

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT KNOXVILLE  
(April 26, 2000 Session)

**WILLIE GRACE GREEN V. ATRIUM MEMORIAL SURGERY  
CENTER**

Direct Appeal from the Chancery Court for Bledsoe County  
No. 26344 Jeffrey Stewart, Chancellor

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**No. E1999-00730-WC-R3-CV - Mailed September 12, 2000**

FILED: OCTOBER 17, 2000

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The appellant, Atrium Memorial Surgery Center (hereafter "Atrium Memorial"), appeals an award of thirty-five percent disability to the body as a whole to Willie Grace Green. Appellant contends the trial court erred (1) in finding that the employee's underlying preexisting condition was advanced or progressed by her work, and (2) in awarding permanent partial disability benefits in any amount. We affirm the judgment of the trial court.

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

Peoples, Sp. J., delivered the opinion of the court, in which Barker, J., and Terry L. Lafferty, Sr. J., joined.

David C. Nagle, Chattanooga, Tennessee, for the appellant, Atrium Memorial Surgery Center.

Stephen T. Greer and Russell Anne Swafford, Dunlap, Tennessee for the appellee, Willie Grace Green

## OPINION

Review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise. T.C.A. § 50-6-225(e)(2); *Stone v. City of McMinnville*, 896 S.W.2d 548, 550 (Tenn. 1995). The application of this standard requires this Court to weigh in more depth the factual findings and conclusions of the trial courts in workers' compensation cases. *Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988).

Willie Grace Green testified she had been involved in a motor vehicle accident in 1995 which resulted in muscle spasms and low back pain that resolved, and that she had been pain free for a year and a half in August 1997. She testified that, on August 7, 1997, she was working as a scrub nurse for Atrium Memorial and slipped on a freshly mopped floor and twisted her back. Immediately after the incident, she began to experience pain in her low back. A similar incident occurred the next day, August 8, and the low back pain continued and eventually developed into radiating leg pain. She testified that prior to these incidents, she had not experienced back pain. She testified that the work injury has caused her to have difficulty with bending, lifting, and repetitive activities. She was unable to continue working as a scrub technician and now works at Tennessee Technology Center training students to be scrub technicians, which, she testified, is less physically demanding and for fewer hours.

Dr. Susan Pick, an orthopedic surgeon first saw Ms. Green on September 1995 with complaints of cervical, thoracic and lower lumbar spine pain as a result of a motor vehicle accident. An MRI was performed on October 10, 1995. Dr. Pick treated Ms. Green for the back pain, but testified that it was temporary in nature. Dr. Pick saw Ms. Green on August 11, 1997 with complaints of lower back pain extending down her right leg following the incidents at work the previous Thursday and Friday. Another MRI was performed on August 21, 1997. Dr. Pick testified that the 1995 MRI was normal and the 1997 MRI showed desiccation or drying out of the discs, a normal part of the aging process not caused by Ms. Green's work at Atrium Memorial. Dr. Pick testified that on December 8, 1997, she released Ms. Green to return to work "at regular duty, but she said she felt she could try to modify a little bit. If she knew something was going to aggravate her, she could modify her activity a little bit. So I put no restrictions on her." Concerning Ms. Green's prior complaints of back pain, Dr. Pick testified as follows:

"Q. Do you think this incident at work that she had in August, 1997, aggravated her preexisting condition?

A. Yes.

Q. How did it do that?

A. Well, basically she had resolved her lower back pain after the car wreck and all that, and was not having any problems with that prior to the incident. And I think you will find, with

people that have underlying arthritis or whatever, an overuse situation or a fall or something can aggravate an underlying situation. It didn't cause the arthritis, but it can aggravate it.

Q. How does that manifest itself; causing pain?

A. Usually by pain.

Q. What about in Mrs. Green's situation?

A. I would say by pain."

Dr. Pick also testified that she could not say whether the incident at work advanced or accelerated Ms. Green's underlying anatomical conditions, but she was having no pain before and "(it) definitely advanced the pain."

Dr. Todd C. Bonvallet, an orthopedic surgeon who specializes in spinal surgery, also treated Ms. Green. When she did not respond to conservative treatment, he performed a lumbar fusion on March 18, 1998. He testified that she reached maximum medical improvement on September 14, 1998 and that, as a result of the injury, she has a twelve percent permanent medical impairment to the body as a whole. He testified that she had a preexisting spondylosis which was not caused by her employment. Asked whether the incidents at Atrium Memorial in August 1997 actually caused an anatomical change in her spondylosis, he answered: "The patient had an underlying lumbar spondylosis asymptomatic before her fall. She became symptomatic after her fall. It's reasonable to believe that the fall was the cause of the symptoms that she was experiencing. Not the pathology, the symptoms." Asked if the symptoms were increased pain, he responded: "Not increased pain, the symptoms were pain." He also testified that it was more likely than not that the injury in August 1997 did advance the severity of her underlying anatomical condition. Ms. Green had not told Dr. Bonvallet that she had complaints of lower lumbar back pain from a motor vehicle accident in 1995.

There is no evidence that Ms. Green suffered any pain or that she had any medical impairment caused by the underlying condition at the time of the incidents. We find that the facts and medical testimony in this case justify a judgment for the employee because the Supreme Court has held: "There is no doubt that pain is considered a disabling injury, compensable when occurring as a result of a work-related injury." *Talley v. Virginia Ins. Reciprocal*, 775 S.W.2d 587 (Tenn. 1989). In this case, Ms. Green was pain free before the incidents at work in August 1997. Both doctors testified that the work injury caused her preexisting spondylosis to become symptomatic. Counsel for Atrium Memorial argues that there is no compensable injury by accident where the work aggravates a preexisting condition merely by increasing pain. *Townsend v. State*, 826 S.W.2d 434 (Tenn. 1992). To be compensable, the preexisting condition must be advanced, there must be an 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). In this case, however, the medical testimony establishes that Ms. Green's underlying anatomical condition was advanced or accelerated because she was having no pain before the injury. The injury also resulted in a permanent medical impairment of twelve percent to the body as a whole that did not exist before, and has caused Ms. Green to change to a less physically demanding job. An employer is responsible for workers' compensation benefits if the employment causes an actual progression or aggravation of the preexisting condition

which produces pain which is disabling. *Hill v. Eagle Bend Mfg., Inc.*, 942 S.W.2d 483, 488 (Tenn. 1997).

### **Conclusion**

We find the contentions of the appellant, Atrium Memorial Surgery Center to be without merit and affirm the judgment of the trial court. This case is remanded for any appropriate proceedings. Costs of the appeal are assessed to the Appellant.

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**Howell N. Peoples**

IN THE SUPREME COURT OF TENNESSEE  
AT KNOXVILLE, TENNESSEE

**WILLIE GRACE GREEN VS. ATRIUM MEMORIAL SURGERY  
CENTER**

**Chancery Court for Bledsoe  
No. 2634**

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**No. E1999-00730-WC-R3-CV -Filed October 17, 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 Judgement of the Court.

Costs on appeal are taxed to the appellant, Atrium Memorial Surgery Center and surety, David C. Nagle for which execution issue if necessary.

10/17/00