

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

FILED

October 21, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

EMILY MILLS,)	KNOX CIRCUIT
)	
Plaintiff/Appellant)	NO. 03S01-9611-CV-00110
)	
v.)	HON. DALE C. WORKMAN,
)	JUDGE
BAPTIST HOSPITAL OF EAST)	
TENNESSEE, INC.,)	
)	
Defendant/Appellee)	

For the Appellant:

James M. Moore
MOORE & SMITH, P.C.
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Knoxville, TN 37902

For the Appellee:

Barry K. Maxwell
Reuben N. Pelot, IV
EGERTON, McAFEE, ARMISTEAD
& DAVIS, P.C.
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P. O. Box 2047
Knoxville, TN 37901

MEMORANDUM OPINION

Members of Panel:

Justice Adolpho A. Birch, Jr.
Senior Judge John K. Byers
Special Judge Irvin H. Kilcrease, Jr.

AFFIRMED as MODIFIED.

BYERS, 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 trial court found the plaintiff had sustained a 10 percent vocational impairment to her left lower extremity as a result of an injury to her knee on September 25, 1991. The trial court further found the plaintiff reached maximum medical improvement on March 3, 1993. Additionally, the trial court found the defendant was not liable for medical bills incurred by the plaintiff after March 3, 1993.

The plaintiff appeals and claims the trial court erred in limiting the recovery to ten percent, that the period of temporary total disability should have extended until April 15, 1995, and that the trial court erred in holding the defendant was not liable for medical bills after March 3, 1993.

The defendant raises as an issue the claim that the plaintiff has failed to show she sustained any disability as a result of her injury.

We find the judgment of the trial court should be affirmed in all things except for the award of ten percent permanent vocational disability to the lower extremity. We find from the record the plaintiff is entitled to recover at the rate of 25 percent for the injury to her left lower extremity.

The plaintiff was age 51 at the time of the trial; she had a high school diploma and was a certified nursing assistant. On September 25, 1991, she fell while working for the defendant.

The medical evidence in this case was given by Dr. William M. Hovis, an orthopedic surgeon. Dr. Hovis found the plaintiff had a pre-existing arthritic condition in both knees. Dr. Hovis testified this can be exacerbated or accelerated by trauma. Dr. Hovis treated the plaintiff for the injury to her knee by various means. He testified she had reached maximum medical recovery on March 3, 1993. Dr. Hovis was of the opinion the plaintiff had a 15 percent impairment to her left leg, with five percent of this caused by the fall and the remainder by the arthritic condition. Whether Dr. Hovis placed restrictions on the plaintiff because of her injury when she returned to work is less than clear. He testified she should refrain from climbing, squatting and kneeling. Dr. Hovis testified the restrictions were based on her overall condition.

Dr. Hovis testified he did total knee arthroplasty on the plaintiff on December 8, 1994. Dr. Hovis testified in a previous deposition that the plaintiff would require knee surgery in the future because of her arthritis. He testified he tried to dissuade the plaintiff from having the surgery in 1994 because he did not think it was appropriate at that time. However, he gave in to her request. Dr. Hovis testified the surgery eliminated the previous 15 percent medical impairment rating and that the plaintiff now has a 37 percent impairment as a result of the surgery.

We review the action of the trial court with a presumption of the correctness of the court's findings of fact, and unless the evidence preponderates against the findings of the trial judge, we must affirm the judgment. TENN. CODE ANN. § 50-6-225(e)(2). We are required to examine the record in depth to determine where the preponderance of the evidence lies. *Stone v. City of McMinnville*, 896 S.W.2d 584 (Tenn. 1991).

The plaintiff and defendant agree that the plaintiff had an accident at work. The defendant claims that the plaintiff failed to show any injury other than an increase in pain as a result of the aggravation of a pre-existing condition, and that under the holding in *Talley v. Virginia Ins. Reciprocal*, 775 S.W.2d 587 (Tenn. 1989), increase in pain only is not compensable. The defendant says the plaintiff has failed to show the injury caused any compensable injury as a result of the fall.

We find, contrary to defendant's assertion, that the plaintiff did show by a preponderance of the evidence that she suffered a compensable injury and that she suffered a permanent vocational impairment as a result thereof. The record shows the plaintiff was pain free prior to this injury. An aggravation of a pre-existing condition as a result of a work injury is compensable. *White v. Werthen Industries*, 824 S.W.2d 158 (Tenn. 1992).

We find the division of the medical impairment rating by Dr. Hovis in his April 8, 1994 deposition at five percent as a result of the fall and ten percent as a result of the previously existing arthritis to be, in the application of the Workers' Compensation Law, a 15 percent medical impairment. If the liability for aggravation of a pre-existing condition has any validity, it must encompass the total disability triggered by the injury.

In this case, the evidence shows a 15 percent medical impairment to the left leg. We find, based upon the medical evidence, including the restrictions placed upon the plaintiff, that she has sustained a 30 percent permanent vocational impairment to her left leg and we so modify the judgment of the trial court.

We do not find the plaintiff is entitled to recover an award based upon the surgery done upon her knee in December 1995. The medical evidence shows the surgery was inevitable in the future because of her arthritic condition. The surgery was done sooner than the doctor thought it should be and the doctor was not of the opinion the fall caused the surgery to be necessary. It results therefore that the medical expenses incurred by the plaintiff after March 3, 1993 are not the responsibility of the defendant, and we affirm that portion of the judgment of the trial court.

Dr. Hovis testified the plaintiff reached maximum medical recovery on March 3, 1993 and returned her to work. The plaintiff has failed to show the period of temporary total disability should extend beyond that time. Therefore we affirm the trial court's finding on that issue.

As modified, we affirm the judgment of the trial court and remand this case to the trial court for entry of any orders necessary to carry out this judgment.

John K. Byers, Senior Judge

CONCUR:

Adolpho A. Birch, Jr., Justice

Irvin H. Kilcrease, Jr., Special Judge

IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE

EMILY MILLS,)	KNOX CIRCUIT
)	No. 1-719-93
Plaintiff/Appellant,)	
)	
vs.)	Hon. Dale C. Workman
)	Judge
)	
BAPTIST HOSPITAL OF EAST)	
TENNESSEE, INC.,)	
)	03S01-9611-CV-00110
Defendant/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 defendant/appellee, Baptist Hospital of East Tennessee, Inc., for which execution may issue if necessary.

10/21/97

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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