

SPECIAL WORKERS' COMPENSATION APPEALS PANEL
FEBRUARY 1999 SESSION

FILED

August 27, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

BRENDA RAINEY,

Plaintiff/Appellant,

v.

CLEO, INC.,

Defendant/Appellee.

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Hardin Circuit No. 2655

No. 02S01-9802-CV-00018

Honorable C. Creed McGinley, Judge

For the Appellant:

Mitchell G. Tollison
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P. O. Box 630
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For the Appellee:

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80 Monroe Avenue, Suite 550
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MEMORANDUM OPINION

Members of Panel:

Justice Janice M. Holder
Senior Judge L. T. Lafferty
Special Judge J. Steven Stafford

AFFIRMED

LAFFERTY, 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.

Plaintiff, Brenda Rainey, has appealed from the judgment of the trial court denying her claim for workers' compensation on the grounds that she failed to carry her burden of proof that she sustained a work-related injury in the course and scope of her employment and that she sustained a permanent anatomical impairment as a result of a work-related injury. On appeal, the only issue presented by the plaintiff is whether the evidence preponderates against the judgment of the trial court. For the reasons hereinafter stated, we find that it does not, and, therefore affirm the trial court's judgment.

At the time of trial, the plaintiff testified she was a single mother with two adult children, an eighth grade education, and a previous work history consisting of factory jobs and a nursing home position. The plaintiff testified she worked for the defendant as a bow inspector in November, 1995. The plaintiff's job was to watch 200-300 gift bows go by on a conveyor belt and "pick them out." While observing the conveyor line and bows, the plaintiff testified that her hands began hurting, and she notified her supervisor/line leader.¹ The line leader replied, "Well, you'll be okay," and told the plaintiff that the absence would count against her if she left work. The plaintiff had previously complained about her left wrist while employed with another employer. She was seen by Dr. James Crenshaw and treated with wrist bands and medication.

On November 4, 1995, the defendant notified the plaintiff that she was being laid off and subsequently closed the factory without notice. The plaintiff testified she was not furnished a panel of physicians from the defendant's compensation carrier until her attorney got approval for her to see Dr. Michael Cobb. The plaintiff lived in Humboldt, Tennessee, and Dr. Cobb's office was in Jackson, Tennessee. The plaintiff testified that

¹In her complaint, the plaintiff stated that the date of injury was November 11, 1995, and the defendant's answer acknowledged that notice of an injury was given on November 4, 1995. Plaintiff later amended her complaint to allege the injury was gradually occurring with the last occurrence on November 11, 1995.

Dr. Cobb only spent two or three minutes with her and was rude. She described her injury as painful, with episodes of swelling in her left hand and knots in her arm. She further testified that she had difficulty in holding dishes, because of extreme pain, and cannot fish, rake leaves, or do other activities that she was accustomed to doing.

At trial, Larry Hearod testified that he has known the plaintiff for eighteen or nineteen years and was familiar with her complaints of wrist injury. He testified that the plaintiff was currently living in his home and had lived with him before. According to Mr. Hearod, the plaintiff could not longer vacuum the floors and frequently complained about her hands, which were getting worse. Hearod denied the plaintiff had problems with her hands and wrists before her injury at the defendant's business.

Sue Spencer testified that she has known the plaintiff for eighteen or nineteen years and has heard plaintiff complain about pain, tingling, and swelling in her hands. She has also observed the plaintiff dropping dishes. Mrs. Spencer denied that the plaintiff had wrist problems prior to November, 1995.

The medical testimony consists of medical reports of various physicians filed in the record. Dr. Ronald C. Bingham conducted an electromyography examination on the plaintiff on December 27, 1995, and found normal median nerve conduction across both wrists and a normal study of both upper extremities.

Dr. Michael Cobb filed a report and C-32 report as to his findings regarding the plaintiff's complaints. Dr. Cobb first saw the plaintiff on January 11, 1996, with complaints of pain and numbness in both hands, but more in the left hand than the right. The plaintiff described her job as a bow inspector who watches for bad bows on a conveyor belt. Dr. Cobb found no objective findings of an injury or permanent disability and did not restrict the plaintiff's employment. Dr. Cobb's report established that the plaintiff missed three appointments in April, May, and June, 1996. He next saw the plaintiff on July 17, 1996, with diffuse symptoms in her hands and wrists. X-rays showed no degenerative changes. Dr. Cobb found no chronic neurological problems, excellent range of motion, good grip, and no signs of weakness. On August 14, 1996, the plaintiff complained of the same problems, but an examination revealed no swelling, no pathology, good range of motion, and unchanged grip strength. Dr. Cobb found no signs of serious injury or disability and

opined that the plaintiff could work without restriction.

Dr. Christian Stewart saw the plaintiff on November 8, 1996, with primary complaints of sharp chest pains, gout, and migraine headaches. The plaintiff complained that the pain radiated down her left arm and consisted of pain and tingling. The plaintiff had been seen in the Humboldt General Hospital in November, 1995, for similar complaints. Dr. Stewart examined the plaintiff and found no impairment-related physical limitations.

