IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

FILED

September 29, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

VIRGINIA BYRD,	)	Putnam Circuit
	)	No. 97N0096
Plaintiff-Appellee,	)	
	)	
v.	)	Hon. John Turnbull, Judge
	)	
COOKEVILLE GENERAL HOSPITAL,	)	NO. 01S01-9805-CV-00097
	)	
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.

The plaintiff's Motion to Strike the defendant's brief in support of its Motion for Review is also denied.

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.

IT IS SO ORDERED.

PER CURIAM

Drowota, J., Not Participating

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE
(March 31, 1999 Session)

VIRGINIA BYRD,	)	PUTNAM CIRCUIT
	)	
Plaintiff-Appellee,	)	Hon. John Turnbull,
	)	Judge.
v.	)	
	)	No. 01S01-9805-CV-00097
COOKEVILLE GENERAL HOSPITAL,	)	
	)	
	)	
Defendant-Appellant.	)	

For Appellant:

Daniel H. Rader, III
Moore, Rader, Clift & Fitzpatrick
Cookeville, Tennessee

For Appellee:

Mary Dee Allen
Cookeville, Tennessee

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

Members of Panel:

Frank F. Drowota, III, Associate Justice
Thomas W. Brothers, Special 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 in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. The employer, Cookeville General Hospital, insists (1) the trial judge erred in awarding permanent disability benefits for the employee's right leg injury and (2) the award of seventy percent permanent partial disability to the left foot is excessive. As discussed below, the panel has concluded the judgment should be affirmed.

Because the extent of an injured worker's permanent vocational

disability is a question of fact, we have reviewed the case *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, per Tenn. Code Ann. § 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. Collins v. Howmet Corp., 970 S.W.2d 941 (Tenn. 1998).

The employee or claimant, Virginia Byrd, is seventy-three years old with a G.E.D. She has training as a licensed practical nurse and is a certified nurse assistant. She has worked for the employer for twenty-five years. She suffered a compensable injury by accident on October 12, 1996, when she fell at work, fracturing her left foot and injuring her right knee and elbow. The elbow injury has healed. She was referred to Dr. McKinney.

The doctor treated her injuries and assigned a permanent impairment rating of two percent to the whole body because of the left foot injury and ten percent to the whole body because of the right knee injury, superimposed on preexisting arthritis. The employee's testimony, accredited by the trial judge, was that she did not have disabling knee pain before her injury and that she is no longer able to perform her duties as a nurse's aid. The doctor also related her pain to the fall and that opinion is supported by the lay evidence. Dr. McKinney was the only medical expert that testified.

The employer contends the award to the right leg should not be affirmed because Dr. McKinney testified that the claimant's arthritis was not caused by her fall at work, that it resulted in no impairment as a result of the fall, and that no medical restrictions were imposed. However, the doctor did assign a permanent impairment rating, did testify that the claimant's pain was causally related to her fall and did testify that she would probably never return to work because of it.

In all but the most obvious cases, both causation and permanency must be established by expert medical testimony. Wade v. Aetna Casualty and Surety Company, 735 S.W.2d 215 (Tenn. 1987). However, absolute certainty on the part of a medical expert is not necessary to support a workers' compensation award, for expert opinion must always be more or less uncertain and speculative; Reeser v. Yellow Freight Systems, Inc., 938 S.W.2d 690 (Tenn. 1997); and, where equivocal medical evidence combined with other evidence supports a finding of causation, such an inference may nevertheless be drawn under the case law. White v. Werthan Industries, 824 S.W.2d 158 (Tenn. 1992). The employer takes the employee with all pre-existing conditions, and cannot escape liability when the employee, upon suffering a work-related injury, incurs disability far greater than if he had not had the pre-existing conditions; Kellerman v. Food Lion, Inc., 929 S.W.2d 333 (Tenn. 1996). To be compensable, the preexisting condition must be advanced, there must be anatomical change in the preexisting condition, or the employment must cause an actual progression of the underlying disease. Sweat v. Superior Industries, Inc., 966 S.W.2d 31, 32-33 (Tenn. 1998).

While the medical evidence in the present case is somewhat weak, it is also uncontradicted, and we are not persuaded the trial judge erred in drawing inferences favorable to the claimant with respect to the right leg injury. Any reasonable doubt as to whether such an injury arises out of the employment should be resolved in favor of the employee. Tapp v. Tapp, 192 Tenn. 1, 236 S.W.2d 977 (1951). The employer's argument that the accident merely increased preexisting pain is not supported by a preponderance of the evidence.

The employer next contends the award of benefits based on seventy percent permanent partial disability to the left foot is excessive because no medical restrictions were imposed and because the treating physician assessed only seven percent permanent impairment. Once the causation and permanency of an injury have been established by expert testimony, the trial judge may consider many pertinent factors, including age, job skills, education, training, duration of disability, and job opportunities for the disabled, in addition to anatomical impairment, for the purpose of evaluating the extent of a claimant's permanent disability. Tenn. Code Ann. § 50-6-241(a)(2). The opinion of a qualified expert with respect to a claimant's clinical or physical impairment is a factor which the court will consider along with all other relevant facts and circumstances, but it is for the court to determine the percentage of the claimant's industrial disability. Pittman v. Lasco Industries, Inc., 908 S.W.2d 932 (Tenn. 1995).

For the above reasons and from a careful consideration of all relevant factors established by the proof in this case, we cannot say the evidence preponderates against the judgment of the trial court. The judgment is affirmed and the cause remanded to the trial court for such further proceedings, if any, as may be necessary. Costs on appeal are taxed to the defendant-appellant.

_____
Joe C. Loser, Jr., Special Judge

CONCUR:

_____
Frank F. Drowota, III, Associate Justice

_____
Thomas W. Brothers, Special Judge