IN THE SUPREME OF TENNESSEE

AT NASHVILLE

LISA JO PHILLIPS	}	*WARREN General Sessions*
	}	*No. Below 6585*
Plaintiff/Appellee	}	
	}	*Hon. Barry Medley*
vs.	}	
	}	
	}	*No. M1998-00206-WC-R3-CV*
MORTON'S HORTICULTURAL PRODUCTS, INC.	}	
	}	
Defendant/Appellant	}	*REVERSED and DISMISSED*

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 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 plaintiff/appellee, Lisa Jo Phillips, for which execution may issue if necessary.

IT IS SO ORDERED on December 30, 1999.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
(September 23, 1999 Session)

LISA JO PHILLIPS,	)	
	)	
Plaintiff/Appellee,	)	**WARREN COUNTY**
	)	**GENERAL SESSIONS**
COURT		
v.	)	**NO. 6565 GSWC**
	)	
MORTON'S HORTICULTURAL	)	**NO. 01S01-9810-GS-00181**
PRODUCTS, INC.,	)	
	)	**HON. BARRY MEDLEY**
Defendant/Appellant.	)	
	)	
	)	

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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 Adolpho A. Birch, Jr.
Senior Judge F. Lloyd Tatum

Special Judge Carol L. McCoy

REVERSED AND DISMISSED

F. LLOYD TATUM, SENIOR JUDGE

OPINION

This workers' compensation appeal was referred to the Special Workers' Compensation Appeals Panel of the Supreme Court pursuant to Tennessee Code Annotated § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

This is an appeal by the employer, Morton's Horticultural Products, Inc., from a judgment of the General Sessions Court of Warren County in favor of the plaintiff, finding that, due to a work related neck injury, she had 60 percent permanent partial disability to the body as a whole. On this appeal, the defendant presents six issues:

1. The trial judge erred in determining that Appellee satisfied the notice requirements of Tennessee Code Annotated § 50-6-201 so as to entitle her to receive workers' compensation benefits under the statute.

2. The trial judge erred in determining that Appellee's condition was causally related to the alleged injury sustained on or around May 8, 1997, or to her employment at Morton's Horticultural Products, Inc.

3. The trial judge erred in determining that Appellee presented sufficient medical testimony to sustain her burden of proving permanency and causation of this alleged work related injury.

4. The trial judge erred in determining that Appellee retains a 60 percent permanent partial disability as a result of her alleged injury on or about May 8, 1977.

5. The trial judge erred in accrediting the opinion of Appellee's independent medical evaluation physicians over the opinions of treating doctors, in light of the conflicting and substantial evidence to the contrary.

6. In the alternative, if Appellee is deemed to have sustained a work related injury, the trial judge erred in not applying Tennessee Code Annotated § 50-6-241(a)(1) and the two and one-half times cap.

The standard of review of factual issues in workers' compensation

cases is de novo upon the record of the trial court with a presumption of correctness, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2); Henson v. Lawrenceburg, 851 S.W.2d 809, 812 (Tenn. 1993). Under this standard, we are required to conduct an in depth examination of the trial court's findings of fact and conclusions of law to determine where the preponderance of the evidence lies. See Thomas v. Aetna Life and Casualty Co., 812 S.W.2d 278, 282 (Tenn. 1991); King v. Jones Truck Lines, 814 S.W.2d 23, 25 (1991). In making such a determination, this court must give considerable deference to the trial judge's findings regarding the weight and credibility of any oral testimony received. Townsend v. State, 826 S.W.2d 434, 437 (Tenn. 1992). An appellate court is as well situated to gauge the weight, worth and significance of deposition testimony as the trial judge. Seiber v. Greenbriar Industries, Inc., 906 S.W.2d 444, 446 (Tenn. 1995).

