IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE
(September 25, 1997 Session)

SHARON ABBOTT,	)	MAURY CHANCERY
	)	
Plaintiff-Appellant,	)	Hon. William B. Cain,
	)	Judge.
v.	)	
	)	No. 01S01-9703-CH-00071
SATURN CORPORATION,	)	
	)	
Defendant-Appellee.	)	

For Appellant:

Daniel L. Clayton
Kinnard, Clayton & Beveridge
Nashville, Tennessee

For Appellee:

Thomas H. Peebles
Waller, Lansden, Dortch & Davis
Columbia, Tennessee

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

Members of Panel:

Lyle Reid, Associate Justice, Supreme Court
William S. Russell, Special Judge
Joe C. Loser, Jr., Special Judge

REVERSED AND REMANDED

Loser, Judge

MEMORANDUM OPINION

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. section 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. Fairly stated the issue raised by the employee or claimant, Abbott, is that the evidence preponderates against the trial court's finding that her permanent disability is not causally connected to her work-related injury. As discussed below, the panel has concluded the judgment should be reversed.

On or about September 1, 1993, the claimant, while working for the employer, Saturn, felt a sharp pain in her neck and shoulder while reaching for boxes of parts. She continued to work off and on with pain until November of 1994, when she became disabled to work and was referred by the employer to a Dr. Tom Bartsokas, a family and sports medicine practitioner. The doctor made a preliminary diagnosis of cervical disc disease with myelopathy and myofascial pain syndrome. He excused her from work for one week and ordered a magnetic resonance imaging (MRI) scan. He also prescribed physical therapy.

The MRI scan revealed areas of disc bulging in the midline at three levels, particularly C4-C5, C5-C6 and C6-C7 with degenerative disc narrowing from C4 down to C7. In his deposition, Dr. Bartsokas opined the claimant was permanently impaired and gave the following testimony concerning causation:

> Q. All right. Sir, do you have an opinion, to a reasonable degree of medical certainty, as to what was the cause, then, of this permanent impairment that she has?
>
> A. My personal opinion is that, number one, she has cervical disc degeneration. It's a form of disc disease compounded by osteoarthritis, spurring of the spine, and particularly at the level where she had her disc degeneration. And this condition that she was born with the proclivity to manifest was aggravated by the work she performed.

In July of 1995, the claimant was referred to Dr. Noel Tulipan, a neurosurgeon, who also found her to be permanently impaired and, by deposition, gave the following testimony:

> Q. So you said earlier that the patient attributed her condition to her work. My question is to you, do you attribute her condition, the condition that you've described and that you found in her neck, to her work?

A. Well, I have to answer that in two parts. I think that the abnormalities that we see on the CT scan, the myelogram and the plain x-rays are not attributable to her work. The fact that she gives a history of having pain related directly to an incident at work makes me think there was something about her work that aggravated her pain or aggravated her condition, but certainly the abnormalities that we see on the myelogram pre-dated this pain.

Q. And the aggravation that you've talked about, would that have made the condition -- or do you have an opinion as to whether that aggravation would have made the condition any worse than it would have been under the normal degenerative process?

A. I think if you're asking me -- let's say we did a myelogram immediately before she had her pain and immediately after. We might not have seen any major -- any significant change before and after but that still doesn't necessarily mean that there was something about the way she moved her neck at work that aggravated the pain.

Q. Is the condition that she has, is it usually something that causes pain regardless of whether or not someone is working or not?

A. I would have expected her to have some degree of neck pain from this kind of degenerative change.

Q. Whether it had been aggravated by work or not?

A. It's certainly very possible.

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Q. But, doctor, it is your opinion that Sharon Abbott, with the history that she gave you regarding her work, that her work-related activities have contributed to her problems that she's having now; correct?

A. I believe that's correct. Yes, sir.

Q. And, sir, it would certainly be consistent with the many

people out there who have degenerative changes without even knowing about it that she could have continued working at Saturn without this pain and without these problems ever occurring; correct?

A. You're asking me a hypothetical situation that she could have gone on working without pain?

Q. Right.

A. Sure.

Q. In other words, it's not set in stone that these degenerative changes would have caused Sharon Abbott the problems that she had if you removed the September, 1993 work injury. Do you follow my question?

