

IN THE SUPREME COURT OF TENNESSEE  
WORKERS' COMPENSATION APPEALS PANEL  
KNOXVILLE, DECEMBER 1997 SESSION

**FILED**

February 19, 1998

Cecil Crowson, Jr.  
Appellate Court Clerk

FREDDIE JANE COOK )

Plaintiff/Appellant )

VS. )

MONROE FARMERS COOPERATIVE )

Defendant/Appellee )

MONROE CIRCUIT )

Hon. Earl Murphy,  
Circuit Judge )

NO. 03S01-9707-CV-00090

**For the Appellant:**

Philip P. Durand  
607 Market St., 9th Floor  
Knoxville, Tenn. 37902

**For the Appellee:**

Lynn C. Peterson  
P.O. Box 2467  
Knoxville, Tenn. 37901

**MEMORANDUM OPINION**

**Members of Panel:**

E. Riley Anderson, Chief Justice  
John K. Byers, Senior Judge  
Roger E. Thayer, Special Judge

AFFIRMED.

THAYER, Special Judge

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 to the Supreme Court of findings of fact and conclusions of law.

The appeal has resulted from a decision of the trial court to dismiss the complaint. The Circuit Judge found the employee had failed to establish she had sustained an injury as a result of her work activities on January 12, 1994.

Plaintiff, Freddie Jane Cook, age 55 years, had been employed by defendant, Monroe Farmers Cooperation, for about 6 ½ years. She worked as a cashier which involved waiting on customers, stocking, etc. On the day in question, she was walking through a door carrying a gasoline can when she stepped on the threshold board of the door and lost her balance causing her to twist her body. She testified her knees buckled but she did not fall to the floor. She reported the incident to her employer and was referred to a doctor who returned her to work. She continued to work until about January 22. On January 28th she was admitted to a hospital for treatment of depression and anxiety. She remained in the hospital for about thirteen days. She testified the incident at work caused her to suffer neck, arm and knee pain.

On cross-examination she admitted having prior problems with depression and anxiety. She said she found it stressful waiting on customers and dealing with her boss; that on occasion she became so nervous she would get physically ill at work and have to stay at home a day or two; that she had sexual and emotional abuse during childhood; had been involved in a series of abusive marriages; she was presently dealing with a husband who had been unfaithful and had a drinking problem; she had been subject to a criminal assault by a step-daughter and she had been convicted of an aggravated assault of a prior husband's girlfriend.

Plaintiff's psychiatrist, Dr. Jeffrey D. Greenwood, testified by deposition. He had seen her for several years prior to the incident at work. He stated he hospitalized her during January 1994 for recurrent depression and generalized anxiety problems which was the same diagnosis as in previous visits. When asked if the incident at work was the proximate cause of her hospitalization, he declined to say it was but preferred to say it was "related" to her hospitalization. He was of the opinion the marital infidelity was a large part of the reason for hospital treatment. He also felt her problems with other family members, the history of abuse, etc. all related

to her being hospitalized. He admitted that any pain resulting from the incident at work could have been a contributing factor. He opined she was not able to work in any gainful employment.

The testimony of Dr. Robert H. Haralson III, an orthopedic surgeon, was also presented by deposition. He testified he had followed and treated her since 1976. He said she had two operations on her neck (fusion) and two arthroscopic procedures on her right knee prior to the incident at work. He saw her again after the incident at work but his examination did not reveal any objective findings concerning a recent injury. He prescribed medicine and therapy. He said he referred her to a rheumatologist who diagnosed fibromyalgia. He gave no permanent impairment as a result of the work event and said if anything resulted from her work activity it would amount to only an increase of pain.

The case is to be reviewed on appeal de novo accompanied by a presumption of the correctness of the findings of fact unless the preponderance of the evidence is otherwise. T.C.A. § 50-6-225(e)(2).

The only issue on appeal is whether the evidence preponderates against the decision of the trial court in finding there was no compensable injury.

Plaintiff seems to concede the evidence is not sufficient to support a finding of a compensable physical injury. Dr. Haralson's testimony that the incident at work would at most only amount to an increase in pain would make the claim noncompensable. The aggravation of a pre-existing condition merely by increasing the pain is not sufficient to make the claim compensable. The severity of the condition must be advanced or must result in a disabling condition other than increased pain for the claim to be compensable. *Townsend v. State*, 826 S.W.2d 434 (Tenn. 1992); *Smith v. Smith's Transfer Corp.*, 735 S.W.2d 221 (Tenn. 1987).

Plaintiff contends the evidence is sufficient to support a finding of a compensable mental injury. There are two different rules in connection with determining whether a mental condition or disorder is compensable. First, recovery is appropriate for a mental injury by accident or occupational disease, standing alone, if the mental disorder is caused by an identifiable, stressful, work-related event producing a sudden mental stimulus such as fright, shock or excessive unexpected anxiety. Secondly, compensation for psychological disorders has been

allowed when an employee sustains a compensable work-related injury by accident and thereafter experiences a mental disorder which is caused by the original compensable work-related injury. *Hill v. Eagle Bend Mfg., Inc.*, 942 S.W.2d 483 (Tenn. 1997).

We are of the opinion the second rule would not apply as the record is not sufficient to support a finding of a compensable physical injury. While the first rule may have application to the facts of the instant case, the trial court was presented with considerable evidence indicating there were multiple causes for plaintiff's condition and hospitalization. This question of fact in regard to causation is primarily for the trial court to resolve and will not be disturbed on appeal unless the evidence preponderates against the finding.

We have carefully reviewed the record and cannot say the evidence preponderates against the court's finding.

Therefore, the judgment of the trial court is affirmed. Costs of the appeal are taxed to the plaintiff.

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Roger E. Thayer, Special Judge

CONCUR:

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E. Riley Anderson, Chief Justice

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John K. Byers, Senior Judge

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FREDDIE JANE COOK,	)	MONROE CIRCUIT
	)	No. 9158
Plaintiff/Appellant	)	
	)	
vs.	)	Hon. Earl Murphy
	)	Judge
	)	
MONROE FARMERS COOPERATIVE	)	
.	)	NO. 03S01-9707-CV-00090
	)	
Defendant/Appellee.	)	
	)	

JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation 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 on appeal are taxed to Freddie Jane Cook and Philip P. Durand, surety, which execution may issue if necessary.

02/19/98



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 the plaintiff-appellant and sureties, for which execution may issue if necessary.

IT IS SO ORDERED this \_\_\_\_ day of June, 1997.

PER CURIAM

Anderson, J. - Not Participating

al to the Special Worker' Compensation 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 act and conclusions of law are adopted and affirmed, and the decision of the Panel is made the Judgment of the Court.

Costs on appeal are taxed to the plaintiff-appellant, Vernon Harris and Gilbert and Faulkner. surety, for which execution may issue if necessary.

06/03/97