IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE

PATRICIA A. ANDERSON, Plaintiff/Appellee	)	No. 01S01-9703-CH-00070
v.	)	TROUSDALE COUNTY CHANCERY
HARTSVILLE CONVALESCENT CENTER and LIBERTY MUTUAL INSURANCE COMPANY Defendants/Appellants	)	HON. C.K. SMITH, CHANCELLOR

FOR THE APPELLANTS:

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FOR THE APPELLEE:

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MEMORANDUM OPINION

MEMBERS OF PANEL

LYLE REID, ASSOCIATE JUSTICE, SUPREME COURT
JOSEPH C. LOSER, JR., RETIRED JUDGE
WILLIAM S. RUSSELL, RETIRED JUDGE

MODIFIED AND REMANDED RUSSELL, SP. J.

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

The injured employee, Patricia A. Anderson, was employed as a nurse technician at the Hartsville Convalescent Center. On January 2, 1995, in the course and scope of her employment, she ruptured a cervical disc when moving a patient. Subsequent surgery left her with an anatomical impairment of 9% to the body as a whole. The trial judge decreed that she sustained a 90% industrial or vocational disability and entered judgment accordingly. The employer and insurance carrier appeal, questioning the amount of the award.

It is first contended that the judgment should have been limited to two and one-half times the 9% anatomical impairment, based upon the limitations set out in Tennessee Code Annotated Section 50-6-241 (a)(1). This limitation does not apply unless there has been a meaningful return to work, as defined in that statute and the cases decided thereunder. In this case the employee returned to her former job for two days, could not continue because of pain from her injury, returned again a month

later, but after an additional two months of working in pain she gave up the job. The trial judge found that this was not a meaningful return to work and declined to apply the two and a half times multiplier; as she was forced to resign due to her pain. Our de novo review confirms that the evidence does not preponderate against this finding, and it is therefore affirmed. Tennessee Code Annotated Section 50-6-225 (e)(2). See, generally, Brown v. Campbell County Board of Education, 915 S.W. 2d 407 (Tenn. 1995).

The next issue is whether or not the cap set out in Tennessee Code Annotated Section 50-6-241 (b) of six times the anatomical impairment rating is applicable, or is that cap inapplicable because three of the four criteria for non-application of the six times cap set out in Tennessee Code Annotated Section 50-6-242 are found to be present. The trial court correctly found that the employee did not have a high school education and could not read or write on a grade eight level. The question became whether the employee has no reasonably transferrable job skills and/or no reasonable employment opportunities available locally, as the trial judge held.

The plaintiff at the time of trial was 38 years of age. Her vocational expert testified that there were 94 jobs in the area that she is physically able to do. Her surgeon, Dr. Weiss, testified that she could work within her restrictions of not lifting in excess of 25 or 30 pounds, no overhead lifting above shoulder level, and no hyperextension and hyperflexion of the neck. It is apparent from the record that she could work

effectively at such a job as an attendant at a day care center. The evidence preponderates against the finding of no reasonably transferrable job skills and that there existed no reasonable employment opportunities locally.

We apply the six times cap and modify the judgment to award compensation based upon 54% permanent disability to the body as a whole. The case is remanded to the trial court for further proceedings consistent with this opinion. Costs on appeal are assessed to the appellants.

WILLIAM S. RUSSELL, SPECIAL JUDGE

CONCUR:

LYLE REID, ASSOCIATE JUSTICE

JOSEPH C. LOSER, JR., SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

PATRICIA A. ANDERSON,	}	*TROUSDALE CHANCERY*
	}	*No. 6196 Below*
Plaintiff/Appellee	}	
	}	*Hon. C. K. Smith,*
vs.	}	*Chancellor*
	}	
HARTSVILLE CONVALESCENT CENTER and LIBERTY MUTUAL INSURANCE COMPANY,	}	
	}	*No. 01S01-9703-CH-00070*
	}	
Defendants/Appellants	}	*MODIFIED AND REMANDED.*

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 Defendants/Appellants, Hartsville Convalescent Center and Liberty Mutual Insurance Company, and Surety, for which execution may issue if necessary.

IT IS SO ORDERED on December 31, 1997.

PER CURIAM