

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT KNOXVILLE
(May 6, 1998 Session)

FILED
September 25, 1998
Cecil Crowson, Jr.
Appellate Court Clerk

ANGELA BILBREY,)	HAMILTON CHANCERY
)	
Plaintiff-Appellee,)	Hon. Howell N. Peoples,
)	Chancellor.
v.)	
)	No. 03S01-9708-CH-00092
AMERICAN NATIONAL BANK)	
and TRUST COMPANY,)	
)	
Defendant-Appellant.)	

For Appellant:

Randy Wilson
James Williams
Miller & Martin
Chattanooga, Tennessee

For Appellee:

Ronald J. Berke
Berke, Berke & Berke
Chattanooga, Tennessee

MEMORANDUM OPINION

Members of Panel:

Charles D. Susano, Jr., Special Justice
John K. Byers, 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 contends the evidence preponderates against the chancellor's findings that the employee's permanent mental and physical injuries arose out of and in the course of her employment. As discussed below, the panel has concluded the judgment should be affirmed.

At the time of the trial, the employee or claimant, Angela Bilbrey, was fifty years old. She has a high school education and attended a business school for two years. She has served in the United States Navy, where she received some technical training. She has worked for American National Bank, now SunTrust, since 1979 as a collector or account adjuster. In April of 1987, she went to Sierra-Tuscon, an alcohol and drug dependency center, where she was treated for emotional problems related to her family situation and her difficulty coping with them. There is some history of mental dysfunction in her family and there is evidence she was mistreated by her mother and that her former husband is a recovering alcoholic. She told a psychologist at Sierra-Tuscon she wanted "to know why I am unhappy a lot."

She worked on the third floor of her employer's building. On June 29, 1993, she and another employee entered an elevator on the third floor to go to the lobby floor. The elevator fell from the third floor to some distance below the lobby floor, before stopping suddenly. She remained "stuck" in the elevator for approximately half an hour until she could be removed by other persons. Following the injury, she complained of shoulder pain and, after receiving emergency care at East Ridge Hospital, she was referred by the employer to Dr. George Seiters, a licensed and board certified orthopedic surgeon practicing in Chattanooga.

Dr. Seiters diagnosed a cervical sprain, left rotator cuff tendinitis with mild impingement syndrome and possible bursitis in the left shoulder, all of which he treated conservatively. When her shoulder pain and loss of motion persisted, he injected her shoulder with six milligrams of cortisone on October

11, 1993. The shot did not help but caused increased pain for a few days. The doctor testified by deposition that, in his opinion, the claimant's injuries were causally related to the above accident and that she would retain a permanent whole body impairment of eight percent. She returned to work after reaching maximum improvement from her physical injuries on January 24, 1994.

Upon returning to work, she began having personality conflicts with her co-workers. She perceived that they were harassing her by not transferring calls to her, taking work material from her desk and verbal hostility. In a letter to the employer, she complained of "co-workers' continuous cursing, rages, vulgar language and crude remarks" which, she said, offended her. She resigned but was later reinstated. In an EEOC complaint, she said her disability to work was "caused by the torment to which I was subjected at the hands of my co-workers."

She became depressed and, in June of 1994, was first seen by Dr. Mark Peterson, a licensed and board certified psychiatrist, practicing in the Chattanooga area since 1987, who diagnosed severe depression and paranoid psychosis, "stemming from" the elevator fall and subsequent injection of cortisone. The doctor has been treating the claimant with medication and psychotherapy since that time. His testimony included the following answers:

Q. Doctor, from the history given to you, from your examination of her, and your entire course of treatment, do you have an opinion to a reasonable degree of medical certainty as to whether the fall that she had in the elevator at work on June 29, 1993 proximately caused these psychiatric problems that you've described to us?

A. Yes, they are the proximal cause of the psychiatric problems.

Q. Doctor, considering the history given to you, the examinations you performed, and your entire course of treatment, do you have an opinion to a reasonable degree of medical certainty whether or

not these problems are permanent in nature?

