

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

FILED

October 31, 1997

Cecil W. Crowson
Appellate Court Clerk

ROXIE MOOREHEAD,)	LINCOLN CIRCUIT
)	
Plaintiff/Appellee)	NO. 01S01-9703-CV-00049
)	
v.)	HON. LEE RUSSELL,
)	JUDGE
LINCOLN & DONALSON CARE)	
CENTER,)	
)	
Defendant/Appellant)	

For the Appellant:

Helen Sfikas Rogers
SunTrust Bank Building, Suite 1550
201 Fourth Avenue North
Nashville, TN 37219

For the Appellee:

Floyd Don Davis
Floyd Don Davis, P.C.
201 First Avenue, N.W.
Winchester, TN 37398

MEMORANDUM OPINION

Members of Panel:

Justice Frank F. Drowota, III
Senior Judge William H. Inman
Special Judge Joe C. Loser, Jr.

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.

The issue in this case is whether the replacement of the plaintiff's right knee was causally related to a compensable accident within the purview of applicable law. The trial judge found the issue in favor of the plaintiff and awarded benefits based upon a determination that she had an 85 percent permanent partial disability to her right leg. The employer appeals, insisting that the judgment is contrary to the preponderance of the evidence.

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 plaintiff is a 62 year old woman of limited education and skills. She was employed as a nursing technician¹ at the Care Center where she began work in 1991.

On April 17, 1994, a patient whom she was attending kicked her right knee, which caused momentary pain. She continued to work for three weeks during which time her knee became stiff and painful. She was seen by Dr. Michael Siaw, an orthopedic specialist who recommended conservative treatment. She did not respond, and Dr. Siaw scheduled her for a MRI which revealed an oblique tear of the lateral meniscus. Dr. Siaw believed this injury was consonant with the history the plaintiff gave him of having been kicked on the knee by a patient at the nursing home.

Eventually, it became necessary to correct the tear arthroscopically. This procedure was performed on July 5, 1994, and successfully so, although pre-existing osteoarthritis continued to cause the plaintiff considerable pain. The plaintiff returned to work, and the arthritic condition worsened, according to her. Dr. Siaw saw her on June 21, 1996 and discovered that she had a total knee replacement

¹ Being a nursing technician involves lifting, bathing, feeding, and dressing patients.

arthroplasty which he had not recommended. She was complaining of pain and inability to walk on a sustained basis. He assigned no anatomical impairment.

In the interim, and without consulting Dr. Siaw, the plaintiff sought the services of Dr. Eslick Daniel, an orthopedist who specializes in joint replacements, on January 18, 1995.

The history obtained by Dr. Daniel was essentially the same as the history recited by Dr. Siaw, which was that a kick on her right knee precipitated the problem. Dr. Daniel found crepitation and fluid with severe degenerative disease coupled with loss of joint space and spur formation. He recommended total knee replacement, which was accomplished on February 20, 1995. He opined that, based on the *American Medical Association Guides to the Evaluation of Permanent Impairment, 4th Ed.*, the plaintiff had a physical impairment of 50 percent to the right leg or 20 percent to the whole person. Dr. Daniel further opined that the history given to the plaintiff was compatible with his diagnosis.²

Proof was offered concerning the plaintiff's long history of arthritis, accompanied pain and swelling in both knees. This history forms the basis of the defense that the plaintiff's knee replacement was occasioned by osteoarthritis of long duration, and thus was not job-related, superimposed upon an accident at home, all strengthened by the testimony of Dr. Siaw that the arthroscopic procedure he performed was successful and resulted in no impairment.

However that may be, the trial judge chose to accredit the plaintiff, who testified that the arthroscopic procedure did not alleviate the pain and discomfort in her knee, and for this reason she sought further treatment with the knowledge and consent of the defendant. Dr. Daniel was of the opinion that the injury to the plaintiff's knee was compatible with the history she recited; this testimony is sufficient to prove causation. Absolute medical certainty is not required to prove causation, and any reasonable doubt about the issue should be resolved in favor of the employee. *White v. Werthan Indus.*, 824 S.W.2d 158 (Tenn. 1992). We cannot find

² The plaintiff went to the ER on May 14, 1994 because her knee "locked up." The ER personnel made a notation on their records that the plaintiff "fell when leaving house," and "knee, it gave way stepping out of house." The plaintiff denied that she fell at home; this issue was resolved favorably to her, and since the ultimate test is credibility, there the matter ends.

that the evidence preponderates against the finding of the trial court that the plaintiff's ultimate condition was precipitated by a job-related injury.

In the reply brief, the appellant raises the issue of whether the trial court erred in awarding the plaintiff additional temporary total benefits. We are unable to determine from the record whether the issue has merit.

The judgment is affirmed at the costs of the appellant and the case is remanded.

William H. Inman, Senior Judge

CONCUR:

Frank F. Drowota, III, Justice

Joe C. Loser, Jr., Special Judge

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AT NASHVILLE

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ROXIE MOOREHEAD,
Plaintiff/Appellee

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LINCOLN CIRCUIT
No. 039-95 Below
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vs.

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}

Hon. F. Lee Russell,
Judge

LINCOLN & DONALSON CARE
CENTER,

}
}

No. 01S01-9703-CV-00049

Defendant/Appellant

}
}

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 Defendant/Appellant and Surety, for which execution may issue if necessary.

IT IS SO ORDERED on October 31, 1997.

PER CURIAM