiff attempted to lift a milk crate. She was initially treated by Dr. Ramprasad who prescribed physical therapy; thereafter, she was referred to Dr. Paul McCombs, a neurological surgeon. He saw the plaintiff on two occasions, April 25 and May 16, 1994, and on the second visit released her to return to work with the recommendation that she avoid prolonged repetitive twisting, bending and stooping, and that she avoid lifting in excess of 20 pounds at any one time or ten pounds repetitively.

The plaintiff returned to Dr. McCombs on June 6, 1994 stating that she had a reoccurrence of pain while lifting her daughter. She returned again on July 25, 1994,

stating that she was working as a cashier, and that the work was tolerable and her pain was decreasing. She resumed her job with the defendant, at the same wages, and was allowed to work as often as she wished. Her job was facilitated by the defendant which provided her with an ergonomically correct chair, and she was allowed to take rest breaks as often as she thought necessary.

A documented file on the plaintiff was maintained by the defendant. She quit her job on May 4, 1995 with a written note saying, "I'm turning in my resignation because my daughter is going to be out of school and I need to stay home with her, and my back is giving me problems so I would like to quit."[1]

Dr. McCombs testified by deposition that the plaintiff suffered a chronic lumbar strain resulting in a five percent impairment according to the *AMA Guides to the Evaluation of Permanent Impairment.* He did not believe she would require future medical care or pain management care, and stated his opinion that she could continue her job as a cashier.

A psychologist was employed by the Social Security Administration to administer certain psychological tests to the plaintiff. She attested to the limited mental abilities of the plaintiff - which were likely quite obvious - and opined that the plaintiff had no transferable job skills, notwithstanding that she was able to work as a cashier.

The trial judge found that the plaintiff had sustained a 75 percent permanent partial disability to her whole body. He declined to apply any statutory multiplier, holding that TENN. CODE ANN. § 50-6-242 should control the disposition of the case. We are unable to agree.

TENN. CODE ANN. § 50-6-241(a) provides that where an injured employee who receives permanent partial disability benefits and the pre-injury employer returns the employee to work at a wage equal to or greater than the wage earned at the time of the injury, the maximum aware is two and one-half times the impairment rating.

It is not disputed that the plaintiff returned to work at the same wage but reduced hours. While she testified she quit because of the pain associated with the job as cashier, we can hardly overlook her manuscripted note of resignation hereto-

---

[1]She had not worked for about six weeks, having been "sent home" by her employer until she could produce a relevant medical report.

fore reproduced. Before her injury she worked as a cashier; she returned to that job; there were no complaints about her performance; she told Dr. McCombs that her back pain had improved and that the work was tolerable, and Dr. McCombs was of the opinion that she could perform the work.

TENN. CODE ANN. § 50-6-241(b) prescribes the maximum award the employee may receive is six (6) times the impairment rating if the pre-injury employer does not return the employee to employment at a wage equal to or greater than the wage earned at the time of injury.

A meaningful return to work is implicated, and whether or not there has been a meaningful return depends on the facts of each case.[2] The facts *sub judice* are extraordinary, and the application of section (a) in its literal context would likely and unjustly penalize the plaintiff for industry and a commendable work ethic. She, in point of fact, returned to work part-time, but quit for the reasons stated. The thrust of all the evidence justifies a finding that under the circumstances of this case there was no meaningful return to work, thus triggering the application of section (b).

We observe that the employer cannot lawfully be onerated with liability for the plaintiff's previously existing afflictions, absent an injury which aggravated a pre-existing condition. Her anatomical impairment attributable to the work injury is five percent, and the pathology was insignificant. The evidence preponderates against the judgment, and in favor of a finding of six times the impairment rating of five percent, or 30 percent to the body as a whole, and we modify the judgment to so hold. As modified, the judgment is affirmed, with costs assessed to the parties evenly.

_____
William H. Inman, Senior Judge

CONCUR:

_____
Frank F. Drowota, III, Justice

_____
William S. Russell, Special Judge

[2] *See Newton v. Scott Health Care Center,* 914 S.W.2d 884 (Tenn. 1995).

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

FILED

August 28, 1997

Cecil W. Crowson
Appellate Court Clerk

JOAN MARIE GRIFFIN,	)	Coffee Chancery
	)	No. 95-44 Below
Plaintiff-Appellee,	)	
	)	
V.	)	
	)	NO. 01-S-01-9606-CH-00130
	)	
NATIONAL MEDICAL HOSPITAL OF TULLAHOMA, INC., with an assumed name of HARTON REGIONAL MEDICAL CENTER,	)	Hon. John W. Rollins, Chancellor
	)	
	)	Affirmed as modified.
Defendant-Appellant.	)	

JUDGMENT ORDER

This case is before the Court upon motion for review pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), 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 motion for review is not well-taken and should be denied; 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 are apportioned evenly between the parties. One half of the costs are assessed against the appellant, one half against the appellee, and execution may issue if necessary.

It is so ordered this 28th day of August, 1997.

PER CURIAM

Drowota, J., not participating