IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT KNOXVILLE
(October 29, 1998 Session)

JOYCE HAMILTON,	)	BRADLEY CHANCERY
	)	
Plaintiff-Appellee,	)	Hon. Earl Henley,
	)	Chancellor.
v.	)	
	)	No. 03S01-9712-CH-00143
	)	
LIFE CARE CENTER OF AMERICA d/b/a LIFE CARE CENTER OF CLEVELAND,	)	
	)	
Defendant-Appellant.	)	

For Appellant:

Wesley R. Kliner, Jr.
Allen & Kliner
Chattanooga, Tennessee

For Appellee:

Conrad Finnell
Cleveland, Tennessee

M E M O R A N D U M O P I N I O N

Members of Panel:

Adolpho A. Birch, Jr., Associate Justice
William H. Inman, 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. In this appeal, the employer, Life Care Center, insists the evidence preponderates against the trial court's finding that the injury to the employee or claimant, Hamilton, is permanent or, alternatively, that the award of permanent partial disability benefits is excessive. As discussed below, the panel has concluded the judgment should be affirmed.

It is undisputed that, on September 15, 1993, the claimant slipped on a wet floor and fell backward, hitting the back of her head on a hard floor, while working for the employer. After a trial, the trial judge awarded permanent partial disability benefits based on forty percent to the body as a whole. The extent of an injured worker's disability is an issue of fact. Jaske v. Murray Ohio Mfg. Co., 750 S.W.2d 150 (Tenn. 1988). Thus, 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).

The claimant was forty-five years old at the time of her injury, with a high school education. She worked for Life Care Center as a nurse's assistant and had a second job as a greeter for Wal-Mart. Her work for Life Care required some heavy lifting and other strenuous work, whereas her work as a greeter for Wal-Mart was not very strenuous. She has never before made a claim for an injury to her head or neck.

On the day of the accident, it had been raining heavily. As the claimant entered the building to attend classes for obtaining certification as a nurse's aide, her feet suddenly went out from under her and she fell, striking the back of her head on the tile floor. According to her testimony, accredited by the findings

of the chancellor, she was briefly unconscious and came to while lying on the floor hearing voices. Her vision was blurred and she could not focus.

The claimant's daughter transported her to the hospital emergency room, where she was prescribed medication and given an ice pack to reduce swelling on the back of her head. The relevant portions of the emergency room record are illegible, but it does reflect that tests revealed no fracture or subluxation.

Upon leaving the emergency room, the claimant returned briefly to her class before going home. The supervisor in charge of conducting classes testified that the claimant did not look like she felt well after the accident and that, before the accident, the claimant was an enthusiastic employee, who was doing well in her training. Following the accident, the claimant gave up her work as a nurse's assistant, but continued to work as a greeter for Wal-Mart until October of 1995, when she quit because her condition had worsened.

On September 20, 1993, the claimant visited Dr. Sharon Farber, a neurologist, on referral from Dr. Hayes. Dr. Farber testified by deposition that she "felt" that Ms. Hamilton had chronic anxiety. When asked for an opinion as to permanency, the doctor said, "not for any neurologic reason." When asked if there was a causal connection between the claimant's accident and the anxiety, Dr. Farber replied, "I can't really – don't really feel capable of giving an opinion on that. I recommended she see a psychiatrist regarding that." When pressed, the doctor conceded the accident could have been causally connected to the anxiety at least temporarily. Dr. Hayes did not testify.

On October 13, 1993, the claimant saw Dr. Russell Smith, a chiropractor. Dr. Smith took a careful history and noted "complaints of moderate to severe neck and upper back pain and muscle spasms with little to no motion in her cervical spine." After providing conservative care for a period of approximately one year, Dr. Smith assigned a permanent impairment rating of twenty-two percent to the whole person, based in part on a finding of herniated discs in the

claimant's cervical and thoracic area.

On December 15, 1993, an MRI was performed of her cervical spine at Outpatient Diagnostic Center. The radiologist found no significant abnormalities. Subsequently, on March 15, 1995, an MRI was performed at Bradley Memorial Hospital. The same radiologist found no difference in the two except for "more pronounced posterior extension of the C5-6 and C6-7 discs" and some difference of the cervical lordosis, which he attributed to positioning of the patient by technicians. The radiologist did not see the claimant or attempt to make any clinical diagnosis, which he conceded would be a more appropriate way to diagnose. We find in the record no evidence of any injurious occurrence between the above dates.

On August 25, 1994, the claimant reported to Dr. W. Charles Sternbergh, a neurologist, for an evaluation. He took a careful history and conducted a neurological examination. He diagnosed post concussion headaches. She returned to this doctor for a second evaluation on March 13, 1995. When asked for an opinion as to permanency, Dr. Sternbergh replied, "I do not think this lady has any organic neurologic injury or impairment. I have no explanation for her continuing complaints other than what I mentioned in my last note, which was basically anxiety, stress, tension." He said he could not "perceive" any "ratable percentage of medical disability."