A. I guess I do. I think the answer to that -- let me restate it in my own terms. I think it's possible with somebody with the same myelographic findings as Ms. Abbott could work at Saturn and not have incapacitating pain. Is that the question you're asking?

Q. Okay, fine, but --yeah, it is. And then as a follow-up to that though the problems that she has relate back -- the aggravation of it relates back to the September, 1993 injury; correct?

A. That's correct.

We find in the record no other expert medical proof.

The trial court, relying on Cunningham v. Goodyear Tire and Rubber Co., 811 S.W2d 888 (Tenn. 1991), Jose v. Equifax, Inc., 556 S.W.2d 82 (Tenn. 1977) and Townsend v. State, 826 S.W.2d 434 (Tenn. 1992), found the claimant's permanent disability to be not compensable. Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. section 50-6-225(e)(2).

Conclusions of law are subject to de novo review on appeal without

any presumption of correctness. Presley v. Bennett, 860 S.W.2d 857 (Tenn. 1993). Where the trial judge has seen and heard the witnesses, especially if issues of credibility and weight to be given oral testimony are involved, considerable deference must be accorded those circumstances on review. McCaleb v. Saturn Corp., 910 S.W.2d 412 (Tenn. 1995). The appellate tribunal, however, is as well situated to gauge the weight, worth and significance of deposition testimony as the trial judge. Seiber v. Greenbrier Industries, Inc., 906 S.W.2d 444 (Tenn. 1995).

In Jose v. Equifax, our Supreme Court held that a mental injury arises out of employment if the injury is caused by an identifiable, stressful work-related event producing sudden mental stimulus such as fright, shock or excessive unexpected anxiety, and not by gradual employment stress building over a period of time. Its facts are clearly distinguishable from those here. Ms. Abbott is not claiming a mental injury caused by gradual employment stress. The other cases cited by the trial judge stand for the proposition that an employer is not responsible for workers' compensation benefits if the employment does not cause an actual progression or aggravation of the pre-existing condition but merely produces additional symptoms or pain. We understand the quoted medical proof to be that this claimant's work-related injury did cause an aggravation of the pre-existing condition.

Under the Tennessee Workers' Compensation Law, injuries by accident arising out of and in the course of employment which cause disablement of the injured employee are compensable. Tenn. Code Ann. section 50-6-102(a)(5). Benefits must be paid even where the employer is without fault. Morrison v. Tennessee Consolidated Coal Co., 162 Tenn. 523, 39 S.W.2d 272 (1931).

Our Supreme Court has consistently followed the rule that an injury is compensable, even though the claimant may have been suffering from a serious pre-existing condition, if a work-connected accident can be fairly said to be a contributing cause of such injury. An employer takes an employee as the employee is and assumes having a weakened condition aggravated by an injury which might not affect a normal person. Fink v. Caudle, 856 S.W.2d 952 (Tenn. 1993). The employer takes the employee with all pre-existing conditions and cannot escape liability when the employee, upon suffering a work-related injury, incurs disability far greater than if the employee had not had the pre-existing conditions. Rogers v. Shaw, 813 S.W.2d 397 (Tenn. 1991).

From a consideration of the above principles and the expert testimony that the claimant's pre-existing conditions were probably aggravated by the work-related accident, resulting in a permanent impairment, the panel is persuaded that the evidence preponderates against the finding of the trial court. The judgment of the trial court is consequently reversed and the cause remanded to the Chancery Court for Maury County for an award of permanent disability

benefits and such other proceedings as may be appropriate. Costs are taxed to the defendant-appellee.

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Joe C. Loser, Jr., Special Judge

CONCUR:

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Lyle Reid, Associate Justice

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William S. Russell, Senior Judge

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

SHARON ABBOTT,	)	MAURY CHANCERY
	)	NO. 95-163
PLAINTIFF/APPELLANT,	)	
	)	HON. WILLIAM B. CAIN,
v.	)	JUDGE
	)	
SATURN CORPORATION,	)	S. CT. NO. 01S01-9703-CH-00071
	)	
DEFENDANT/APPELLEE.	)	REVERSED AND REMANDED

JUDGMENT

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 defendant/appellee, for which execution may issue if necessary.

It is so ordered this 13th day of March, 1998.

PER CURIAM

REID, J. NOT PARTICIPATING