

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

FILED

September 21, 1998

Cecil Crowson, Jr.
Appellate Court Clerk

ZOILA ROSA DRAPIZA,)	
)	
Plaintiff/Appellant)	HAMILTON CHANCERY
)	
v.)	NO. 03S01-9707-CH-00084
)	
MEMORIAL HOSPITAL,)	HON. SAMUEL F. PAYNE,
A Division of Sisters of Charity of)	CHANCELLOR
Nazareth Health Corporation,)	
)	
Defendant/Appellee)	

For the Appellant:

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For the Appellee:

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MEMORANDUM OPINION

Members of Panel:

Special Judge Charles D. Susano, Jr.
Senior Judge John K. Byers
Special Judge Joe C. Loser, Jr.

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. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

Review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2); *Stone v. City of McMinnville*, 896 S.W.2d 548, 550 (Tenn. 1995). The application of this standard requires this Court to weigh in more depth the factual findings and conclusions of the trial court in a workers' compensation case. See *Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988).

This case presents the issue of whether the trial judge erred in dismissing the plaintiff's claim, which was filed on February 14, 1996, for workers' compensation benefits by way of summary judgment.

We reverse the judgment of the trial court and remand this case for further proceedings.

On February 1, 1995, the plaintiff and the defendant entered into a settlement of a workers' compensation matter on a joint petition. The defendant filed the petition to resolve the case because of some question as to whether the plaintiff had a compensable claim. The plaintiff was unrepresented throughout the proceeding.

The settlement entered into was to compensate the plaintiff for injuries to her sinus cavities as a result of exposure to chemicals used in the dark room of the x-ray department where she worked.

Because the medical evidence indicated the plaintiff was allergic to these chemicals, the plaintiff quit work upon entry of the judgment approving the settlement.

We find the following facts in the pleadings, etc. filed by the parties on the motion for summary judgment.

Prior to the settlement, the plaintiff had been experiencing some joint pain and was examined for this on September 19, 1994 by Dr. Patrick Tsui. Dr. Tsui's notes

on this visit state: "Here for joint pain also for the allergy that we have been treating her for."

The plaintiff was examined by Dr. Michael C. Hollie on October 26, 1994. His notes, relevant to the issue now existing, do not relate the joint pain to chemical exposure. He expressed the opinion that this may represent a latent connective tissue disorder, but he could not determine the cause.

On December 21, 1994, the plaintiff was examined by Dr. Larry W. Moreland, a specialist in the Division of Clinical Immunology and Rheumatology at the University of Alabama. On January 20, 1995, he gave his opinion that "the most reasonable approach at this time would put [the plaintiff] in the category of an early undefined connective tissue disorder."

On November 30, 1995, the plaintiff was examined by Dr. Allan D. Lieberman at the Center for Environmental Medicine in Charleston, South Carolina. Dr. Lieberman found the plaintiff was experiencing the involvement of multiple organs and systems, including obstructive and restrictive pulmonary disease, sinusitis, headaches, joint pain with swelling and redness, nausea, rash and loss of pigmentation on the hands and upper arms, tachycardia, chest pain, and swelling of the face, lips, tongue and throat. Dr. Lieberman was of the opinion that this was caused by the plaintiff's exposure to dark room chemicals and that she was totally disabled.

The defendant points out that the plaintiff could have proceeded under the provisions of Tenn. Code Ann. § 50-6-231 to have the lump sum settlement set aside if she had done so within 30 days of the filing of the judgment with the Division of Workers' Compensation, or that she could have filed a motion under Rule 60 of the Tennessee Rules of Civil Procedure if she had done so within one year. The plaintiff did not pursue either of these remedies.

The issue is whether she may proceed in this case on the basis of her petition alleging a disability based upon the medical evidence of Dr. Lieberman.

We are of the view that there are material issues of fact in this case as to whether the claim filed by the plaintiff alleges a separate and distinct cause of action from the case settled on February 1, 1995. Further, we are of the view that there are

material issues of fact in this record on the question of when the time for the running of the statute of limitations commenced.

Based upon these conclusions, we reverse the summary judgment ruling by the trial court and remand this case to the trial court for further proceedings.

The cost of this appeal is taxed to the defendant.

John K. Byers, Senior Judge

CONCUR:

Charles D. Susano, Jr., Special Judge

Joe C. Loser, Jr., Special Judge

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ZOILA ROSE DRAPIZA,)	HAMILTON CHANCERY
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PLAINTIFF/APPELLANT,)	
)	
v.)	HON. SAMUEL F. PAYNE,
)	CHANCELLOR
)	
MEMORIAL HOSPITAL, A DIVISION OF))	
SISTERS OF CHARITY OF NAZARETH))	S. CT. NO. 03S01-9707-CH-00084
HEALTH CORPORATION,)	
)	
DEFENDANT/APPELLEE.)	REVERSED AND REMANDED

JUDGMENT

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 Defendnat, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM

