

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

**FILED**  
  
March 23, 1998  
  
Cecil Crowson, Jr.  
Appellate Court Clerk

JANET L. BROOKS,	)	Hamblen County Circuit
	)	
Plaintiff/ Appellee,	)	
	)	Cause No.
vs.	)	03S01-9702-CV-00024
	)	
LEAR SEATING CORPORATION,	)	
	)	Hon. Ben K. Wexler, Circuit Judge
Defendant/Appellant.	)	

**For the Appellants:**  
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**For the Appellee:**  
James M. Davis  
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Morristown, Tennessee 37814

**MEMORANDUM OPINION**

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**Members of Panel:**

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

AFFIRMED

KILCREASE, Special 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. 50-6-225(e)(3) for hearing

and reporting of findings of fact and conclusions of law.

In this appeal, the employer, Lear Seating Corporation, contends that the trial court erred in awarding the employee, Janet L. Brooks, workers' compensation benefits based upon the court's finding that she suffered from "reflex sympathetic dystrophy or some psychiatric symptoms." The employer contends further that the trial court erred in determining the period of time in which the employee was eligible to for temporary total disability benefits. Finally, the employer challenges as excessive the trial court's award of permanent partial disability benefits based on a vocational disability rating of 85% to the body as a whole.

We affirm the judgment of the trial court in all respects.

At the time of the trial, the employee was forty-one (41) years old. She completed high school and attended one year of business college. Her work history includes jobs as a retail cashier and assembly line worker. The employee performed various functions for the employer from the time she began her employment there in November of 1985. When the employee was injured, she was operating a hand press which had overhead control buttons. On February 18, 1994, a 30-pound piece of steel fell off of the press bench and struck her left foot causing a crushing injury. She immediately saw the company nurse who referred her to the emergency room. At the emergency room, the employee was placed in a walking shoe and referred to an orthopedist.

The employee was first treated by Dr. William Hovis, an orthopedic surgeon, on February 21, 1994. Dr. Hovis examined her and took x-rays of her left foot. He diagnosed her to have contusion of the left foot. On a return visit on March 14, 1994, in addition to the bruising and swelling, the employee also complained of knee pain which intensified when she sat for a long time. On examination, Dr. Hovis determined that the employee's knee was normal and that the contusion in her foot was resolving. Dr. Hovis opined that the employee would not have any permanent impairment or work restrictions as a result of her injury.

Dr. Hovis saw the employee again on April 25, 1996 at the request of the employer for the

purpose of conducting an independent medical examination to determine whether or not the employee suffers from reflex sympathetic dystrophy (RSD). At this visit, the employee complained of pain in her right arm and wrist and numbness in her right leg. She stated that her pain was worse since her surgery to remove the neuromas from her feet. Dr. Hovis opined that the employee has no objective signs demonstrating that she has reflex sympathetic dystrophy.

Dr. William Holt, a podiatrist, first treated the employee on April 5, 1994. His first impression was that the employee probably had a Morton's neuroma or a soft tissue injury of her left foot. He treated her with cortisone and advised her to wear a firm, solid shoe. Because the cortisone treatment failed, Dr. Holt performed surgery to excise the neuroma on August 8, 1994. The employee returned on several occasions complaining of increasing pain. On September 26, 1994, Dr. Holt performed exploratory surgery on the plantar aspect of the foot, discovered a second neuroma, and removed it. Again, the employee returned several times with complaints that her pain was worse, even to the point that it limited her ambulation. On October 14, 1994, Dr. Holt referred the employee to Dr. Turney Williams, a Johnson City anesthesiologist who specializes in pain work, for possible peripheral nerve involvement. When the patient returned to Dr. Holt's office on April 9, 1996, Dr. Holt determined, based upon his objective findings, that the employee has RSD. Dr. Holt stated that he does not know what caused the neuromas, but that the employee's pain was caused by her dropping the steel on her foot and the RSD was caused by that trauma. Dr. Holt further opined that the employee is totally disabled due to the pain and that her condition is permanent. Dr. Holt placed restrictions on the employee's walking and standing and instructed her to wear a soft shoe.

