

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

November 3, 2000 Session

KATHY RILEY v. THE TRAVELERS INSURANCE COMPANY

**Direct Appeal from the Chancery Court for Lauderdale County
No. 11,274 Martha B. Brasfield, Chancellor**

No. W2000-01738-WC-R3-CV - Mailed January 10, 2001; Filed March 15, 2001

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 of findings of fact and conclusions of law. The employer's insurer, Travelers, insists the employee's injury did not arise out of the employment and that the award of permanent partial disability benefits based on 55 percent to the right leg is excessive. As discussed below, the panel has concluded the evidence fails to preponderate against the findings of the trial court.

Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Chancery Court Affirmed.

JOE C. LOSER, JR, SP. J., delivered the opinion of the court, in which JANICE HOLDER, J.. and JOE H. WALKER, III, SP. J., joined.

S. Newton Anderson, Marc A. Sorin, Spicer, Flynn & Rudstrom, Memphis, Tennessee, for the appellant, The Travelers Insurance Company.

Gayden Drew, IV, Drew & Martindale, Jackson, Tennessee, for the appellee, Kathy Riley.

MEMORANDUM OPINION

The employee or claimant, Kathy Riley, age 35, is an unskilled factory worker with a high school education. She has worked for the employer, Anderson Hickey, in production since 1996. She injured her knee at work on February 17, 1999, when she tripped and fell, her right knee landing on rollers. After briefly seeing the company doctor, she continued working with the use of crutches until surgery was performed by Dr. Carl Huff, the treating physician and operating surgeon.

Dr. Huff treated and released the claimant to return to work on April 12, 1999, but eventually ordered a magnetic resonance imaging scan (MRI), when she continued to have pain in the injured knee. The results were negative for a torn anterior cruciate ligament (ACL). The claimant continued to have pain and swelling. On July 1, 1999, Dr. Huff performed arthroscopic surgery and discovered for the first time that the claimant did indeed have a torn ACL, torn meniscus and chondromalacia

of the lateral tibial plateau. He debrided the meniscus and scraped the chondromalacia. His testimony established a causal connection between the industrial accident and the torn meniscus and the chondromalacia, but was equivocal as to the torn ACL.

Dr. Joseph Boals, whose testimony the chancellor accredited, testified that the MRI report was probably a false negative one and that the torn ACL was probably causally related to the accident at work. He also assigned a permanent medical impairment rating of 22 percent to the right leg. Both doctors agreed that false negative MRIs sometimes occur. We find in the record no evidence that the torn ACL pre-existed February 17, 1999 or resulted from a later event. The lay evidence supports the trial court's finding that it was caused by the accident at work on that date.

Upon the above summarized evidence, the trial judge awarded, inter alia, permanent partial disability benefits based on 55 percent to the right leg. 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. § 50-6-225(e)(2). This standard requires the panel to examine in depth a trial court's factual findings and conclusions. The panel is not bound by a trial court's factual findings but instead conducts an independent examination to determine where the preponderance of the evidence lies. Galloway v. Memphis Drum Serv., 822 S.W.2d 584 (Tenn. 1991).

The insurance company contends the evidence fails to establish the causal connection required for a finding that an accidental injury was one arising out of the work-related accident because Dr. Huff's testimony was equivocal on the point. In order to establish that an injury was one arising out of the employment, the cause of the injury must be proved; and if the claim is for permanent disability benefits, permanency must be proved. Hill v. Royal Ins. Co., 937 S.W.2d 873 (Tenn. 1996). In all but the most obvious cases, causation and permanency may only be established through expert medical testimony. Thomas v. Aetna Life and Cas. Ins. Co., 812 S.W.2d 278 (1992). In a workers' compensation case, a trial judge may properly predicate an award on medical testimony to the effect that a given incident "could be" the cause of a claimant's injury, when, from other evidence, it may reasonably be inferred that the incident was in fact the cause of the injury. Long v. Tri-Con Ind., Ltd., 996 S.W.2d 173, 177 (Tenn. 1999).

The equivocal testimony of Dr. Huff, the testimony of Dr. Boals and the claimant's own testimony, coupled with the absence of evidence of some other cause, are sufficient where, as here, the trial court finds the evidence credible.

Next, the appellant insists the trial court's award of permanent partial disability benefits is excessive. 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 anatomic impairment, for the purpose of evaluating the extent of a claimant's permanent disability. Tenn. Code Ann. § 50-6-241(b); McIlvain v. Russell Stover Candies, Inc., 996 S.W.2d 179 (Tenn. 1999). The opinion of a qualified expert with respect to a claimant's medical 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). From a careful review of the evidence in the present case, we are unable to say that the evidence preponderates against the trial court's finding as to the extent of the claimant's permanent vocational disability.

For all of the above reasons, the judgment of the trial court is affirmed. Costs on appeal are taxed to the appellant.

JOE C. LOSER, JR.

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JUDGMENT

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 on appeal are taxed to the Appellant, The Travelers Insurance Company, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM