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

KATHY REYNOLDS, Plaintiff / Appellee, v. LIFE CARE CENTERS OF AMERICA, INC., d/b/a LIFE CARE CENTERS OF BRUCETON AND HOLLOW ROCK, Employer / Appellant BIRMINGHAM FIRE INSURANCE COMPANY OF PENNSYLVANIA c/o CRAWFORD AND COMPANY, Insurer	)	BENTON COUNTY CIRCUIT Hon. C. Creed McGinley, Judge NO. 02S01-9703-CV-00015 (Nos. 3734 & 3833 Below)

FILED

January 7, 1998

Cecil Crowson, Jr.
Appellate Court Clerk

For the Appellant:

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MEMORANDUM OPINION

Members of Panel

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

AFFIRMED

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 trial court awarded the plaintiff 50% permanent partial disability to the right arm and 25% to the left arm. The trial court also awarded temporary total disability for the period between 6/30/95 and 1/16/96 (22 weeks) at the $152.24 compensation rate totaling $5,023.92 , medicals and mileage, future medical on arms only, attorney's fees in lump sum and discretionary costs.

We affirm the judgment of the trial court.

The plaintiff is a 55-year-old female with a tenth grade education. She has work experience in a factory and experience cleaning and working on boats. She started working for the defendant in 1993 as a certified nursing assistant.

Plaintiff's duties for the defendant included making beds, feeding, shaving and bathing patients and turning them in their beds. These job activities require lifting, bending, and manipulating of the patients and the objects around them.

On May 10, 1995, the plaintiff, while attempting to lift a patient into a chair with the aid of a fellow employee, fell forward striking her arm on the chair. She alleged that this accident caused damage to her neck, shoulder and right arm. The trial court did not find adequate proof to substantiate an injury to the neck. Only the questions of causation and the amount of permanent partial disability to the right and left arms are before us for review.

The plaintiff testified that she complained of the injury to her right arm to her charge nurse on the date of the accident and again on the next day. The plaintiff testified on cross-examination that she first saw Dr. Portis to whom, she believes, she related the details of her accident. However, Dr. Portis' medical records do not reveal that the plaintiff informed him of the details of her accident.

The plaintiff then saw Dr. Warmbroad on June 9, 1995. She admits that she did not tell him about the fall.

In June of 1995, the plaintiff also saw Dr. Anthony Segal. She did not give a history of injury or trauma to her right arm to him. Dr. Segal thought that the carpel

tunnel syndrome was "not very severe in her right and her left arm was completely normal." Dr. Segal noted nothing repetitive in nature within her job description and opined that the syndrome was not "occupationally related."

The plaintiff next saw Dr. William Schooley on June 29, 1995. The evidence shows that the plaintiff did not inform him of her accident until he saw her on September 5, 1995, her seventh visit to Dr. Schooley. The plaintiff testified that she believes she told Dr. Schooley about the accident on either the first or second visits and that the September 5, 1995 notification occurred when she noticed that her first report of the injury was not in his records. Dr. Schooley performed surgery for carpel tunnel syndrome on the Plaintiff's right arm on July 19, 1995, and released her to light duty work on January 16, 1996. In early March 1996, plaintiff notified her supervisors that she was experiencing pain in her left arm. Plaintiff returned to Dr. Schooley March 12, 1996, complaining of left arm pain which she contended was the result of her overcompensation for the injury to the right arm. Dr. Schooley stated in his deposition that the plaintiff did not identify any specific repetitive work activity, but repeatedly referred to lifting and pulling patients. Dr. Schooley opined that both of the arm injuries, although more clearly the injury to the right arm, were work-related and he assessed a 20% disability to the right arm and a 10% disability to the left arm.

Our review is *de novo* on the record accompanied by the presumption that the findings of fact of the trial court are correct unless the evidence preponderates otherwise. TENN. CODE ANN. § 50-6-225(e)(2). The plaintiff must prove every element of his case by a preponderance of the evidence. *White v. Werthan Industries*, 824 S.W.2d 158, 159 (Tenn. 1992). Causation and permanency of a work-related injury must be shown in most cases by expert medical evidence. *Tindall v. Waring Park Ass'n*, 725 S.W.2d 935, 937 (Tenn. 1987).

Defendants contend that the medical evidence preponderates against the trial court's award of 50% permanent partial disability to the right arm and 25% permanent partial disability to the left arm. Defendants assert that the repetitive work-related activities necessary to show causation in this case were not adequately established by the expert medical evidence. Defendants also claim that plaintiff failed to notify any of the physicians of her accident until her September 5, 1996 examination by Dr.

Schooley.

To support what they believe to be inadequate proof of causation, the defendants cite our decision in *Talley v. Virginia Insurance Reciprocal* where we held that the plaintiff must establish by expert medical proof the causal relationship between the disability complained of and the employment activity or condition. *Talley,* 775 S.W.2d 587 (Tenn. 1989). In addition, defendants note the requirement in *Tindall* that ". . .[a]lthough absolute medical proof is not required for proof of causation, . . . medical proof that the injury was caused in the course of the employee's work must not be speculative or so uncertain regarding the cause of the injury that attributing it to the Plaintiff's employment would be an arbitrary determination or a mere possibility . . . " *Tindall*, 725 S.W.2d 935 (Tenn. 1987).

We do not agree with the defendants that the plaintiff's proof of causation was inadequate to meet the criteria of our previous decisions. Dr. Schooley testified in his deposition that he believed that plaintiff's symptoms were causally linked to her work-related accident. In addition, we find that the plaintiff's notice of injury to her supervisors immediately following the accident and thereafter was sufficient, combined with Dr. Schooley's deposition testimony, to establish that the link between her accident and the injuries to her right and later her left arm is more than speculative or uncertain proof of causation.

Next, in determining whether there has been a decrease in the employee's capacity to earn wages in any line of work available to the employee and in assigning permanent partial disability, the trial court should consider both expert and lay testimony, as well as the employee's age, education, skills, training, local job opportunities, and capacity to work at types of employment available in the employee's disabled condition. *Orman v. Williams Sonoma, Inc.*, 803 S.W.2d 672, 678 (Tenn. 1991).

We find that the expert medical testimony and plaintiff's testimony at trial establish that, as a result of her injury, she is limited in future employment possibilities. The evidence showing plaintiff's inability to perform the repetitive movements required by clerical work and the loss of strength in her arms necessary to attend to patients at her pre-accident level does not preponderate against the trial court's award of 50%

permanent partial disability to the right arm and 25% permanent partial disability to the left arm. We affirm the decision of the trial court.

The cost of this appeal is assessed against the defendants/appellants.

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Robert L. Childers, Special Judge

CONCUR:

_____
Janice M. Holder, Justice

_____
John K. Byers, Senior Judge

IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

KATHY REYNOLDS, Plaintiff/Appellee, vs. LIFE CARE CENTERS OF AMERICA, INC., d/b/a LIFE CARE CENTERS OF BRUCETON AND HOLLOW ROCK, Employer/Appellant, BIRMINGHAM FIRE INSURANCE COMPANY OF PENNSYLVANIA c/o CRAWFORD AND COMPANY, Insurer.	)	BENTON CIRCUIT NO. 3734 & 3833 Hon. C. Creed McGinley, Judge NO. 02S01-9703-CV-00015 AFFIRMED.

FILED

January 7, 1998

Cecil Crowson, Jr.
Appellate Court Clerk

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 Appellants, 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)