

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT JACKSON  
August 20, 2001 Session

**LISA SILLS v. HUMBOLDT NURSING HOME, INC.**

**Direct Appeal from the Chancery Court for Gibson County  
No. H-4306 George R. Ellis, Chancellor**

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**No. W2000-03034-WC-R3-CV - Mailed March 20, 2002; Filed May 2, 2002**

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This workers' compensation appeal has been referred to the Special Workers' Compensation Panel of the Supreme Court in accordance with Tennessee Code Annotated § 50-6-225(e)(1999) for a hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The appellant presents the following issues for review: (1) Whether the evidence preponderates against the trial court's finding that the plaintiff sustained a work related injury that resulted in a permanent disability to the plaintiff, and (2) Whether the evidence preponderates against the trial court's award of benefits to the plaintiff based on a percentage of the body as a whole rather than to a scheduled member.

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

ROBERT L. CHILDERS, SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and JOE C. LOSER, SP. J., joined.

John D. Burlison and V. Latosha Mason, Jackson, Tennessee, for the appellant, Humboldt Nursing Home.

T.J. Emison, Jr., for the appellee, Lisa Sills.

**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.

Plaintiff, Lisa Sills, filed a Complaint for workers' compensation benefits on January 19, 2000. The trial was heard on November 8, 2000. At the conclusion of the proof, the trial court awarded plaintiff twenty-seven percent (27%) permanent partial disability to the body as a whole.

Defendant, Humboldt Nursing Home, appeals the decision of the trial court. For the reasons discussed below, we affirm.

## FACTS

Plaintiff, a forty year old woman, had been employed by defendant for about nine years, as a licensed practical nurse. She was responsible for supervising several nurse aides and caring for about forty patients. Her duties included administering medication, helping in bathing, turning, pulling, lifting and transferring patients, keeping their charts, and calling the doctor when they were sick.

On the morning of June 10, 1999 plaintiff assisted another employee in lifting and repositioning a 157 pound female patient in a wheelchair. She also assisted another employee in repositioning a 249 pound male quadriplegic patient in his bed. Plaintiff did not specifically remember experiencing any symptom or sensation in her right ear, other than straining, when she lifted the patients. She did, however, remember that she could not hear out of her right ear while talking on the telephone to a doctor about one hour after the second lifting incident. She also began experiencing a ringing in her right ear, or tinnitus, shortly after the lifting incidents.

After discovering that she could not hear in her right ear, plaintiff called the office of her family doctor and spoke to his nurse who made an appointment for plaintiff to see Dr. William Keith Wainscott, an otolaryngologist. Dr. Wainscott had treated plaintiff for an ear infection in 1992. Dr. Wainscott took a history from plaintiff, examined her and recommended plaintiff undergo a MRI test to rule out an acoustic neuroma. In her history to Dr. Wainscott, plaintiff reported that she had an acute onset of decreased hearing and a lot of dizziness about 7-10 days prior to the date she saw him. Dr. Wainscott asked plaintiff if she had any straining she could remember that might have had any affect on her hearing and plaintiff responded that she could not remember any.

After seeing Dr. Wainscott one time, plaintiff then saw Dr. John R. Emmett, a board certified otolaryngologist who had treated plaintiff in September, 1998 for an ear infection. On June 28, 1999 plaintiff gave Dr. Emmett a history of a sudden hearing loss when she was moving a couple of large patients at work about three weeks earlier. Plaintiff also told Dr. Emmett that she had an onset of ringing in her ear and some unsteadiness, dizziness and nausea at the same time.

Dr. Emmett did a physical examination and performed a hearing test on plaintiff. The hearing test results showed that plaintiff could understand 92 percent of the words read to her in her left ear and zero percent of the words read to her in her right ear. A CT scan ordered by Dr. Emmett ruled out acoustic neuroma as a cause of the sudden deafness and tinnitus in plaintiff's right ear. Dr. Emmett gave plaintiff antibiotics to kill bacteria and fungus in plaintiff's ears. He also performed a surgical procedure on plaintiff's right ear that consisted of administering a steroid, dexamethasone, directly onto plaintiff's right ear drum and intravenously. That procedure temporarily restored slight hearing to plaintiff's right ear, however, later hearing tests revealed that plaintiff still had a total loss of hearing in her right ear. Dr. Emmett determined that plaintiff sustained a sixteen percent (16%)

permanent partial impairment to the ears for the binaural hearing loss, or six percent (6%) to the whole body, and a five percent (5%) permanent partial impairment to the whole body for the tinnitus, based on the AMA Guidelines.

