

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

MARTHA SHUPE)	HAWKINS CIRCUIT
)	
Plaintiff/Appellee)	
)	
V.)	Hon. Ben K. Wexler,
)	Circuit Judge
INSURANCE COMPANY OF)	
PENNSYLVANIA)	
)	
Defendant/Appellant)	NO. 03S01-9706-CV-00065

For the Appellant:

Nan R. Jenne
Timothy W. Conner
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1130 First American Center
Knoxville, Tn. 37902

For the Appellee:

Thomas D. Dossett
134 W. Center Street
Kingsport, Tn. 37660

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 was perfected by the employer, Insurance Company of Pennsylvania, from a decision of the trial court awarding the employee, Martha Jane Shupe, 90% permanent partial disability to the body as a whole.

On appeal defendant insurance company insists (1) the trial court was in error in finding the cervical disc injury was work-related and (2) if the injury was work-related, the award of 90% was excessive under the proof.

The employee contends (1) she is totally disabled and the award should be fixed at 100% and (2) the trial court was in error in finding the aneurysm rupture was not work-related.

Plaintiff was 45 years of age at the time of the trial and had completed the 8th grade. She was employed at a Burger King restaurant on April 27, 1992, when she climbed upon a shelf to return a box to a higher shelf; in attempting to come down, her foot slipped and she fell some distance landing on her feet; she stated the fall caused her body to twist and she experienced immediate intense pain in her neck.

Plaintiff was taken immediately to a hospital emergency room where she was examined and referred to another doctor. She remained off work for about two weeks and then returned to work on a reduced time schedule. She testified after some period of part time work, her employer decided she should not work further.

On about May 27, 1992, she was present with her husband at a court hearing (unrelated to present case) when she turned her head to look out the window and felt a sting of pain in the back of her neck. Shortly later she experienced double vision problems and could not move her legs for awhile. She also became nauseated. Further investigation into her complaints indicated there had been a rupture of an aneurysm in her head and that she also had a herniated cervical disc. Surgery was performed to correct the aneurysm problem and about a year later, she had a fusion to repair the disc problem.

The trial was conducted on October 28 and 29, 1996, which was about 4 ½ years after sustaining the injury. She testified she had attempted to find some light

work but no one would hire her upon learning of her condition. She said she still suffered a great deal of pain and was never without it. She also stated she suffered from some loss of memory and dropped objects frequently.

She married Danny Busler during July 1995 and he testified she took pain medication every day and she did not work much around the house. He said he did most of the housework.

Dr. Norman Hankins, a vocational rehabilitation consultant, was of the opinion plaintiff was 100% vocationally disabled as a result of the disc surgery. He also stated she would not be totally disabled if she had been released to return to work without any physical restrictions.

All of the expert medical testimony was by deposition.

Dr. Greg Corrandine, a neurosurgeon, testified he followed plaintiff after the disc surgery since her operating doctors had retired. He said a myelogram showed a large herniated cervical disc which required a fusion and he was of the opinion the incident at work caused the disc injury. He said he did not place any physical restrictions because he had not been requested to make that determination as she had not reached a return to work stage. As to the causation of the aneurysm rupture, he said it would be speculative to make that determination. He stated an elevation of blood pressure "could or might have" caused the rupture but he had no idea what her blood pressure was at the time of the rupture.

Dr. John Marshall, a physical medicine and rehabilitation physician, saw plaintiff on the day of the incident at work and felt she had a strain of the cervical and lumbar areas. He prescribed medicine and therapy. He also saw her soon after the courtroom incident and was of the opinion the aneurysm condition pre-existed the incident at work and that the rupture was not work-related. He gave a 10% medical impairment for the disc injury.

Dr. Jim C. Brasfield, a neurosurgeon, saw plaintiff on only one occasion on September 15, 1992. He was of the opinion she did not have a ruptured disc but that she had degenerative changes in her neck which was probably aggravated by the incident at work. It was his opinion that the aneurysm problem was not work-related. He testified severe pain could cause a sudden elevation of blood pressure which in turn could cause an aneurysm to rupture but felt that when this did occur

there was usually something more than mere elevation of blood pressure such as a straining movement.

Trudy Castleberry, a medical case manager and vocational consultant, testified orally before the court and stated her duties with Optima Rehabilitation Services required her to place disabled persons in employment. She had interviewed plaintiff and examined numerous medical records, etc. and concluded plaintiff was not totally disabled but could perform light physical capacity tasks.

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).

In resolving disputes in medical testimony, the trial court may choose which medical testimony to accept. In doing this, the court may consider the qualifications of the experts, the circumstances of their examination, the information available to them and the evaluation of the importance of that information by other experts. *Orman v. Williams-Sonoma, Inc.*, 803 S.W.2d 672, 676 (Tenn. 1991).

The trial court found plaintiff's cervical disc injury was work-related but the aneurysm rupture was not work-related. Each party raises an issue concerning this question on causation. From our independent review of the evidence, we find the greater weight of the evidence supports this conclusion and therefore, the evidence does not preponderate against the decision of the trial court.

The parties also each raise issues concerning the extent of disability. Plaintiff seeks an increase to 100% disability. The defendant seeks a reduction from the 90% award. The trial court was in a better position to judge credibility of the plaintiff as she testified orally before the court. When the court heard plaintiff's testimony, it had been 4 ½ years since the accident at work. She was still complaining of a great deal of pain and insisted she was not able to work. In our review of the record, we cannot say the evidence preponderates against the award of disability.

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

Roger E. Thayer, Special Judge

CONCUR:

E. Riley Anderson, Chief Justice

John K. Byers, Senior Judge

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

MARTHA SHUPE)	HAWKINS CIRCUIT
Plaintiff Appellee)	
)	No. 6614
)	
vs.)	Hon Ben K. Wexler
)	Judge
)	
)	
INSURANCE COMPANY OF)	
PENNSYLVANIA)	No. 03S01-9706-CV-00065
Defendant/Appellant.)	

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 the defendant/appellant, Insurance Company of Pennsylvania. and Timothy W. Conner, surety, for which execution may issue if necessary.

03/03/98

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