Dr. Turney Williams first saw the employee on October 21, 1994. His initial impression was that the employee probably had RSD. On October 25, Dr. Williams attempted a sympathetic block in order to establish a diagnosis. Dr. Turney was not able to obtain a good block. Therefore, the test was nonconclusive. In December of 1994 the employee reported to Dr. Williams that her pain was getting worse and that left lower extremity was weaker than her right. She also complained about problems she was having with her right foot, generalized weakness and soreness in her shoulders and hands, and swelling in her hands. Dr. Williams prescribed pain medications. The employee's next

visit was on January 17, 1995. Her major complaint was that she had soreness in her shoulders and upper extremity and swelling and weakness in her hands and fingers. Dr. Williams, treated the employee with amitriptyline, which is an antidepressant frequently used in sympathetic dystrophy and chronic pain syndromes. The employee returned to Dr. Williams several times, with similar complaints. He thought that she needed psychiatric pain therapy. Her final visit to Dr. Williams was on February 8, 1996. Dr. Williams' clinical diagnosis is RSD and he opined that the process that started her dystrophy began when the steel plate fell on her foot. Dr. Williams did not assign a disability rating to the employee because it is not his practice to do so.

The employee was also evaluated and treated by Dr. Russell D. McKnight, a psychiatrist. Dr. McKnight diagnosed the employee to have anxiety/depressive syndrome with insomnia secondary to chronic pain and from a depression N.O.S. (Not Otherwise Specified). He also diagnosed her to have delayed stress disorder, panic attacks, emotional lability and acrophobia. Dr. McKnight opined that the employee's psychiatric symptoms and disorders are secondary to and a consequence of her original industrial injury. Dr. McKnight further diagnosed the employee to have RSD. He stated that as a result of her condition the employee will require prolonged vigorous therapy. He opined that the employee will have long-term complications and chronic pain for the foreseeable future. Dr. McKnight treated the employee with swimming therapy to minimize the consequences of her condition. The employee returned to Dr. McKnight on several occasions with complaints of continued pain, nightmares, panic attacks and depression. Dr. McKnight's clinical impression remained the same throughout the course of his treatment.

Dr. McKnight assigned the employee an impairment rating of 40% to the body as a whole based on her chronic pain syndrome depression and stress disorder and panic attacks. He stated that the employee will need to continue psychiatric treatment and medication in order to have a reasonable amount of personal comfort in the future. He stated that the employee's medications impair her employability to the extent that she cannot work.

Dr. William J. Gutch, an orthopedic surgeon, saw the employee once for the purpose of performing an independent medical evaluation on May 21, 1996. In addition to his examination of

the employee, Dr. Gutch reviewed the reports of Drs. Holt, McKnight and Williams. He diagnosed the employee to have a crushing injury to her left foot which later developed into RSD, which is limited to the employee's left lower extremity. He stated that her pain would cause her to not be able to concentrate well enough to hold a job and that he doubts that her condition will improve.

Norman E. Hankins, Ph.D. is an expert in vocational analysis and disability assessment and is certified by the American Board of Vocational Experts. Dr. Hankins evaluated the plaintiff on March 29, 1996 and his assessment included the reports of Dr. Williams, Holt and McKnight. Given the employee's vocational history, pain, emotional problems and IQ, Dr. Hankins considered the labor market which includes Greene, Hamblen, Cocke, Grainger and Hawkins Counties and determined that the employee's post-injury access to employment is nonexistent. He opined that the employee is 100% vocationally disabled.

The trial court found as follows regarding the employee's condition:

This court is of the opinion, after considering the type of injure, [sic] all the medical treatment, her work history, her educational history, her medical impairment to the left foot, and left extremity, her psychiatric impairment, her depression, her psychiatric problems, the fact that she was prescribed antidepressants shortly after the injury and further considering all the medical evidence in the light that this is a workmens [sic] compensation case, that the plaintiff is suffering from RSD or some psychiatric symptoms that is [sic] a direct consequence of her work related injure, [sic] and has a vocational disability of 85% to the body as a whole.

The employer asserts that the evidence is insufficient to support an award on either the theory that the employee has RSD or the theory that she has some psychiatric symptoms as the trial court found. Specifically, the employer asserts that the employee failed to establish by a preponderance of the evidence that any RSD she may have had is permanent. Secondly, the employer asserts that the employee failed to establish by a preponderance of the evidence the essential elements of causation and permanence with respect to her psychiatric symptoms.

In workers' compensation cases, the scope of review in this Court on issues of fact is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise. Tenn.Code Ann § 50-6-225 (e)(2).

In this case, five doctors testified about the employee's condition. Of these, only Dr. Hovis is of the opinion that the employee does not have RSD. Dr. Williams, an anesthesiologist, opined that the employee has RSD. Dr. McKnight, a psychiatrist, stated that the employee has RSD and that she will need continued psychiatric treatment and medications to have a reasonable amount of personal comfort. Dr. Gutch, an orthopedic surgeon, testified that the employee has RSD and he doubts that her condition will improve. Dr. Holt, a podiatrist, gave the opinion that the employee has RSD and that her condition is permanent. Even if we do not consider Dr. Holt a competent witness as urged by the employer, the other competent testimony in this case does not preponderate in favor of a finding that the employee's RSD and psychiatric condition are not permanent.

