

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

FILED

March 5, 1998

Cecil W. Crowson
Appellate Court Clerk

AT NASHVILLE
(December 3, 1997 Session)

STEPHANIE J. CLINARD,) ROBERTSON CIRCUIT
)
Plaintiff-Appellee,) Hon. James E. Walton,
) Judge.
v.)
) No. 01S01-9703-CV-00051
LUMBERMENS MUTUAL CASUALTY)
COMPANY OF THE KEMPER)
INSURANCE COMPANIES,)
)
Defendant-Appellant.)

For Appellant:

Richard C. Mangelsdorf, Jr.
Leitner, Williams, Dooley & Napolitan
Nashville, Tennessee

For Appellee:

William L. Underhill
Madison, Tennessee

MEMORANDUM OPINION

Members of Panel:

Lyle Reid, Associate Justice, Supreme Court
William H. Inman, Senior Judge
Joe C. Loser, Jr., Special Judge

AFFIRMED

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. The appellant here contends the evidence preponderates against the trial court's finding that the employee's injury was causally connected to her employment. The panel has concluded the judgment should be affirmed.

The employee or claimant, Clinard, is approximately 40 years old and has a GED. She has worked as a cashier at a convenience market in Springfield since 1992, having previously worked as a cashier, as a baby sitter, as a production worker in a garment factory and as a homemaker. On March 24, she noticed a pop in her neck and a shooting pain in her left arm, while manually operating a credit card machine at work. She reported the event to her supervisor, who did not refer her to a physician or provide a list from which she could choose one.

The claimant went to her own physician, Dr. Robert Ferland, who took her off work and prescribed physical therapy. She also saw two neurosurgeons, both of whom ordered diagnostic testing. One of them expressed doubt as to whether the injury was work-related, but was unable to point to any other possible cause. The other had no opinion as to the cause of injury.

The claimant was unable to work from May 2, 1994 until she returned during the last week in July of the same year. She terminated her employment in November of that year after the pain worsened. The employer did not provide any medical benefits.

Ultimately, the claimant sought out a Dr. Cantrell, who referred her to Dr. Arthur Cushman, another neurosurgeon. Dr. Cushman diagnosed a herniated disc in her neck and performed corrective surgery. The pain diminished following the surgery. Dr. David Gaw saw her after surgery and prescribed permanent limitations. The claimant took karate after the injury, but we find in the record no evidence that her injury was caused by karate lessons, as the employer's insurer contends. The lay proof supports the claimant's contention that her injury was work related.

Dr. Cushman conceded the credit card machine incident and continued use of the arm at work was a possible cause of the injury. He estimated her permanent impairment at seven percent.. Dr. Gaw testified the credit card incident was the most likely cause, in the absence of any other explanation, and assigned a fifteen percent permanent impairment to the whole body. Both of these doctors based their opinions of permanent impairment on approved guidelines.

The trial court found the injury to be work related and awarded benefits under the Tennessee Workers' Compensation Law (the Act). 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).

Under the Act, injuries by accident arising out of and in the course of employment which cause either disablement or death of the employee are compensable. An accidental injury arises out of one's employment when there is apparent to the rational mind, upon a consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Fink v. Caudle, 856 S.W.2d 952 (Tenn. 1993).

In order to establish that an injury was one arising out of the employment, the cause of the death or injury must be proved; and if the claim is for permanent disability benefits, permanency must be proved. Thomas v. Aetna Life and Cas. Ins. Co., 812 S.W.2d 278 (Tenn. 1991). In all but the most obvious cases, causation and permanency may only be established through expert medical testimony. Id. Absolute certainty on the part of a medical expert is not necessary to support a workers' compensation award, for expert opinion must always be more or less uncertain and speculative; Kellerman v. Food Lion, Inc., 929 S.W.2d 333 (Tenn. 1996); and, where equivocal medical evidence combined with other evidence supports a finding of causation, such an inference may nevertheless be drawn under the case law. Tindall v. Waring Park Assoc., 725 S.W.2d 935 (Tenn. 1987).

From a deliberate consideration of all the evidence and appropriate legal authorities, the panel concludes that the evidence fails to preponderate against the findings of the trial judge. The judgment is affirmed and the case remanded to the Circuit Court for Robertson County. Costs are taxed to the defendant-appellant.

Joe C. Loser, Jr., Special Judge

CONCUR:

Lyle Reid, Associate Justice

William H. Inman, Senior Judge

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<i>STEPHANIE J. CLINARD,</i>	}	<i>ROBERTSON CIRCUIT</i>
	}	<i>No. 7315 Below</i>
<i>Plaintiff/Appellee</i>	}	
	}	<i>Hon. James E. Walton,</i>
vs.	}	<i>Judge</i>
	}	
<i>LUMBERMENS MUTUAL</i>	}	<i>No. 01S01-9703-CV-00051</i>
<i>CASUALTY COMPANY OF THE</i>	}	
<i>KEMPER INSURANCE COMPANIES</i>	}	
	}	
<i>Defendant/Appellant</i>	}	<i>AFFIRMED.</i>

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 March 5, 1998.

PER CURIAM

