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

WILLIE M. NUTT,	)	WAYNE CHANCERY
	)	
Plaintiff/Appellant	)	No. 01S01-9609-CH-00195
	)	
v.	)	HON. WILLIAM B. CAIN
	)	
ANGELICA UNIFORM GROUP,	)	
	)	
Defendant/Appellee	)	
	)	

For the Appellant:

Wm. Landis Turner
KEATON, TURNER & SPITZER
Hohenwald, Tennessee

For the Appellee:

Paul C. Ney, Jr.
DORAMUS & TRAUGER
Nashville, Tennessee

MEMORANDUM OPINION

MEMBERS OF PANEL

LYLE REID, ASSOCIATE JUSTICE, SUPREME COURT
WILLIAM S. RUSSELL, RETIRED JUDGE
W. MICHAEL MALOAN, SPECIAL JUDGE

AFFIRMED

MALOAN, SPECIAL JUDGE

This Workers' Compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated §50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

The plaintiff, Willie M. Nutt, appeals the judgment of the trial court in dismissing her complaint as being barred by the statute of limitations. For the reasons stated in this opinion, we affirm the judgment of the trial court.

Willie M. Nutt worked for the defendant, Angelica Uniform Group, from 1982 to 1989 when she quit due to pain in her shoulders and back. She then worked for Tennessee River for several months, but again had to quit due to the physical inability to do her job. In November 1989, she was advised by Dr. Howard Fuchs that her shoulder problems were work-related. With the encouragement of the plant manager, and the assurance of light duty, Ms. Nutt returned to work for Angelica Uniform in July, 1990. She was able to handle small parts for a few days, but her shoulder symptoms returned when she was assigned to heavier work. She was terminated because she was unable to perform her job.

Plaintiff filed suit on January 28, 1991, and alleged on or about July 31, 1990, she became aware she had suffered an injury to her shoulders. The defendant answered and pled the statute of limitations as a defense. After a trial on October 20, 1994, the trial court took the matter under advisement and entered judgment on December 16, 1994, dismissing plaintiff's cause of action. The trial court found:

> The shoulder problems suffered by Ms. Nutt, however, were long standing problems and were not caused by a work-related injury during her brief period of employment at Angelica's plant in July of 1990. The Court further finds that Ms. Nutt was aware of her shoulder problems and aware that those shoulder problems were work related several years before the complaint in this action filed. The statute of limitations applicable to her claims, therefore, expired prior to the filing of this action on January 28, 1991, and Ms. Nutt's action was untimely and barred by the statute of limitations.

The scope of review of issues of fact is *de novo* upon the record of the trial court, accompanied by a presumption of correctness of the findings, unless the preponderance of evidence is otherwise. Tennessee Code Annotated § 50-6-225(e)(2). *Lollar v. Wal-Mart Stores, Inc.*, 767 S.W.2d 143 (Tenn. 1989). When a trial court has seen and heard witnesses, especially where issues of credibility and weight of oral testimony are involved, considerable deference

must be accorded the trial court's factual findings. *Humphrey v. David Witherspoon, Inc.*, 734 S.W.2d 315 (Tenn. 1987). However, where the issues involve expert medical testimony which is contained in the record by deposition, as it is in this case, then all impressions of weight and credibility must be drawn from the contents of the depositions, and the reviewing court may draw its own impression as to weight and credibility from the contents of the depositions. *Overman v. Williams Sonoma, Inc.*, 803 S.W.2d 672, 676-77 (Tenn. 1991).

Plaintiff contends her brief employment of July 1990 aggravated her pre-existing shoulder problems and she suffered a compensable injury. Defendant insists no new injury occurred and the trial court was correct in dismissing her complaint as being time barred.

An employee's work that aggravates a pre-existing injury or condition by increasing the amount of pain, but does not otherwise "injure or advance the severity" of the employee's injury or condition is not compensable. *Cunningham v. Goodyear Tire & Rubber Co.*, 811 S.W.2d 888 (Tenn. 1991). However, increased pain may be disabling and compensable when medical and claimant's testimony establish an advancement of the severity of the pre-existing condition which increases the percentage of permanent impairment. *Fink v. Caudle*, 856 S.W.2d 952 (Tenn. 1993). Medical evidence must establish the manifestation of increased pain and a permanent anatomical change in the pre-existing injury or condition. *Talley v. Virginia Insurance Reciprocal*, 775 S.W.2d 587 (Tenn. 1989). Further, medical testimony must establish a causal relationship between the anatomical change and the work-related aggravation to the pre-existing injury or condition. *Boling v. Raytheon Corporation*, 448 S.W.2d 405 (Tenn. 1969).

Dr. Howard Fuchs testified by deposition he first saw plaintiff in October, 1989, for joint trouble. On November, 1989, he diagnosed her condition as tendinitis and told her the condition was work related. Dr. Fuchs continued to treat her through April of 1991, when she was seen by Dr. Emilio Rodriguez. Dr. Fuchs was not asked to give any medical opinion as to the existence, causation, or extent of permanent impairment of any increased pain, anatomical change, or advancement of the severity of the pre-existing condition caused by her July, 1990, employment. The record is, therefore, devoid of the necessary medical evidence to determine whether plaintiff's condition is compensable. Having found no new compensable injury or aggravation in July, 1990, the trial court correctly found plaintiff's pre-existing work-related condition was time barred, as no suit had been filed within one year of the date plaintiff became aware she had a

work-related injury. Tennessee Code Annotated, §50-6-224.

Plaintiff further argues on appeal the actions of the employer in encouraging her to return to work at lighter duty and then terminating her when she was unable to perform heavier duties precludes the employer from relying on the statute of limitation on the basis of waiver and/or estoppel. This issue was not raised at trial, but presented as a post-trial motion to alter or amend judgment which was denied by the trial court. Plaintiff 's reliance on cases where the employer misled the employee regarding the statute of limitations, *American Mutual Liability Insurance Co. v. Baxter*, 357 S.W.2d 825 (1962) and *Humphreys v. Allstate*, 627 S.W.2d 933 (Tenn. 1982) is misplaced. There is no evidence in the record Angelica Uniform misled Ms. Nutt regarding her rights under the Workers' Compensation Act. This issue is without merit.

The evidence does not preponderate against the trial court's judgment and is, therefore, affirmed. This appeal is dismissed at plaintiff's costs.

_____
W. Michael Maloan, Special Judge

Concur:

_____
Lyle Reid, Justice

_____
William S. Russell, Senior Judge

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

WILLIE M. NUTT,	}	*WAYNE CHANCERY*
	}	*No. 8492 Below*
Plaintiff/Appellant	}	
	}	*Hon. William B. Cain,*
vs.	}	*Judge*
	}	
ANGELICA UNIFORM GROUP,	}	*No. 01S01-9609-CH-00195*
	}	
Defendant/Appellee	}	*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 Willie M. Nutt, Principal, and Surety, for which execution may issue if necessary.

IT IS SO ORDERED on November 13, 1997.

PER CURIAM