On December 20, 1994, the claimant reported to Dr. George Seiters, an orthopedist, for an evaluation. The doctor took a careful history and performed a physical examination. He found tenderness to firm palpation in the mid cervical spine and over the inner edge of the right shoulder blade, but no other positive findings. From the most recent MRI, he found "a small posterior bulge at C-5/6 and C-6/7 without any nerve impingement of any significance as far as causing neurologic dysfunction." He assigned "zero permanent impairment."

She saw Dr. James L. Schroder, another chiropractor, on April 26, 1994. His impression was that the claimant was "suffering from suboccipital neuralgia with the likelihood of post traumatic cephaliga (sic) associated." He referred her to Dr. David A. Rankine, another neurologist.

Dr. Rankine first saw the claimant on May 23, 1996. This doctor took essentially the same history as the other doctors, conducted essentially the same examination as the other doctors and reviewed essentially the same medical records as the other doctors. In addition, he ordered an electroencephalogram. From all of which, he diagnosed a brain injury, occipital neuralgia and possible migraine headaches, all causally related to the accident. Dr. Rankine's deposition includes the following questions and answers concerning permanency and causation:

Q. Dr. Rankine, I haven't asked you this, but are you in a position at this point in time to state an opinion within the realm of reasonable medical certainty or probability as to whether or not Ms. Hamilton has any permanent medical impairment or a percentage of permanent medical impairment as a result of this accident or do you want to treat her longer before you arrive at such an opinion?

A. Prior to her seeing me she really had not received adequate neurology evaluation or treatment and the fact that she has responded quite well with the recent introduction of the medication, I would prefer to wait before giving her a definite rating. I suspect she will have a minor permanent disability rating. I wouldn't expect this to be a large number.

Q. Would it be a medical impairment rating?

A. Yes. It would probably be a medical impairment based on the AMA Guidelines probably around -- again this is subject to review -- but probably around five percent to ten percent at most.

On cross examination, the following exchange occurred:

Q. Do you believe it to be pre-mature to render any kind of an

impairment rating?

A. I think it is because as of my September fifth meeting with her, she was indicating that she was doing much better over all and that her headaches had remarkably improved and she was having symptomatic relief and it is quite possible with medical management that we would be able to perhaps get her back to one hundred percent.

Q. Without any kind of rating, I mean, she would be one hundred percent?

A. I would hope, although if you go by the AMA Guidelines, even if there is some mild impairment, you are supposed to give them at least zero to five percent or something, but I don't always find the guidelines very useful, to be quite honest. They are cumbersome sometimes.

Dr. Donald B. Gibson examined the claimant for the purpose of an evaluation on March 14, 1996. He took a thorough history and studied her medical history, before conducting a physical examination and reviewing the MRI films of March, 1995. He diagnosed sprains of the cervical, thoracic and lumbar spines, with pain in the occipital scalp, neck and into the arms; herniated discs at C5-6 and C6-7, with mild protrusion at C3-4; cervicobrachial radiculoneuritis; tendinitis of both distal forearms and wrists; mild to moderate thoracolumbar strain; and anxiety and depression. He assigned a permanent impairment rating of fifteen percent to the whole person, based on appropriate guidelines. As to whether the above conditions were causally related to the claimant's fall at work, Dr. Gibson said, "Oh, I felt that the first three diagnoses were connected to that accident. This anxiety and depression was a sequel that came on; and I did not know the patient's pre-accident personality, so that I put no arithmetic value on that.

In describing her own condition, the claimant testified, more than three years and nine months after she was injured, "I have constant pain trapped in my head and my ears. I have a burning sensation through my head and constant

pain in my neck and upper back, numbness and tingling and burning sensation, at times, all through my body; and I am unbalanced all the time, just staggery. I can't walk. I just can't function well." None of the experts questioned her credibility. That the chancellor believed her is implicit in his findings.

This appears to us to be another in a long line of cases where a trial judge is forced to reconcile conflicting opinions of scientists. In such cases, the trial judge, as the trier of fact, has the discretion to determine which expert testimony to accept and which to reject, just as a jury would have in a jury trial. Clearly, the chancellor chose to accept the proof that the claimant is permanently disabled as a result of her work related accident.

From a deliberate reading of the record, we cannot say the evidence preponderates otherwise. The judgment of the trial court is accordingly affirmed and the cause remanded to the Chancery Court for Bradley County. Costs on appeal are taxed to the defendant-appellant.

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Joe C. Loser, Jr., Special Judge

CONCUR:

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Adolpho A. Birch, Jr., Associate Justice

_____

William H. Inman, Senior Judge

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Plaintiff/Appellee	)	No. 94-059
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	)	No. 03S01-9712-CH-00143
v.	)	
	)	
	)	Hon. Earl Henley
LIFE CARE CENTER OF AMERICA dba LIFE CARE CENTER OF CLEVELAND	)	
	)	
Defendant/Appellant	)	

FILED

February 17, 1999

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 facts 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,Life Care Center of America and Wesley r. Kliner, Jr.,surety for which execution may issue if necessary.

02/17/99