

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

REBECCA DAY,	)	
	)	
Plaintiff/Appellant,	)	ROANE CHANCERY
	)	
v.	)	NO. 03501-9808-CH-00096
	)	
TRAVELERS INSURANCE COMPANY,	)	HON. FRANK V. WILLIAMS
	)	CHANCELLOR
Defendant/Appellee.	)	
	)	FILED: JUNE 2, 2000

**For the Appellant:**

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**For the Appellee:**

Weldon E. Patterson  
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**MEMORANDUM OPINION**

**Members of Panel:**

Justice William Barker  
Special Judge Robert E. Corlew, III  
Special Judge Robert Vann Owens

AFFIRMED AND REMANDED

CORLEW, Special Judge

This worker's compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with the provisions of *Tennessee Code Annotated* §50-6-225 (e) (3) (1998 Supp.) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The Trial Court, after considering all of the evidence, found the worker to lack credibility, and determined that she was not entitled to recover under the workers' compensation law, and after consideration of the entire record, we affirm the Trial Court's decision.

The Appellant alleged an injury to her back as she worked as a cashier for the Petro Shopping Center in Knoxville. The worker asserted that as she bent over to move a floor display in order to sweep under it, she felt a stabbing pain in her back. Although she worked the remainder of the evening, she asserts she did no heavy work. She reported the injury the next day to her supervisor.

Prior to this injury, the Appellant had suffered other injuries. Various medical tests had been conducted with regard to those injuries. Much of the testimony centered around the credibility of the worker, inasmuch as her prior statements to her doctors indicated great suffering and an inability to function in many areas. At one time, for example, she had indicated to one of her doctors that she had been unable to walk, and for a period of time, ambulated only by wheelchair. In a question in her discovery deposition, introduced into evidence only for impeachment, she testified that she had done nothing more strenuous than walk across a store since the date of the accident in this cause. Subsequent evidence was introduced that she had joined a health club, although the worker asserted that she had gone primarily to provide company to her husband who was a weight lifter, and had worked out very lightly only a single time or so. Further evidence was presented that the worker had gone on vacation to the beach. She testified that she had been in such pain that she was unable to enjoy the vacation, and although she went in the water, she only waded in to a depth below her waist. Photographs were then displayed and identified by the worker, which appeared to show that the worker's hair was wet, which the worker explained was due to the fact that some of those with whom she was vacationing were splashing in the water, wetting her hair. Another photograph was then displayed showing the Appellant seated in a position on the beach, appearing to smile, in a position which her doctor testified he would

have felt she was unable to assume, based upon the complaints the Appellant had made to him. The Appellant explained this photograph by asserting that she assumed this position only for a brief moment, posing for the photograph.

Two medical doctors testified by deposition. Both were asked questions concerning objectivity of findings. Both testified that the tests conducted upon the Appellant both before and after her alleged injury reflected a slight anatomical change in the area of her low back where the Appellant alleged her injury. Both doctors testified that their anatomical findings were consistent with the history given by the Appellant of a work-related injury, and based upon the Appellant's subjective complaints, objective findings, and history related by the worker, they concluded that the Appellant's injury was work-related. Upon strenuous cross-examination, however, both doctors acknowledged that given the Appellant's prior back condition, which included a prior neck injury, a prior low back injury which occurred when the Appellant bent over to pick up an item at her home prior to the injury complained of herein, and an automobile accident which presented further low back and neck problems more than a year before the injury complained of herein, and given a further history of chronic intermittent back and leg pain and degenerative changes in her low back prior to the injuries complained of herein, the changes in the Appellant's back could have occurred without the occurrence of any new accident or event.

The Trial Judge read the depositions of the doctors, but heard the testimony of the Appellant in person. On appeal, considerable deference is accorded the determinations made by the Trial Court with respect to the credibility of witnesses and weight given to their testimony where those witnesses testify in person before the Court. *E.g., Seals v. England/Corsair Upholstery Manufacturing Company, Inc.*, 984 S.W.2d 912, 915 (Tenn. 1999); *Collins v. Howmet Corp.*, 970 S.W.2d 941, 943 (Tenn. 1998); *Jones v. Sterling Last Corp.*, 962 S.W.2d 469, 471 (Tenn. 1998). Where the issues involve medical testimony all of which is presented by deposition, however, the Court on appeal may draw its own conclusions with regard to the weight and credibility of those witnesses, for the appellate courts rest in the same posture as the trial judge. *Krick v. City of Lawrenceburg*, 945 S.W.2d 709, 712 (Tenn. 1997).

In considering the evidence, we believe that the credibility of the Appellant is

paramount in this cause. She is the only one who presented evidence of her initial injury. She is the only one who presented her history to the doctors. Although the doctors who testified found that there were objective signs of an injury, both doctors acknowledged that the objective signs they found could in fact have been the result of natural or other causes. Although both medical professionals testified that there was a causal connection between the Appellant's employment and the injuries about which they testified, both acknowledged that the history provided by the Appellant was a necessary part of their opinions. One of the doctors, when pressed as to the issue, stated that he felt compelled to give the benefit of any doubt to his patient, but felt that the determination as to whether the Appellant was credible was a decision which the Court should make, and which he was not required to make. The Trial Judge made that determination, finding that the Appellant was not credible, and discredited all of her testimony. That determination having been made by the Trial Court, and proof being found in the record to support such a conclusion, we must defer to the judgment of the Trial Judge who watched the witness as she testified and likewise find that the testimony of the Appellant should be discounted.

This case is in sharp contrast to *Orman v. Williams Sonoma, Inc.*, 803 S.W.2d 672 (Tenn.1991). In *Orman*, the Trial Court found the Plaintiff's testimony not to be credible, but set forth no reasons for such a finding, and the record did not otherwise demonstrate a basis for this finding. *Id.* at 677. By contrast, in the present case, the Trial Judge set forth in his findings the basis for his finding that the Appellant was not credible, and we find that the record supports his finding.

Thus, we find that the appeal should be dismissed at the costs of the Appellant, and we affirm the decision of the Trial Court, and remand the case to the Trial Court for the collection of costs and further proceedings consistent with this opinion.

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Robert E. Corlew, III, Special Judge

CONCUR:

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William M. Barker, Justice

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Robert Vann Owens, Special Judge

IN THE SUPREME COURT OF TENNESSEE  
AT KNOXVILLE, TENNESSEE

**REBECCA DAY VS. TRAVELERS INSURANCE COMPANY**  
**Washington Chancery for Washington County**  
**No. 12,883**

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**No. E1998-00839-WC-R3-CV -Filed June 2, 2000**

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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 facts 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 plaintiff/appellant, Rebecca Day and Bruce D. Fox, surety, for which execution may issue if necessary.

06/02/00