

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

BRENDA KING,)
) Warren County General Sessions
Plaintiff/Appellee,) No. 6361-GSWC
)
v.) S. Ct. No. M1998-00145-SC-WCM-CV
)
) Hon. Barry Medley, Judge
YASUDA FIRE & MARINE)
INSURANCE COMPANY and) Affirmed
CALSONIC YOROZU CORPORATION,)
INC.,)
)
Defendants/Appellants.)

FILED

February 18, 2000

**Cecil Crowson, Jr.
Appellate Court Clerk**

JUDGMENT ORDER

This case is before the Court upon ~~defendants' 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 defendants/appellants, for which execution may issue if necessary.

PER CURIAM

Drowota, J., not participating

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(JULY 15, 1999 Session)

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BRENDA KING,)
MCMINNVILLE GENERAL)
SESSIONS COURT)
Plaintiff-Appellee,)
6361-GSWC)
v.)
YASUDA FIRE & MARINE)
INSURANCE COMPANY, and)
CALSONIC YOROZU)
CORPORATION, INC.,)
Defendants-Appellants)

Hon. Barry Medley,
Judge
M1998-00145-SC-WCM-CV

For Appellants:

B. Timothy Pirtle
Joseph Butler
McMinnville, Tennessee
Farrar
Tennessee

For Appellee:

William
Frank D.
Lafayette,

MEMORANDUM OPINION
MAILED:

Members of Panel:

Frank F. Drowota, III, Associate Justice
Frank G. Clement, Jr., Special Judge
Samuel L. Lewis, Special Judge

AFFIRMED
Judge

Lewis,

MEMORANDUM 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 of findings of fact and conclusions of law. Appellate review is de novo upon the record of the trial court, accompanied by a presumption of the correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (Supp.1998). In this appeal, the employer-appellant, Calsonic Yorozo Corporation, Inc. ("CYC"), contends: 1) that the employee-appellee, Brenda King ("King"), failed to prove that her injuries were caused by her employment; 2) that the award of fifty percent (50%) disability to King's right arm and fifteen percent (15%) disability to her body as a whole was improper; 3) that the trial court's decision to award temporary total disability benefits to King was against the evidence, and 4) that the trial court's decision to award King discretionary costs should be overturned. This panel finds that the evidence does not preponderate against the trial court's findings and affirms its decision.

King was an employee of CYC when she was injured on July 6, 1996. At the time of her injury, she had been performing the "trailing arm" job for almost six (6) years. This job required her to look down, repetitively squeeze with her hands, and extend her wrists all day long. The job also required her to use vibratory tools and occasionally lift about forty (40) pounds over her head. King was treated for a cyst in the area of her collar bone prior to July 6, 1996, but she testified that the cyst had no relation to her injury.

On July 6, 1996, King went to the clinic at CYC

complaining of pain in her right shoulder and tingling in her right arm. CYC sent her to the emergency room where she was released after tests. King then saw Dr. Glover, her family physician, and was referred to an orthopaedic surgeon, Dr. William Gavigan.

Dr. Gavigan diagnosed King with herniated discs at both the C5-6 and C6-7 levels in her back and mild carpal tunnel syndrome in her right arm. However, Dr. Gavigan did not give King a permanent disability rating for either injury. He opined that King's back injury was the result of a pre-existing degenerative disc disease.

In October of 1996, King began treatment with Dr. S. M. Smith, an orthopaedic surgeon. Dr. Smith determined that King's injuries were caused and/or exacerbated by the repetitive work requirements at CYC. Dr. Smith assigned a permanent partial impairment rating of eight percent (8%) to the body as a whole due to the back injury and a ten percent (10%) impairment rating to the right upper extremity due to carpal tunnel syndrome. Dr. Smith also determined that King could not perform her job duties at CYC and removed her from work on April 23, 1997. King did not return to work at CYC after this date.

Dr. John Thompson, a board certified orthopaedic surgeon, saw King for an independent medical examination on October 16, 1997. Dr. Thompson felt that King's right carpal tunnel syndrome was the result of her repetitive job duties at CYC. Dr. Thompson also felt that the repetitive work at CYC exacerbated King's preexisting, non-symptomatic back condition. He assigned permanent partial impairment ratings of six percent (6%) to the body as a whole for the back injury and ten

percent (10%) to the right arm for carpal tunnel syndrome.

King underwent two additional independent medical examinations. Dr. Robert Landsberg, an orthopaedic surgeon, assigned a ten percent (10%) permanent impairment rating to the upper right extremity for carpal tunnel syndrome and a five percent (5%) permanent impairment rating to the body as a whole for the back injury. Dr. Myron Mills, a preventative and occupational medicine specialist, assigned zero percent (0%) impairment ratings for both of King's injuries.

The trial court determined that the injuries to King's back and arm occurred within the course and scope of her employment with CYC. As a result of these injuries, the trial court found that King retains a fifty percent (50%) permanent partial impairment to her right arm and a fifteen percent (15%) permanent partial impairment to her back. The court awarded King \$32,982.00 for the right arm impairment and \$19,789.20 for the back impairment. The court ordered CYC to pay King's reasonable and necessary future medical expenses incurred as a result of her injuries. The trial court also awarded King twenty-six (26) weeks of temporary total disability for a total of \$8,575.32 and discretionary cost in the amount of \$1,944.22.

The first issue on appeal in this case is whether King proved that her injuries were caused by her employment. In most workers' compensation cases, the plaintiff must prove the element of causation by expert medical evidence. Orman v. Williams Sonoma, Inc., 803 S.W.2d 672, 676 (Tenn. 1991). When all medical expert testimony is contained in the record by deposition, an appellate court may draw its own conclusions about the weight

and credibility since it is in the same position as the trial judge. Krick v. City of Lawrenceburg, 945 S.W.2d 709, 712 (Tenn. 1997).

Although causation cannot be based upon speculative or conjectural proof, absolute medical certainty is not required, and reasonable doubt is to be extended in favor of the employee. Hill v. Eagle Bend Mfg., Inc., 942 S.W.2d 483, 487 (Tenn. 1997). In Thomas v. Aetna Life & Cas. Co., 812 S.W.2d 278 (Tenn. 1991), this Court stated, “[t]he aggravation, acceleration, or exacerbation of a pre-existing condition or disease brought about by an accidental injury or occupational disease is compensable.” Id. at 284; see also Sweat v. Superior Industries, Inc., 966 S.W.2d 31, 34 (Tenn. 1998) (holding that prolonged standing on a concrete floor and at times strenuous nature of work caused a progression of plaintiff’s underlying disease of psoriatic arthritis).

In the present case, three medical experts opined that the repetitive nature of King’s job duties was causally related to her injuries. Drs. Smith, Thompson, and Landsberg agreed that King’s right carpal tunnel syndrome was caused by her employment. They also agreed that the repetitive nature of King’s employment exacerbated her pre-existing degenerative disc disease in her back.

King testified that prior to July 6, 1996, she had no functional problems with her back or right arm. She further stated that after her injuries in July of 1996, she suffered functional difficulties with numerous activities, including driving for more than thirty (30) minutes, ironing, washing dishes, and rolling her hair. King’s testimony was corroborated by the testimony of her husband and her sister-in-law. In addition, Ms. Pam Owens, Safety

and Security Supervisor at CYC, testified that King had received excellent performance appraisals prior to her injuries.

Because the medical testimony was not live at trial, this Court may draw its own conclusions as to the credibility and weight of the medical testimony. See Krick, 945 S.W.2d at 712. We are convinced that the expert medical testimony of Drs. Smith, Thompson, and Landsberg establishes that King's employment with CYC caused carpal tunnel syndrome in her right arm. We are further convinced that the medical testimony along with the lay testimony establishes that King's employment exacerbated a pre-existing condition in her back. See Thomas, 812 S.W.2d at 284; Sweat, 966 S.W.2d at 34.

The second issue on appeal is whether the award of fifty percent (50%) disability to King's arm and fifteen percent (15%) to her body as a whole was improper. CYC contends that the total disability award is limited to two and one-half (2½) times the medical impairment rating assigned to the body as a whole. Tenn. Code Ann. § 50-6-241 provides,

where an injured employee is eligible to receive any permanent partial disability benefits, pursuant to §50-6-207(3)(A)(I) and (F), and the pre-injury employer returns the employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of the injury, the maximum permanent partial disability award that the employee may receive is two and one-half times the medical impairment rating.

Tenn. Code Ann. § 50-6-241(a)(1) (Supp. 1998). In Atchley v. Life Care Center of Cleveland, 906 S.W.2d 428 (Tenn. 1995), this Court held that "the multiplier statute [Tenn. Code Ann. § 50-6-241] explicitly applies to injuries to the body as a whole, and not to scheduled members." Id. at 431.

The trial court awarded King permanent partial disability benefits of fifty percent (50%) to the arm and fifteen percent (15%) to the body as a whole based on the back injury. The arm is a scheduled member under Tenn. Code Ann. § 50-6-207(3)(A)(ii)(m). Therefore, the fifty percent (50%) award for King's right arm is not subject to the limitations of Tenn. Code Ann. § 50-6-241. See Atchley, 906 S.W.2d at 431. The fifteen percent (15%) award to the body as a whole is subject to the two and one-half (2½) multiplier limitation. See Id. at 431. However, the trial court's disability award of fifteen percent (15%) to the body as a whole is clearly within two and one-half (2½) times the impairment ratings assigned by Drs. Smith (8%), Thompson (6%), and Lansberg (5%).

The third issue in this appeal is whether the trial court erred in awarding King twenty-six (26) weeks of temporary total disability. The trial court held a post-trial hearing on April 8, 1998, to decide the issue of temporary total disability. Admitting additional proof after the trial is within the discretion of the trial court, and that action may not be disturbed on appeal absent an abuse of discretion. Simpson v. Frontier Community Credit Union, 810 S.W.2d 147, 149 (Tenn. 1991).

The purpose of temporary total disability benefits is to compensate an employee who is totally prevented from working. Thompson v. Leon Russell Enterprises, 834 S.W.2d 927, 929-930 (Tenn. 1992). In Thompson, this Court held that, "[E]ligibility for temporary total disability benefits ceases when the employee either is able to return to work or attains maximum recovery." Id. at 930. In addition, this Court stated, "[l]ay testimony, including that of the injured employee, 'may be admitted on the issue of the employee's inability to

work and may be sufficient to establish that fact without medical testimony.'" Thompson, 834 S.W.2d at 930, (quoting Simpson v. Satterfield, 564 S.W.2d 953, 956 (Tenn. 1978)).

In the present case, King testified that the she did not work after April 23, 1997, on the orders of Dr. Smith. In addition, Dr. Smith's office notes indicated that he had removed King from work on April 23, 1997. King also stated that she was never able to return to work after that date. Dr. Thompson placed the date of King's maximum medical improvement at October 24, 1997. Thus, the trial court's award of temporary total disability corresponds to the twenty-six (26) weeks from April 23, 1997 to October 24, 1997. We are convinced that the evidence does not preponderate against the trial court's award of temporary total disability benefits.

The final issue on appeal is whether the trial court erred in awarding King discretionary costs in the amount of \$1,944.22. The assessment of costs is in the discretion of the trial court and will not be disturbed without a showing of an abuse of discretion. Lewis v. Bowers, 392 S.W.2d 819, 823 (Tenn. 1965). In the present case, King submitted an itemized list of expenses incurred for the presentation of her case. CYC has not demonstrated that those expenses were unreasonable or that the trial court abused its discretion in awarding the discretionary costs to King.

Accordingly, the decision of the trial court is affirmed on each issue in this appeal. Costs are taxed to the appellants, Yasuda Fire & Marine Insurance Company and Casonic Yorozu Corporation, Inc..

Samuel L. Lewis, Special Judge

CONCUR:

Frank F. Drowota, III, Associate Justice,
Supreme Court

Frank G. Clement, Jr., Special Judge

