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

FILED

January 7, 1998

Cecil Crowson, Jr.
Appellate Court Clerk

SANDRA KAY CORNELISON,	)	
	)	MADISON CHANCERY
Plaintiff / Appellee,	)	
	)	NO. 02S01-9704-CH-00035
v.	)	(No. 50191 below)
	)	
NORTHWEST TENNESSEE ECONOMIC DEVELOPMENT COUNCIL,	)	HON. JOE C. MORRIS CHANCELLOR
	)	
Defendant / Appellant.	)	

For the Appellant:

Robert O. Binkley
Jeffery G. Foster
RAINEY, KIZER, BUTLER, REVIERE, & BELL, P.L.C.
105 South Highland Avenue
P.O. Box 1147
Jackson, Tennessee 38302-1147

For the Appellee:

Jeffrey A. Garrety
Patrick N. Parker
LAW OFFICES OF JEFFREY A. GARRETY
65 Stonebridge Boulevard
Jackson, Tennessee 38305

MEMORANDUM OPINION

Members of Panel:

Justice Janice Holder
Senior Judge John K. Byers
Special Judge Robert L. Childers

AFFIRMED AS MODIFIED

CHILDERS, 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 plaintiff sustained an injury to her back during the course of employment on March 1, 1994. Based on her age, education, lack of transferable job skills, the nature and extent of her injury, job opportunities for similarly injured workers and all other relevant vocational factors, the trial judge awarded her permanent partial disability benefits of 50% to the body as a whole.

We find that the evidence preponderates against an award of 50% and in favor of an award of 25% permanent partial disability to the body as a whole and affirm the judgment of the trial court as modified.

The plaintiff is a 42-year-old (39 at the time of the accident) female with a Child Development Associate's Certificate to work with young children. The plaintiff also has a cosmetology license. For some ten years prior to trial, the plaintiff was employed by the Madison County School System working with visually impaired students and CDC students at the local high school. At the time of the accident, and since, the plaintiff has sustained employment as an art teacher for four and five-year-old children in the Northwest Tennessee Head Start Program. This job entails lifting and squatting to manipulate and communicate with the children, as well as extended periods during which she must remain on her feet.

On March 1, 1994 while attempting to move an art table in her classroom, the plaintiff experienced pain in her lower back which was initially diagnosed as a lower lumbar muscle strain. From March 23, 1994 through September 24, 1994 the plaintiff was seen by Dr. James Warmbrod who diagnosed the plaintiff as having a resolving lumbosacral sprain. The plaintiff was subsequently treated on October 21, 1994 by Dr. Jerry Engelberg, who found no significant abnormalities.

Dr. Glen Barnett, a neurosurgeon, examined and treated the plaintiff from November 4, 1994, through August 12, 1996. Dr. Glen Barnett stated during the course of that treatment that he did not believe that surgery would decrease her pain. On April 1, 1996, Dr. Glen Barnett opined that the plaintiff had reached maximum medical

improvement based on his conclusions that the plaintiff was working, had stopped epidural injections and that she seemed "about as good as she was going to be." Dr. Glen Barnett further found, from a neurological point of view, Plaintiff had no permanent impairment.

On December 11, 1995, Dr. James Varner saw the plaintiff and conducted an independent evaluation at the request of the defendant. Dr. Varner diagnosed her with chronic post-traumatic lumbar spine pain syndrome without disc pathology or neurological impairment. He assessed 2% permanent partial disability to the body as a whole based on the AMA guidelines, and he opined that the plaintiff could continue in her capacity as an art teacher without restriction.

On February 12, 1996, Dr. Robert Barnett, an orthopedic surgeon, performed an independent evaluation of the plaintiff at her request. Dr. Robert Barnett diagnosed lumbar radicular syndrome and initially assessed 25% permanent partial disability to the body as a whole. Subsequently at trial, Dr. Robert Barnett revised his assessment to 20% based on the pain and later to "perhaps" 10-15% based on range of motion and radiculopathy.

The plaintiff testified that she continues to take pain medication (Relafin, Flexeril and Elavil) to cope with the pain on a daily basis and that she has had nine (9) nerve blocks as a "quick fix" for her pain. The plaintiff also testified that she still wears a TENS unit on a daily basis, but neither this unit nor the medication has ever been able to fully alleviate her pain. She has maintained her employment without complaint from her employer, but has pain every day that is aggravated by simple household chores and the repetitive bending and squatting required by her job.

Our review is *de novo* on the record accompanied by a presumption that the findings of fact of the trial judge are correct unless the preponderance of the evidence is otherwise. TENN. CODE ANN. § 50-6-225(e)(2). In reviewing the evidence, we note that the maximum permanent partial disability percentage assessed to the plaintiff was 25% by Dr. Robert Barnett and that upon cross examination at trial his revised estimate was 10-15%. The other assessments in this case indicated no impairment by Dr. Glen Barnett and 2% by Dr. Varner, who notably only tested forward range of motion.

The record indicates that the plaintiff has continued to perform her duties in a

satisfactory manner and has received a significant increase in pay from approximately $6.50 to over $8.50 (about $8.63) since the time of the accident. There is no dispute that the plaintiff continues to have pain on a daily basis. We believe that this daily pain, aggravated by repetitive bending, squatting, lifting and from extended periods on her feet precludes her from some employment. However, based on her age, education, training and past work history we find that the evidence preponderates against an award of 50% permanent partial disability to the body as a whole and in favor of an award of 25%. Taking all of these factors into consideration, Ms. Cornelison should be able to work at other teaching jobs which do not require as much bending and stooping. We therefore modify the trial judge's award. The cost of this appeal is assessed to the defendant/appellant.

_____

Robert L. Childers, Special Judge

CONCUR:

_____

Janice M. Holder, Justice

_____

John K. Byers, Senior Judge

IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

SANDRA KAY CORNELISON,	)	MADISON CHANCERY
	)	NO. 50191
Plaintiff/Appellee,	)	
	)	Hon. Joe C. Morris,
vs.	)	Chancellor
	)	
NORTHWEST TENNESSEE ECONOMIC DEVELOPMENT COUNCIL,	)	NO. 02S01-9704-CH-00035
	)	
	)	
Defendant/Appellant.	)	AFFIRMED AS MODIFIED.

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 Appellant, and surety, for which execution may issue if necessary.

IT IS SO ORDERED this 7th day of January, 1998.

PER CURIAM

(Holder, J., not participating)