The plaintiff in a workers' compensation suit has the burden of proving every element of the case by a preponderance of the evidence. Talley v. Virginia Ins. Reciprocal, 775 S.W.2d 587, 591 (Tenn. 1989). Compensable injuries are those caused by "accident arising out of and in the course of employment." Tenn. Code Ann. § 50-6-102(a)(4). The phrase "in the course of" refers to time and place and "arising out of" to cause or origin. An injury by accident to an employee is "in the course of" employment if it occurred while he was performing a duty he was employed to do and injury "arising out of" employment is caused by a hazard incident to such employment. Bill v.

Kelso Oil Co., 597 S.W.2d 731, 734 (Tenn. 1980).

We first address issue two, three and four, which are interrelated and require us to determine whether the plaintiff's condition was caused by an accident arising out of and in the course of her employment.

The plaintiff began working for Morton's Horticultural Products, Inc. in March, 1997. It is plaintiff's theory that on or about May 7, 1997, while working for the defendants, she and a co-worker, Lisa Schackle (Sullivan), were loading and unloading several trucks of ferns when she felt a severe pain in her neck. She testified that she woke the next morning with pain in her neck and arms. It is the defendant's theory that the preponderance of the evidence did not support the trial judge's findings in plaintiff's favor. The defendant states that it is equally or more than likely that the plaintiff's injury occurred from an incident the night before she awoke with a "crick" in her neck. During this incident, the plaintiff allegedly received a whiplash type injury on a personal mission while avoiding a truck.

LAY EVIDENCE

The plaintiff, Lisa Phillips, testified that she was 37 years old at the time of trial with an 11th grade education, a GED degree, and some uncompleted training at Motlow State. The plaintiff testified at trial that in May, 1997, she was injured at work. She described the incident as follows:

> A. The week prior to the 9th, me and Lisa had been loading and unloading several trucks of ferns. And they had the hanging basket thing on them. And when I picked them up, I felt a bad strain, you know, just something I'd never felt before in my life as I picked them up. And it continued to get worse. And I asked Mr. Morton if he could put me doing something lighter that it was

really hurting my neck.

Q. And what is "it" was hurting your neck?

A. The carrying the heavy objects. Lifting trees and flats.

* * *

Q. Did you continue to work that day, the rest of the day, the 7th?

A. One day I woke up and I couldn't move, but that was – I didn't go to work because I was hurting so bad. I think that might have been the 6th, 7th. I went to work the 8th, and told him that I was hurting really bad and that I couldn't do any lifting that day. And that was the 8th, I think.

Q. Did you indicate anything to Mr. Morton when you came into work that day – let me drop back. The morning that you woke up, what had you been doing the day before –

A. Hanging all them baskets.

Q. – the morning you woke up with neck problems?

A. Hanging the ferns, them hanging ferns.

Q. Okay. Any difficulties or any problems at all before that time?

A. No, I worked.

The plaintiff testified that the day that she had the "crick" in her neck, she went to work and told Mr. Morton, the president of her company, on several occasions, that the heavy lifting was hurting her neck. She requested that he give her lighter work, but Mr. Morton declined to do so. She testified that she did not know what was wrong with her neck.

Apparently on May 9, 1997, she went to the emergency room and saw Dr. Goldberg. She testified that she informed the emergency room that she had a bad strain while lifting ferns. Doctor Goldberg released her from work

after she told him that she did heavy lifting in her job. She testified that she was told at the emergency room that she had a "strained neck" and that Dr. Morgan later said that she had a whiplash.

The plaintiff further testified that on June 17, 1997, she quit working five minutes early because of severe pain. Two fellow employees helped her during that day. She saw Lisa Chilton at that time, who was apparently an office employee and sister of Mr. Morton. The plaintiff told Lisa Chilton that she could not do the heavy work, where upon Ms. Chilton wrote a memorandum saying "Lisa Phillips is no longer able to work for us due to her inability to lift. The last day of work, 6/17/97."

As previously stated, the plaintiff saw Dr. Morgan and then saw Dr. Hildabrand. She also saw Dr. McCombs, Dr. Gaw, and Dr. Lytle. She admitted that on July 30, 1997, she gave a statement to the effect that "this whole thing" started and the symptoms were when she "woke up one morning and it felt like I had a crick in my neck."

The plaintiff denied telling Lisa Chilton that her injury was not job related. She also denied that she told witnesses that she injured her neck to avoid a truck in front of her when she took her mother to Nashville. She stated that she did not slam on her brakes or do anything that would cause a whiplash injury and that she was with her brother and Bill Roberts and not her mother when this incident occurred. She testified that she took her mother to Nashville in March, 1997, when she was working at Captain D's. She testified that when the doctor marked on a form that the injury was "job

related" was the first that she knew that it was job related. Dr. Morgan performed an MRI at her mother's insistence.

Betty Ann Ray, plaintiff's mother, who was a licensed practical nurse, testified that the plaintiff took her and her husband to Nashville in March, 1997, when plaintiff was working at Captain D's. There was no unusual occurrence with driving on this occasion. She testified that the plaintiff also took her son to Gallatin sometime in January, 1997, when the plaintiff told her of a driving incident involving a truck in front of her.

Mrs. Ray testified that before the plaintiff saw Dr. Morgan but after the time that she had the "crick" in her neck, she felt the plaintiff's neck and noticed a muscle spasm. The plaintiff's neck, arms, and back grew progressively worse over time.

Lisa Dawn Schackle testified that she worked with the plaintiff at Morton's and that they carried heavy pots in their employment. She testified that the plaintiff had no complaints of pain or injury before May 7, 1997. On May 7, their work required them to go to the greenhouse, put ferns on trucks, move them, and hang them up. The plaintiff made no complaints that day. The next day, May 8, 1997, the plaintiff "couldn't move her neck." The witness and another employee did the heavy work on that day. The witness heard the plaintiff tell Tony Morton on May 8, 1997, and several subsequent occasions that the work was hurting her neck. The next day, May 9, 1997, the plaintiff went to the emergency room.

The witness did not testify that the plaintiff ever complained of pain or

a work-related injury before the morning she awoke with the “crick” in her neck. The witness testified that the plaintiff told her that she had been informed by her doctor that she had a whiplash injury and they could only relate a whiplash injury to an incident when the plaintiff had to swerve around a truck.

Ann Morton, secretary at Morton’s and wife of Tony Morton, testified that the plaintiff told her that she was coming back from Nashville with her mother when a truck in front of her jack-knifed, forcing her to swerve off the interstate into the median. She testified that the plaintiff told her this occurred the day before she came to work with a stiff neck in May, 1997. She testified that the plaintiff told her that her neck “popped” when she was avoiding the truck.

Lisa Chilton is a licensed practical nurse and works for Morton’s. She testified that the plaintiff came to her and asked her opinion as an LPN about receiving treatment for her neck. She had not been to a doctor at this time. The witness testified that she did not remember the details but that the plaintiff told her something about the plaintiff’s mother and a Nashville trip when a big truck caused her to have to swerve. She recalled that the plaintiff mentioned “whiplash.”

The witness testified that the plaintiff’s boyfriend came to her with a document signed by the plaintiff’s physician, Dr. Morgan. The document was dated July 8, 1997. It stated that the plaintiff’s injury was “work related.” This is the first that the witness had heard about the injury being work related. The

witness testified that she then received a telephone call from the plaintiff concerning the document signed by the doctor. The witness testified that the plaintiff told her that she was sorry about this and that she did not tell the doctor that her injury was work related. The witness testified that upon receiving the document signed by the doctor, she gave the workers' compensation insurance carrier all of the information that the plaintiff told her about the near accident when she avoided the truck on a trip. The plaintiff told the witness that the next day she could not move her neck.

Eddie Eldridge, an employee at Morton's, testified that the plaintiff told him that she was coming back from Nashville with her mother when a truck pulled in front of her, causing her to jerk the wheel. She came to work the next day with a "crick" in her neck. The witness could not remember the date of this conversation.

Dorothy Swann, an employee at Morton's, testified that the plaintiff told her and Eddie Eldridge that a vehicle pulled in front of her "real quick" and plaintiff said that she "turned" her brakes on, as she understood it and remembered it. The plaintiff told the witness that she "jerked her neck." The witness advised her to go to a doctor.

Robert Patton, an employee at Morton's, testified that he saw the plaintiff one morning, and she was "working her neck." When the witness asked her what was wrong, "she said something about somebody cutting them off or pulling in front of them in Nashville, she had to stop suddenly."

Tony Morton, president of Morton's Horticultural Products, Inc., testified

that he came to work one morning and saw the plaintiff and Lisa Schackle. The plaintiff was holding her neck as if it was stiff and told him that she had hurt her neck. Mr. Morton testified that he asked the plaintiff if she had hurt her neck at work, and the plaintiff told him no, that she thought she had whiplash. Mr. Morton testified that "she told me briefly about the incident with the truck and swerving, and her neck went this way and that way, and that's all I know."

Bill Roberts testified that he was engaged to marry the plaintiff. They had been going together for eight years and had been living together seven and one half years. Between February 20 and March 2, 1997, the witness, the plaintiff, and the plaintiff's brother were in a vehicle going to Gallatin. There was a truck in front of them that "hit his brakes. Something went on in front of him and he hit his brakes pretty quick. And we had a choice of either hit him, or go around him. So we just went around him." He testified that the plaintiff's neck was not injured and that she made no complaint about her neck until May 8, 1997, when she awoke with pain in her neck. The plaintiff did not know what caused the pain. After Dr. Morgan said "whiplash," the couple decided that the truck incident was the closest to an accident that they had experienced.

MEDICAL EVIDENCE

Dr. Charles Morgan, a family practitioner, testified by deposition that he saw the plaintiff on May 20, 1997. She was complaining of neck pain and stated that the pain was caused from heavy lifting at work. The pain radiated

down her left arm, according to her history, and her neck was stiff. She had full range of motion. Dr. Morgan treated her with Prednisone. He testified that he saw the plaintiff again on June 3, and she was still complaining of pain in her neck and arms. He treated her with Naproxen along with a narcotic for pain. Dr. Morgan referred her to Dr. Hildabrand at Vanderbilt Orthopedics.

Dr. Morgan was not questioned as to his diagnosis, but his medical notes which were an exhibit to his deposition, indicated that his diagnosis was cervicalgia (pain in the neck). Dr. Morgan stated no etiology or cause of the plaintiff's pain.

The doctor had in his possession a record from the emergency room of River Park Hospital, which he had reviewed in forming his opinions. The hospital record was dated May 9, 1997, and noted that the plaintiff "states does heavy work but doesn't remember injury." The emergency room record also noted "strain in L shoulder and down arm X two wks." Although the etiology of the plaintiff's neck pain was unknown to Dr. Morgan, he opined that the work "at least exacerbated her problem" and that her work "may have been the cause." Dr. Morgan did not relate any specific work injury history given to him by the plaintiff.

Dr. Alan Hildabrand, an orthopedic surgeon with a specialty in spine surgery, testified by deposition. He saw the plaintiff on July 7, 1997, upon referral by Dr. Morgan. Dr. Hildabrand testified that he "specifically asked the plaintiff if she had any specific event or traumatic accident and she described only a two month history of pain in her neck radiating to the shoulders and

both arms, which pain started one morning when she woke up with what she described as a crick' in her neck." She gave him no history of hurting herself the day before she had the "crick" by lifting or any other activity at work or elsewhere.