Except in the most obvious and routine cases, the claimant in a workers' compensation action must establish causation by expert medical evidence. *Orman v. Williams Sonoma, Inc.*, 803 S.W.2d 672 (Tenn. 1991). Although causation cannot be based upon speculative or conjectural proof, absolute medical certainty is not required and reasonable doubt is to be construed in favor of the employee. *White v. Werthan Indus.*, 824 S.W.2d 158, 159 (Tenn. 1992). It is entirely appropriate for a trial judge to predicate an award on medical testimony to the effect that a given incident "could be" the cause of the employee's injury, when the trial judge also has heard lay testimony from which it may reasonably be inferred that the incident was in fact the cause of the injury. *Orman*, 803 S.W.2d at 676.

In this case, Dr. McKnight's diagnosis was that the employee suffers from psychiatric symptoms and disorders secondary to and a consequence of her original industrial injury. This testimony is bolstered by the fact that Dr. Williams treated the employee with an antidepressant and suggested that she seek psychiatric pain therapy. An article which was filed as an exhibit to Dr. Holt's deposition clearly identifies psychological and emotional disturbances, and mental invalidism as elements of the prognosis of one who has RSD.<sup>1</sup> The employer suggests that there are or were other potential "stressors" which could be the cause of the employee's psychiatric condition. The employer suggests that the employee's two previous divorces could be a cause. However, the

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<sup>1</sup> James N. Rogers, M.D. & Marc A. Valley, M.D., *Reflex Sympathetic Dystrophy*, 11 PAIN MANAGEMENT 73, 79 (1994)

employee has been married to her present husband for more than eight years. The employer also points to the illness of the employee's child and the deaths of her father and brother. However, the lay and medical proof is that the employee never consulted a mental health specialist for problems which arose as a result of these situations. Therefore, we find that the evidence does not preponderate in favor of a finding that the employee's psychiatric condition was not caused by her on-the-job injury.

The employer next contends that because the employee refused to accept medical services from April 6, 1995 to February 16, 1996, she is not entitled to receive temporary total disability benefits for that period of time pursuant to Tenn. Code Ann. § 50-6-204(d)(7). The evidence is that the employee was approved for treatment at the Pain Clinic in Johnson City. This required her to travel from her home in Russellville five days a week for three weeks. During the employee's first attempt to complete the therapy in April of 1995, her husband was scheduled for surgery and she was only able to complete the first two days. She did not attend on Wednesday. On Thursday, when she attempted to drive herself to Russellville, she suffered a panic attack which prevented her from completing the trip. She attempted to begin the treatment again the following week. She reserved a hotel room in Johnson City to avoid the problems she was having on the drive from Russellville. By the third day, her child became sick and required hospitalization, therefore, she was forced to discontinue the therapy. She attempted to continue the treatment again in July. However, she could not make the drive due to the panic attacks brought on by the drive. The employee notified the employer of her problems and asked about getting someone locally to treat her. However, the employer never approved anyone else. The last day the employee was paid benefits was April 6, 1995.

Under these circumstances, we find that the evidence does not preponderate in favor of finding that the employee refused to comply with the employer's request that she undergo treatment at the Pain Clinic. Therefore, she was entitled to receive benefits until the date of her maximum medical improvement, February 16, 1996.

Once the causation and permanency of an injury have been established by expert testimony,

the courts may consider many pertinent factors, including age, job skills, education, training, local job opportunities, and capacity to work at types of employment available in the claimant's disabled condition. Tenn. Code Ann. § 50-6-241 (a)(2). The trial court awarded permanent partial disability benefits based on a vocational impairment rating of 85% to the body as a whole. From our examination of the evidence and in light of the factors to be considered in this case, we find that the evidence does preponderate in favor of the trial court's award.

The judgment of the trial court is affirmed. Costs on appeal are taxed to the appellants.

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Irvin H. Kilcrease, Jr., Special Judge

CONCUR:

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Adolpho A. Birch, Jr., Justice

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John K. Byers, Senior Judge



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JANET L. BROOKS,	)	HAMBLEN CIRCUIT
	)	NO. 95-CV-070
PLAINTIFF/APPELLEE	)	
	)	HON. BEN K. WEXLER,
v.	)	JUDGE
	)	
LEAR SEATING CORPORATION,	)	S. CT. NO. 03S01-9702-CV-00024
	)	
DEFENDANT/APPELLANT.	)	AFFIRMED

**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 appellants, for which execution may issue if necessary.

It is so ordered this \_\_\_\_\_ day of March, 1998.

PER CURIAM

REID AND BIRCH, J.J., NOT PARTICIPATING

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