Dr. Robert J. Barnett filed a report and C-32 as to his findings. Dr. Barnett saw the plaintiff on February 10, 1997, at the request of her attorney. The plaintiff's EMG and nerve conduction study were normal. After administering a grip strength test, Dr. Barnett found her grip markedly below normal on both sides, but more significant on the left. He estimated that the plaintiff has a ten percent permanent physical impairment to the left arm from tendinitis and some mild nerve root entrapment of the ulna nerve due to numbness of her ring and fifth fingers. Dr. Barnett's C-32 report indicated that the plaintiff's complaints arose out of her employment.

Based on the testimony and medical reports, the trial court was of the opinion that the plaintiff did not conjure up her complaints but had a host of medical problems, including heart problems, gout, migraines, and others. After reviewing the medical reports, the trial court found no objective evidence to support an injury arising out of employment and concluded that the plaintiff failed to carry her burden of proof as to causation and permanent disability.

Our review is **de novo** on the record accompanied with a presumption of correctness of findings of fact of the trial court unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2); *Orman v. Williams Sonoma, Inc.* 803 S.W.2d 672, 675 (Tenn. 1991). We are also mindful that "it is well settled in Tennessee that a plaintiff in a worker's compensation suit has the burden of proving every element of the case by a preponderance of the evidence." *Elmore v. Travelers Ins. Co.*, 824 S.W.2d 541, 543 (Tenn. 1992) (citing *Talley v. Virginia Ins. Reciprocal*, 775 S.W.2d 587, 591 (Tenn. 1989)).

The defendant contends the plaintiff has failed to establish, by expert testimony, medical causation and the permanency of her injury. It is well established that medical

causation and permanency of injury must be established by expert testimony in workers' compensation cases. *Aetna Cas. & Sur. Co. v. Long*, 569 S.W.2d 444, 447 (Tenn. 1978). When the trial court is faced with conflicting medical testimony as to these issues, "it is within the discretion of the trial judge to conclude that the opinion of certain experts should be accepted over that of other experts and that it contains the more probable explanation." *Hinson v. Wal-Mart Stores, Inc.*, 654 S.W.2d 675, 676-77 (Tenn. 1983). In "causal connection" cases, facts and circumstances revealed by lay testimony may assist the trial court in the ultimate determination of that issue, and, therefore, it is not exclusively within the realm of medical science. *Smith v. Empire Pencil Co.*, 781 S.W.2d 833, 835 (Tenn. 1989); *Owens Illinois, Inc. v. Lane*, 576 S.W.2d 348, 349 (Tenn. 1978). Where the trial court has seen and heard witnesses, especially where issues of credibility and weight of oral testimony are involved, considerable deference must still be accorded those circumstances on review. All of the medical proof was documentary, so that all impressions of weight and credibility must be drawn from the contents thereof, and not from the appearance of witnesses on oral testimony at trial. *Humphrey v. David Witherspoon, Inc.*, 734 S.W.2d 315, 315-16 (Tenn. 1987). Thus, we must evaluate the evidence presented to the trial court and ascertain whether or not it preponderates against the trial court's findings.

Shortly after the report of the plaintiff's injury in November, 1995, two physicians, Dr. Ronald C. Bingham and Dr. Michael Cobb, examined the plaintiff for her complaints. Dr. Bingham found normal nerve conduction across both wrists and a normal study of the upper extremities. Dr. Cobb, who treated the plaintiff from January to August, 1996, found no objective findings of an injury or permanent disability which restricted the plaintiff's employment. An additional examination on August 14, 1996, revealed no swelling, no pathology, good range of motion, and unchanged grip strength. Dr. Cobb found no signs of serious injury or disability and believed the plaintiff could work without restrictions.

Dr. Christian Stewart examined the plaintiff in November, 1996, for chest pain. A review of Dr. Stewart's report reveals the plaintiff did not complain of any work-related injuries in her medical history. In a range of motion examination, Dr. Stewart found that the plaintiff's elbows and wrists were in the normal range. Dr. Stewart concluded the

plaintiff had no impairment-related physical limitations.

On February 10, 1997, Dr. Robert J. Barnett, in a one-time visit, examined the plaintiff and found she had a ten percent permanent physical impairment to the left arm and some mild nerve root entrapment of the ulna nerve. Dr. Barnett opined the medical complaints were job-related.

From our review of the record, we believe that the trial court properly gave greater weight to the medical evaluations of Drs. Bingham and Cobb. In sum, our review of the record persuades us that the evidence does not preponderate against the trial court's finding that the plaintiff failed to prove any permanent disability as a result of her employment. The judgment of the trial court is affirmed.

Costs are adjudged against the plaintiff/appellant.

L. T. LAFFERTY, SENIOR JUDGE

CONCUR:

JANICE M. HOLDER, JUSTICE

J. STEVEN STAFFORD, SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

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BRENDA RAINEY,)	Hardin Circuit
)	No. 2655
Plaintiff-Appellant,)	
)	
v.)	Hon. C. Creed McGinley, Judge
)	
CLEO, INC.,)	NO. 02S01-9802-CV-00018
)	
Defendant-Appellee,)	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 plaintiff-appellant and her surety, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM

Holder, J., Not Participating