

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

February 28, 2002 Session

**MICHELE BEELER v. SOUTHEAST SERVICE CORPORATION d/b/a  
SSC SERVICE SOLUTIONS, ET AL.**

**Direct Appeal from the Circuit Court for Knox County  
No. 3-469-99 Wheeler A. Rosenbalm, Judge**

**Filed May 9, 2002**

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**No. 2001-02527-WC-R3-CV**

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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 trial court found the plaintiff had failed to show by a preponderance of the evidence that she had suffered carpal tunnel syndrome as a result of her work for the defendant. The plaintiff, in two issues, basically claims the trial judge erred by finding the plaintiff had failed to carry the burden of showing she was entitled to recover for a work related injury. We affirm the judgment of the trial court.

**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 WILLIAM M. BARKER, J., and HOWELL N. PEOPLES, SP. J., joined.

James C. Cone, Knoxville, Tennessee, for the appellant, Michele Beeler.

Linda J. Hamilton Mowles, Knoxville, Tennessee, for the appellees, Southeast Service Corporation d/b/a SSC Service Solutions and CNA Insurance Company.

**MEMORANDUM OPINION**

**Facts**

At the time of trial, the plaintiff was 39 years of age, married and the mother of two children. She had a high school education.

The parties agree that the plaintiff has carpal tunnel syndrome but do not agree on its cause.

### **Medical**

Dr. C. Stanford Carlson Jr. treated the plaintiff for the carpal tunnel syndrome. He testified in a deposition that first she had carpal tunnel syndrome in the left hand with borderline findings of carpal tunnel syndrome in the right hand.

The history according to Dr. Carlson given by the plaintiff was that her work duties with the defendant required her to do intensive computer work with fine manipulation of the hands all day long. He understood she used both hands eight hours a day to do the work. Based upon this, Dr. Carlson was of the opinion the carpal tunnel syndrome was caused by the work.

When it became clear that the plaintiff did not use the computer all day long and that she seldom used her left hand in the work, a second deposition of Dr. Carlson was taken.

When asked in the second deposition whether the correct history, which showed the plaintiff did not use her left hand for data entry, would affect his previous diagnosis of a work related carpal tunnel syndrome, Dr. Carlson replied that would be “problematic.” Further exchange between counsel and Dr. Carlson produced the following question and answer:

- Q. And Doctor, your opinions that the plaintiff has bilateral carpal tunnel is related to her - that her bilateral carpal tunnel is related to her employment with Southeast Services is based on the truth and accuracy of the history that she provided you.
- A. Correct. ... There’s no question but that carpal tunnel syndrome or any orthopedic condition that is produced by use is dependent upon the accuracy of the history and a determination about where the bulk of the use - hand use and the aggravation is produced.

Dr. Carlson further testified that there are a variety of activities that can cause carpal tunnel syndrome and rated the use of a key board as being low on the causation list.

### **Discussion**

The resolution of the case lies upon the testimony of two key witnesses - the plaintiff and Dr. Carlson. Dr. Carlson clearly testified his original determination of the cause of the plaintiff’s carpal tunnel syndrome was caused by the plaintiff’s work as outlined on the history given to him by the plaintiff. The plaintiff’s testimony showed the history given to Dr. Carlson was not accurate. When Dr. Carlson was made aware of the inaccuracy, he testified that whether the carpal tunnel syndrome was caused by the work was problematic, and further testified that the work the plaintiff did is low

upon the scale of causing carpal tunnel syndrome.

In this case, expert testimony is required to show causation *Thomas v. Aetna Life & Casualty Co.*, 812 S.W.2d 278 (Tenn. 1991). The trial judge is to make the determination from not only the lay testimony but expert testimony. In making the conclusion that the plaintiff had failed to carry the burden of proof, the trial judge was unable to find from the testimony of Dr. Carlson that causation had been shown by a preponderance of the evidence.

We have looked at the medical deposition to determine if it is sufficient to show causation, as we may do, *Cooper v. Insurance Company of NA*, 884 S.W.2d 446 (Tenn. 1994), and we see no reason to disagree with the trial judge's finding on the testimony.

The plaintiff further insists the trial judge failed to apply the standard set out in *Reeser v. Yellow Freight Sys. Inc.* 938 S.W.2d 690 (Tenn. 1997)[and other cases], that testimony by an expert, that an incident "could be" the cause of an injury when coupled with lay testimony from which it may be inferred that the injury was caused by the employment is sufficient to show causation.

In this case, there is no expert testimony of "could be." The expert testimony is "problematic." "Could be" connotes a reasonable likelihood that the injury could have flowed from the work injury. "Problematic" connotes that the answer to the question is unclear and uncertain. We conclude therefore that the medical evidence in this case is at best speculative and insufficient to show causation.

We affirm the judgment of the trial court.

The cost of the appeal is taxed to the plaintiff.

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JOHN K. BYERS, SENIOR JUDGE

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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.

The costs on appeal are taxed to the plaintiff for which execution may issue if necessary.