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

FILED

April 14, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

ESSIE M. BUTLER,	)	
	)	
Plaintiff/Appellant	)	GIBSON CHANCERY
	)	
v.	)	NO. 02S01-9805-CH-00045
	)	
EMERSON MOTOR COMPANY,	)	HON. GEORGE E. ELLIS,
	)	CHANCELLOR
Defendant/Appellee	)	

For the Appellant:

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For the Appellee:

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

Members of Panel:

Justice Janice Holder
Senior Judge John K. Byers
Senior Judge F. Lloyd Tatum

AFFIRMED

BYERS, Senior Judge

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).

The trial court found the plaintiff had failed to show she was entitled to compensation because of an alleged back injury.[1]

We affirm the judgment of the trial court.

The facts in this case are reasonably simple. The plaintiff, age 49, had been working for the defendant for 25 years. Several years prior to 1995 she injured her back at work. This injury is more historical than significant in the case before us.

In January 1995, the plaintiff was working at a lathe, putting machine parts on the lathe and turning them. She began to experience pain in her back. She testified this was caused by having to twist her body side to side or back and forth in doing the work.

Ultimately, the plaintiff was seen by several doctors and had several diagnostic tests and various treatments done. The most significant treatment was done by Dr. Dan Spengler, an orthopedic surgeon, who diagnosed the plaintiff as having instability of motion at the L4-5 section of her spine with some pinching of the nerve. Dr. Spengler was of the opinion that the cause of this problem was a degenerative process in a person of the plaintiff's age. He was of the opinion the plaintiff's work did not cause the problem.

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[1] The plaintiff also sued for carpal tunnel syndrome and was found to be entitled to compensation. That matter is not raised in this appeal.

Dr. Spengler performed surgery on the plaintiff to relieve the symptoms she suffered. He testified the twisting and turning described to him by the plaintiff could cause the symptoms to be aggravated, but whether these movements made the underlying condition worse was "debatable." Further, Dr. Spengler was of the opinion that the slippage of the disc would seldom cause progression beyond what it originally was because of the plaintiff's work. Dr. Spengler testified the plaintiff was 12 percent medically impaired by reason of her back problem.

There is nothing in the record from other medical people that shows any cause of the plaintiff's condition because of her work or any progression of her problem by reason of her work.

In this case, the plaintiff does not point to any specific or accelerated injury arising from her work. She complains only of pain from the work. The medical evidence shows this pain flows from a preexisting condition of her back.

In *Talley v. Virginia Ins. Reciprocal,* 775 S.W.2d 587 (Tenn. 1989), the Supreme Court held that no recovery could be had from the aggravation of a preexisting condition which only increases pain with no anatomical change in the plaintiff's spine. In *Cunningham v. Goodyear Tire & Rubber Co.,* 811 S.W.2d 888 (Tenn. 1991), the Supreme Court held that aggravation of a preexisting condition is compensable only if it results in increased pain or other symptoms caused by the underlying condition, but the aggravation is compensable if the injury causes an actual progression of the underlying condition.

In *Sweat v. Superior Industries, Inc.,* 966 S.W.2d 31 (Tenn. 1998), an opinion by the Special Workers' Compensation Appeals Panel, which was adopted by the Supreme Court, held that where the treating physician testified the plaintiff's work caused an advancement and resulted in actual progression of an underlying condition, the plaintiff was entitled to recover.

In this case, there is no evidence that the work advanced or caused a progression in the plaintiff's underlying condition. We find therefore that the evidence does not preponderate against the finding of the trial judge in this case.

The judgment is affirmed and the cost of this appeal is taxed to the plaintiff.

_____
John K. Byers, Senior Judge

CONCUR:

_____
Janice Holder, Justice

_____
F. Lloyd Tatum, Senior Judge

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

ESSIE M. BUTLER,	)	GIBSON COUNTY
	)	NO. 3615
APPELLANT	)	
	)	HON. GEORGE R. ELLIS
v.	)	CHANCELLOR
	)	
EMERSON MOTOR COMPANY,	)	S. CT. NO. 02S01-9805-CH-00045
	)	
APPELLEE	)	

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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 the appellant, Essie M. Butler, for which execution may issue if necessary.

It is so ordered.

PER CURIAM

HOLDER, J. NOT PARTICIPATING