Upon examination, Dr. Hildabrand found an abnormal reflex called a Babinski reflex, which indicated either spinal cord compression or an abnormality somewhere within the brain or brains stem. He reviewed an MRI made by Dr. Morgan, which was of poor quality, but found a disc bulge at C5-6 with no spinal cord or nerve root compression. His diagnosis was degenerative changes in the plaintiff's neck at C5-6. He testified that it does not take anything extreme to bring on symptoms from an arthritic condition and that patients will have this condition a long time before symptoms develop. The plaintiff stated to the doctor that she did heavy lifting at work and at home. The first time he saw her, she had reduced range of motion, but the second time, on September 8, 1998, she had normal range of motion.

When asked if he disagreed with the two orthopedic surgeons who opined that the plaintiff had work related injuries, he responded that he had read their records but reached a different conclusion because the plaintiff had given the other two doctors a different history than that she had given to him.

Dr. Francisca V. G. Lytle, an orthopedic surgeon, testified by deposition, that he first saw the plaintiff on May 29, 1998, at the request of the plaintiff's attorney. The full history that the plaintiff gave to Dr. Lytle is stated in his office note, which is an exhibit to his deposition:

> 36 YEAR OLD WHITE FEMALE with history of injury on or about 5/9/1997. Since about one week before this date, while doing a lot of strenuous lifting at work she first felt a strain in the neck; she points towards the anterolateral aspect of the neck, both sides equally involved. Patient at the time was working for a horticulture shop. Patient requested that her employer allow her to work light duty only, i.e. no lifting but that was declined. Next the arms started hurting, left worse than right and mostly in the shoulder area. "As if they were coming out of the sockets." Patient went to the emergency room in McMinnville because she woke up with severe pain in the left arm and pain on the left side of the neck. Patient denies hearing or feeling any popping but does recall a grinding feeling in the back of the neck, mostly while picking up hanging baskets, one in each hands. When she looked up to hang up the baskets she felt the grinding feeling in the back of the neck. The grinding since then has remained, is now worse.
>
> Dr. Lytle's diagnosis was as follows:
>
> This patient has a mild loss of range of motion of the cervical spine. Most significant finding was a suspected cervical radiculopathy, or otherwise known as a pinched nerve. In this case because of a bulging disc at the level between the 5th and the 6th cervical vertebrae to the left, as documented by the CT myelogram.

In Dr. Lytle's opinion the "work injury" described to him by the plaintiff caused the "suspected cervical radiculopathy."

Dr. Lytle next saw the plaintiff on June 12, 1998, at which time she was tense and depressed. She had mild swelling in the lower aspect of the neck but no muscle spasms. The biceps tendon was symmetrical, and there was no significant change from her last visit. He testified that with regard to the "suspected pinched nerve," the plaintiff has probably reached her maximum improvement. He thought that the ancillary pains could be improved.

Dr. S. M. Smith, an orthopedic surgeon, testified for the plaintiff by deposition that he saw the plaintiff on June 2, 1998, at the request of the plaintiff's attorney. She gave Dr. Smith the following history:

"Examinee's history: This examinee is a 35 year old, white female who was employed at Morton's Horticultural, Inc. when she developed problems in her neck and shoulders. Her job required a lot of heavy lifting which caused her to feel like her, "neck and arms were coming out of their sockets." She did frequent bending over, lifting and reaching up to hang baskets of plants. She feels that she strained her neck due to this. She states that on or about 5-8-97, she woke up one morning and couldn't move her neck from side to side and was in severe pain. She went to the emergency room on this day."

Dr. Smith testified that in addition to obtaining the history from the plaintiff, he reviewed the medical records from the following doctors: Dr. Charles Morgan, Dr. Alan Hildabrand, Dr. J. C. Gaw, Dr. Paul McCombs, River Park Hospital, and NHC Rehabilitation.

Dr. Smith further testified as follows:

Q. Doctor, on June 2 of 1998, did you, again, to or within a reasonable degree of medical certainty, formulate an opinion with regard to the existence of permanent impairment as it pertains to Lisa Phillips?

