

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
August 30, 2000 Session

RITA M. RUSSELL v. MODINE MANUFACTURING COMPANY, INC.

**Direct Appeal from the Circuit Court for Anderson County
No. 98LA0323 James B. Scott, Jr., Judge**

**No. E2000-00176-WC-R3-CV - Mailed - November 8, 2000
FILED: DECEMBER 14, 2000**

The trial judge found the plaintiff had suffered a compensable injury and that her medical impairment rating was ten percent to the body as a whole. The plaintiff continued to work for the defendant, and the trial court entered a judgment awarding the plaintiff twenty-five percent vocational impairment based on the ten percent medical impairment times two and one-half percent.

The defendant argues the evidence preponderates against the finding.

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

JOHN K. BYERS, SR. J., delivered the opinion of the court, in which E. RILEY ANDERSON, C. J. and ROGER E. THAYER, SP. J., joined.

Robert W. Knolton, Oak Ridge, Tennessee, for the appellant, Modine Manufacturing Company, Inc.

Bruce D. Fox, Clinton, Tennessee, for the appellee, Rita M. Russell.

OPINION

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. 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. TENN. CODE ANN. § 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. See *Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988).

Facts

On April 14, 1998, the plaintiff lifted an automotive part at work and injured her neck and upper back.

Medical Evidence

_____The medical evidence was presented by the deposition of Dr. Gilbert Hyde, an orthopedic surgeon; by the medical records of Dr. Randall Robbins, an orthopedic surgeon and treating physician; by Dr. Howard Brown, an orthopedic surgeon; and by Dr. Jeffrey Uzzle, a physical medicine physician, to whom the defendant referred the plaintiff for evaluation.

Also, the plaintiff was seen by Dr. Alan Weems, a neurosurgeon, to whom the plaintiff's doctor referred her.

Dr. Robbins diagnosed the plaintiff as having sustained a cervical and thoracic sprain as a result of the injury. He found central bulging of the C3-C4, C4-C5 and C5-C6 discs. He did not relate this to the injury. Dr. Robbins records reflect he treated the plaintiff from April of 1998 until September 11, 1998. Dr. Robbins released the plaintiff for return to work with no restrictions. He did, however, prescribe and recommend the use of a TENS Unit as needed.

Dr. Brown found the same disc protrusions as did Dr. Robbins. He also was of the opinion the plaintiff could return to work without restrictions.

Dr. Uzzle evaluated the plaintiff, found no objective signs of improvement and was of the opinion that no work restrictions for the plaintiff were needed.

Dr. Allen Weems, the plaintiff's doctor, evaluated her and observed the same cervical problems found by the other physicians. Dr. Weems did not make a determination as to causation of the plaintiff's complaints, nor did he make any statement concerning disability.

Dr. Gilbert Hyde testified by deposition that the plaintiff had received an injury on April 14, 1998, that aggravated a preexisting back problem. He was of the opinion the plaintiff sustained a ten percent whole body impairment as a result of the work injury.¹

Discussion

¹ A vocational expert testified in the case but we do not find her testimony affected the out come of the case.

The trial judge accepted the testimony of Dr. Hyde in this case over the evidence as presented by the records of the other physicians. The trial judge may do so. *Kellerman v. Food Lion Inc.*, 929 S.W.2d 333 (Tenn. 1996); *Johnson v. Midwesco Inc.*, 801 S.W.2d 804 (Tenn. 1990).

When the medical evidence is presented by deposition or records, the Court may make its own determination of the proof to determine where the preponderance of the evidence lies. *Cooper v. INA*, 884 S.W.2d 446, 451 (Tenn. 1994); *Landers v. Fireman's Fund Ins. Co.*, 775 S.W.2d 355, 356 (Tenn. 1989).

The defendant bases its most insistent argument on the weight of Dr. Robbins' records and argues that as the treating physician his testimony should be given more weight than is given to the testimony of evaluating physicians per *Orman v. Williams Sonoma, Inc.*, 803 S.W.2d 672 (Tenn. 1991). However, *Orman* does not require the trial judge to give more weight to the testimony of a treating physician than that of an evaluating physician. The *Orman* opinion stands only for the proposition that it seems reasonable such physicians could give more accurate and in-depth detail of an injury. There are cases, almost legion in number, holding that this asserted "should rule" is not compelling upon the trial court, and absent any significant reason in the record to compel such action, the reviewing court will not reverse a judgment on that basis alone. We find no reason in this case to overturn the judgment of the trial court, which is affirmed.

The cost of this appeal is charged to the defendant.

JOHN K. BYERS, SENIOR JUDGE

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AT KNOXVILLE, TENNESSEE

RITA M. RUSSELL V. MODINE MANUFACTURING COMPANY, INC.
Circuit Court for Anderson County
No. 98LA0323

No. E2000-00176-WC-R3-CV - Filed December 14, 2000

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 Defendant, Modine Manufacturing Company, Inc. And Robert W. Knolton, for which execution issue if necessary.

12/14/00

