IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE

ELEANOR McDANIEL	)	
	)	NO. 03S01-9612-CV-00121
Plaintiff/Appellant	)	
	)	
v.	)	HON. BEN K. WEXLER
	)	CHANCELLOR
UNIVERSAL BEDROOM FURNITURE, LTD.,	)	
	)	
Defendant/Appellee	)	

For the Appellant:	**For the Appellee:**
Douglas R. Beier P. O. Box 1754 Morristown, TN 37816	Joseph J. Doherty Wimberly & Lawson, PLLC Liberty Center P. O. Box 1066 Morristown, TN 37816-1066

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

Members of Panel:

E. Riley Anderson, Justice
Don T. McMurray, Judge
William H. Inman, Senior Judge

AFFIRMED **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.

T. C. A. § 50-6-241(a)(2) authorizes the Court to "reconsider upon the filing of a new cause of action the issue of industrial disability" and enlarge a previous award in appropriate cases where the employee is no longer employed by the pre-injury employer and files a timely application for an increase in benefits.

This complaint was filed September 10, 1994. The plaintiff alleged that she had suffered a job-related back injury in 1993 which was resolved under the workers' compensation law on July 18, 1994 by a judgment approving a lump-sum settlement based on a finding of 20 percent vocational disability, with the proviso that she be allowed to return to work "within her medical restrictions."[1] The judgment provided for the payment of future medical expenses provided the plaintiff consulted the defendant before seeking treatment from an authorized medical provider.

She further alleged that she returned to work on July 11, 1994 and on August 17, 1994[2] during the course of her employment she again injured her back which resulted in total disability for which she sought an enlargement of the previous award.

The plaintiff's job was sedentary. It involved "putting screws in bags." Upwards of eight one-inch screws were placed in a small glassine bag, total weight less than one ounce. She testified that owing to the laziness of fellow workers she occasionally had to stretch her arms in order to reach the materials and on August 17, 1994 "pulled her back" resulting in the alleged new injury and increased disability.

The defendant denied that the plaintiff was injured as alleged and asserted that her anatomical impairment was no greater than as found by the Court on July 18, 1994.

The trial judge found that this was not "an appropriate case under the provisions of T. C. A. § 50-6-241(a)(2)" and dismissed the case. The plaintiff

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[1]These "medical restrictions" are not otherwise defined or explicated.

[2]Twenty-nine days after the settlement.

appeals and presents for review the issues of (1) whether the trial court erred in failing to reconsider the plaintiff's industrial disability, and (2) in failing to award medical expenses.

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).

The thrust of the plaintiff's case is that the job she was assigned to do upon her return to work required more physical exertion than her pre-injury job, which directly caused her new injury. In support of this contention the plaintiff submitted photographs which, according to her testimony, depicted her daily work activities. During the course of questioning it was established that the photographs were staged, since each of them depicted the plaintiff performing activities contrary to the instructions of her treating physicians, and contrary to the job requirements. The trial judge found that these photographs, or some of them, were taken before August 24, 1994, the significance of which is readily apparent. This finding of a lack of credibility essentially forecloses the plaintiff's case. *Walls v. Magnolia Truck Lines,* 622 S.W.2d 526 (Tenn. 1981).

In any event the plaintiff's treating physician testified that the plaintiff suffered no increase in pain as a result of the claimed new injury, and, significantly, that she had experienced no increase in medical impairment. The first issue, therefore, is without merit for this additional reason.

With respect to the issue of the failure of the Court to award medical expenses, we note that this precise issue was not before the Court. The plaintiff sought medical expenses for the treatment of an alleged *new* injury. She did not allege that the medical treatment was necessitated by the initial injury, or was in any way related to it. We note that the defendant is liable under the initial judgment for future medical expenses attributable to the 1993 injury provided "the plaintiff shall first consult with the defendant prior to seeking such treatment and shall comply with the defendant's reasonable referral to an authorized medical provider." Whether the medical expenses incurred by the plaintiff are within the ambit of the judgment and

applicable law was not an issue in this case.

The judgment is affirmed at the costs of the appellant.

William H. Inman, Senior Judge

CONCUR:

E. Riley Anderson, Justice

Don T. McMurray, Special Judge

IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE

ELEANOR McDANIEL,	)	HAMBLEN CIRCUIT
	)	No. 93-CV-342
Plaintiff/Appellant	)	
	)	
	)	
vs.	)	Hon. Ben K. Wexler,
	)	Judge
	)	
UNIVERSAL BEDROOM FURNITURE, LTD.	)	
	)	
	)	03S01-9612-CV-00121
Defendants/Appellee.	)	

JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' 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 fact 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 appellant, Eleanor McDaniel and surety, Douglas R. Beier, for which execution may issue if necessary.

08/21/97

al 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, Vernon Harris and Gilbert and Faulkner. surety, for which execution may issue if necessary.

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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 on appeal are taxed to the defendant/appellant, Baptist Hospital

of East Tennessees and Barry K. Maxwell, surety, for which execution may issue if necessary.

07/11/97

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 will be paid by the plaintiff-appellant and sureties, for which execution may issue if necessary.

IT IS SO ORDERED this ____ day of June, 1997.

PER CURIAM

Anderson, J. - Not Participating

al 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, Vernon Harris and Gilbert and Faulkner. surety, for which execution may issue if necessary.

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