A. I did.

Q. What was that opinion?

A. The examinee's complaints of pain seem to outweigh her physical findings at the time of examination. We keep carrying her neck through a range of motion passively, I was able to obtain much more motion than measured actively. She still complained of pain, but in palpating the areas of pain during this time I could feel no muscle spasm present in this area. The decreased sensation in the glove-type distribution that she complains of would be a long glove, but as it involves the entire hand and forearm and conforms to no dermatomal pattern. I do not think that I can give her an impairment based upon decreased range of motion within a reasonable degree of medical probability.

Q. According to the AMA fourth edition Guides, is there any other way to formulate or evaluate an individual with regard to permanent impairment other than range of motion?

A. There is.

Q. How?

A. With DRE.

Q. Did you do that with regard to Ms. Phillips?

A. I did.

Q. Did she qualify for any permanent impairment in accordance with the fourth edition of the AMA Guides diagnostic related evaluation and pain?

A. She did.

Q. What category?

A. Cervical Thoracic Category II, minor impairment.

Q. How much is that?

A. It's a five (5) percent permanent partial impairment to the whole person. That's table 73, page 3/110.

Q. Thank you. Doctor, do you have an opinion based upon a reasonable degree of medical certainty or probability as to whether the work injury described to you by Ms. Phillips caused the injury you diagnosed and formulated your opinion with regard to permanent impairment upon?

A. Based upon the history she gave me, yes.

Q. Had she obtained or reached maximum medical improvement as of the date that you saw her? If you don't have an opinion, you don't have an opinion.

A. I don't know that she had.

Dr. Smith testified that there was no objective evidence of the plaintiff having sustained an injury and that she had normal degenerative changes which could just have as likely been asymptomatic as in any other patient. He further testified that the plaintiff was not a candidate for surgery and,

before he would recommend surgery, he would "want to see some objective findings." He further testified as follows:

Q. And that's, in your opinion, all you can see on the MRI is a bulge, and everybody pretty much has a bulge?

A. That's correct.

Q. And, Doctor, your conclusion for that, Ms. Phillips' complaints were greater than any objective findings?

A. Yes, that's true.

Q. And, Doctor, is it true that your examination did not verify Ms. Phillips' complaint to you that she had no strength in her arms?

A. I found that she had normal muscle function in her arms, you know, so I don't know how to explain that.

Q. Doctor, on your examination of Ms. Phillips you found her complaints of decreased sensation to fit what you term a glove distribution rather than fitting a dermatomal pattern; is that correct?

A. That's correct.

Q. Doctor, would that tell you that her complaints of decreased sensation were not reliable, that she was basically complaining of everything being decreased?

A. That was what I felt. It would be more accurate to me as far as giving her some type of impairment, or as an objective finding, if the sensation decreased related to a specific dermatome.

Q. And, Doctor, you testified that Ms. Phillips demonstrated more motion when you tested her passively, which meant when you actually moved her rather than relying upon Ms. Phillips to move herself?

A. That is correct.

Q. And, Doctor, can you explain the significance of there having been no spasm when you were moving Ms. Phillips through these plains?

A. Well, normally when you move somebody's neck like that and you get to a point that it begins to hurt, you can feel some muscle spasm in the muscle because this is usually what the source of the pain is.

Q. So you were feeling no spasm, but she was complaining of pain?

A. That's correct.

Dr. Smith testified that his previous testimony that the plaintiff's condition, permanent impairment, and restrictions were causally related to a work injury in May, 1997, was based upon a reliance on what the plaintiff told him. He testified that the plaintiff's condition could have been compatible with other sources of trauma, such as a whiplash type injury.