Both Dr. Emmett and Dr. Wainscott testified that plaintiff's prior problems with ear infections had no relationship to the acute hearing loss and tinnitus in her right ear. Dr. Emmett had tested plaintiff's hearing in 1998 and found it to be normal in both ears. Dr. Wainscott testified that the straining that plaintiff did while lifting the patients on June 10, 1999, could have ruptured her intracochlear membrane and caused the acute permanent hearing loss and the tinnitus in her right ear. Dr. Emmett testified that, based on the history plaintiff gave him, her hearing loss was caused by lifting a heavy object. Dr. Emmett and Dr. Wainscott agreed that plaintiff's hearing loss in her right ear was permanent and not likely to improve. Dr. Emmett testified that a hearing aid would not improve the hearing in the plaintiff's right ear.

### ANALYSIS

Review of the trial court's decision requires a determination of whether the preponderance of the evidence favors the trial court's judgment. The decision of the trial court will be upheld unless upon review it is determined that the evidence preponderates against the trial court's judgment. *Painter v. Toyo Kogyo of Japan*, 682 S.W.2d 944, 951 (Tenn. Ct. App. 1984).

The trial court, after hearing testimony and weighing the evidence, determined that plaintiff suffered a twenty-seven percent (27%) vocational disability to the whole body. Appellate review is *de novo* upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225 (e)(2). This tribunal is not bound by the trial court's findings, but instead conducts an independent examination of the record to determine where the preponderance lies. *Galloway v. Memphis Drum Serv.*, 822 S.W.2d 584, 586 (Tenn. 1991). Considerable deference must be given to the trial court's finding of fact, especially where issues of credibility are involved. *Collins v. Howmet*, 970 S.W.2d 941, 943 (Tenn. 1998). The appellate tribunal, however, is as well situated to gauge the weight, worth and significance of deposition testimony as the trial judge. *Orman v. Sonoma, Inc.*, 803 S.W.2d 672, 676-77 (Tenn. 1991).

Appellant insists that the Chancellor erred in finding that the plaintiff sustained a work related injury that resulted in a permanent disability to the plaintiff. Appellant bases its argument on the history that plaintiff gave to Dr. Wainscott, and that she had been previously treated for ear infections. Although there was a conflict between the history plaintiff gave to Dr. Wainscott and the one she gave to Dr. Emmett, it is apparent from his oral findings that the Chancellor found plaintiff's trial testimony to be consistent with the history she gave Dr. Emmett. There is ample evidence in the record to support the trial court's finding that plaintiff sustained a work related injury that resulted in a permanent disability.

Issues involving questions of law are reviewed *de novo* without a presumption of correctness.

*Ridings v. Ralph M. Parsons Co.*, 914 S.W.2d 79, 80 (Tenn. 1996). Appellant insists that the Chancellor erred by awarding plaintiff benefits to the whole body rather than to a scheduled member, loss of hearing in the ears. A disability resulting from an injury to a scheduled member may be apportioned to the body as a whole if the injury extends beyond the scheduled member. *Wells v. Sentry Ins. Co.*, 834 S.W.2d 935, 937 (Tenn. 1992). When there is evidence that a claimant has suffered not only a loss of hearing, but also some additional injury, such as dizziness, nausea, or headaches, there is a basis for an award for permanent partial disability to the body as a whole. *F. Perlman and Co. v. Ellis*, 410 S.W.2d 166 (Tenn. 1966). Dr. Emmett's testimony established that plaintiff suffered not only a loss of hearing to a scheduled member, her ears, but that she also suffered an additional injury, the tinnitus, that is separate and apart from the complete loss of hearing in her right ear.

### CONCLUSION

After review of the trial court's findings, the briefs and oral argument submitted by the parties, we find that the evidence preponderates in favor of the trial court's judgment and we affirm it. Costs are assessed to the appellant.

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ROBERT L. CHILDERS, SPECIAL 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 fact 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/Appellant, Humboldt Nursing Home, Inc., for which execution may issue if necessary.

**IT IS SO ORDERED.**

**PER CURIAM**