A. Looking at the length of time since the injury and what I would term stable instability, meaning every few weeks or months there's problems with job, problems with trust, these paranoid ideas and reactions coming up, it's clear to me that she has an ongoing permanent condition that has settled into a pattern.

She's reached her maximal improvement at this point and I don't expect it to change much.

Doctor Peterson rated her impairment, using appropriate guidelines, as moderate, which he translated to fifty percent to the mind. He further opined that the condition could be exacerbated by cortisone injection, that the care he was providing was medically necessary, that his charges were reasonable and that the claimant would need future psychiatric care. He testified both by deposition and in person.

The employer retained Dr. D. Ross Campbell, another licensed and board certified psychiatrist, who practiced for twenty-five years before retiring in January of 1996. He testified that, based on his experience and from psychiatric literature, the claimant's psychiatric disability was unrelated to the accident at work, but was chronic and probably resulted from an unhappy childhood and family difficulties. He further opined that a single injection of six milligrams of cortisone could not cause or exacerbate a mental condition. As with Dr. Peterson, Dr. Campbell testified both by deposition and in person.

The lay testimony supported the notion, confirmed by the testimony of Dr. Peterson, that the claimant's present condition is far more severe than those for which she sought help from Sierra-Tuscon.

The chancellor found both conditions to have arisen out of the elevator accident and treatment for her physical injuries, and awarded medical and permanent disability benefits. 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). Where the trial judge has seen and heard the witnesses, especially if issues of credibility and weight to be given oral testimony are involved, considerable deference must be accorded those circumstances on review. McCaleb v. Saturn Corp., 910 S.W.2d 412, 415 (Tenn. 1995).

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. Hill v. Royal Ins. Co., 937 S.W.2d 873 (Tenn. 1996). In all but the most obvious cases, causation and permanency may only be established through expert medical testimony. Thomas v. Aetna Life and Cas. Co., 812 S.W.2d 278 (Tenn. 1991).

A mental injury by accident or occupational disease arises out of employment if caused by an identifiable, stressful work-related event producing sudden mental stimulus such as fright, shock or excessive unexpected anxiety, and not by gradual employment stress building over a period of time. Batson v. Cigna Property and Cas. Co., 874 S.W.2d 566, 569 (Tenn. 1994). If mental illness naturally flows from an otherwise compensable physical injury, then disability resulting therefrom has been held compensable even though the physical injury may not have been disabling. Hill v. Eagle Bend Mfg., Inc., 942 S.W.2d 483, 487 (Tenn. 1997).

The expert psychiatric testimony in this case is in direct conflict. The treating psychiatrist persists in his opinion that the required causal connection exists; the examining psychiatrist disagrees. The chancellor was able to observe both of those eminently qualified experts and to weigh and evaluate their testimony, just as he did the testimony of the claimant and other lay witnesses. He chose to accept that of the treating physician that the claimant's physical and

mental injuries were causally related to the accident at work and that they are permanent. Under the circumstances, the evidence fails to preponderate against the chancellor's findings.

The judgment of the trial court is accordingly affirmed and the cause remanded to the Chancery Court for Hamilton County for all further purposes. Costs on appeal are taxed to the defendant-appellant.

Joe C. Loser, Jr., Special Judge

CONCUR:

Charles D. Susano, Jr., Special Justice

John K. Byers, Senior Judge

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ANGELA BILBREY,)	Hamilton Chancery
)	No. 947584
Plaintiff-Appellee,)	
)	Hon. Howell N. Peoples,
)	
v.)	
)	
AMERICAN NATIONAL BANK &)	
TRUST,)	03S01-9708-CH-00092
)	
Defendant-Appellant.)	Affirmed

JUDGMENT ORDER

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 are taxed to the defendant-appellant and its surety, for which execution may issue if necessary.

PER CURIAM