CONCLUSION

The plaintiff's trial testimony was that in early May, 1997, while hanging baskets of ferns she felt a "bad strain, you know, just something I never felt before in my life as I picked them up." She testified that on or about May 8, 1997, she awoke with a "crick" in her neck. The evidence is overwhelming that she told approximately six disinterested witnesses that her neck difficulty was the result of an incident that occurred the night before she had the "crick," when she jerked her neck while avoiding a truck driving on a trip to Nashville. She did not tell Lisa Dawn Schackle that she injured her neck while hanging ferns, although she worked "shoulder to shoulder" with Lisa Schackle. She did not complain of pain to her boyfriend with whom she was living, to Lisa Schackle, or anyone else of pain prior to the morning of the "crick."

The plaintiff gave no history of a specific injury at the emergency room,

to Dr. Morgan, or to Dr. Hildabrand, although she did state that the work that she was doing hurt her neck. She told Dr. Hildabrand that her pain began when she awoke with the "crick." There was other similar evidence of this.

It was not until May 29, 1998, that she gave a medical history of a specific episode to Dr. Francisca V. G. Lytle, when she told him that she had a grinding feeling in her neck while hanging baskets. On June 2, 1998, she gave Dr. S. M. Smith a history of feeling that her "neck and arms were coming out of their sockets" while hanging baskets. The opinions of Dr. Lytle and Dr. Smith were based upon a history that was given about one year after the alleged injury occurred.

After a careful review of the entire record in this case, we find that the plaintiff did not prove by a preponderance of the evidence that she was injured by accident growing out of and in the course of her employment for the defendant. For this reason, we find that issues two, three and four have merit.

Moreover, the diagnostic evidence presented by the depositions of four doctors have been carefully reviewed. Dr. Morgan's diagnosis was simply "neck pain" with no etiology. Dr. Lytle's diagnosis was only a "suspected" pinched nerve. Both Dr. Hildabrand and Dr. Smith opined that the plaintiff suffered from degenerative arthritic changes. We accredit the diagnosis testimony of Drs. Hildabrand and Smith as well as the medical evidence that extreme trauma is not required to bring on symptoms from degenerative changes and that a "whiplash" type injury could cause symptoms.

The evidence is clear that the plaintiff's work activity and activity at home caused pain, but the evidence does not establish that her work caused a condition or aggravated a preexisting condition that was the etiology of the plaintiff's related pain.

In Bolling v. Raytheon Co., 223 Tenn. 528, 448 S.W.2d 405, 408 (1969), it was stated:

> In substance, what we have here is an employee with a disabling injury or disease not related to employment, but the employment does aggravate the disabling injury or disease by making the pain worse. This situation does not constitute an "accident" as this word is used in our workmen's compensation statutes.

In Sweat v. Superior Indus., Inc., 966 S.W.2d 31, 32 (Tenn. 1998), the following rule is stated:

> The general rule is that aggravation of a preexisting condition may be compensable under the workers' compensation law of Tennessee, but it is not compensable if it results only in increased pain or other symptoms caused by the underlying condition (citations omitted). It has been otherwise stated that to be compensable, the preexisting condition must be "advanced" (citations omitted), or there must be an "anatomical change" in the preexisting condition (cases omitted), or the employment must cause "an actual progression… of the underlying disease." (citation omitted).

There is no evidence that during the period of two months or less when the plaintiff worked for the defendant, her work caused an anatomical advance or change in her underlying condition. In her testimony, she gave several examples of activity causing pain, both at work and at home. The evidence preponderates against the trial judge's finding that the plaintiff was injured by "accident."

It results that issues two, three and four are sustained for these

additional reasons. The judgment of the trial court is reversed, and the case is dismissed. Since issues two, three and four are dispositive of this case, we pretermit the remaining issues.

Costs are adjudged against the plaintiff.

F. LLOYD TATUM, SENIOR JUDGE

CONCUR:

ADOLPHO A. BIRCH, JR., JUSTICE

CAROL L. MCCOY, SPECIAL JUDGE