

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT NASHVILLE  
March 27, 2002 Session

**BETSY D. COKER v. BEVERLY ENTERPRISES TENNESSEE, INC.**

**Direct Appeal from the Chancery Court for Franklin County  
No. 16,294 Jeffrey Stewart, Chancellor**

---

**No. M2000-01630-WC-R3-CV - Mailed - May 24, 2002  
Filed - June 25, 2002**

---

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 to the Supreme Court of findings of fact and conclusions of law. In this appeal, the employer-appellant questions (1) the trial court's finding that the employee's injury arose out of and in the course of her employment and (2) the award of permanent partial disability benefits based on 65 percent to the leg. As discussed below, the panel has concluded the judgment should be affirmed.

**Tenn. Code Ann. § 50-6-225(e) (2001 Supp.) Appeal as of Right; Judgment of the Chancery Court Affirmed.**

JOE C. LOSER, JR., SP. J., delivered the opinion of the court, in which FRANK F. DROWOTA, III, C. J., and JOHN K. BYERS, SR. J., joined.

Pamela M. McCord and Richard E. Spicer, Nashville, for the appellant, Beverly Enterprises, Inc., d/b/a Beverly Healthcare

Robert T. Carter, Tullahoma, Tennessee, for the appellee, Betsy D. Coker

**MEMORANDUM OPINION**

The employee or claimant, Ms. Coker, initiated this civil action to recover workers' compensation benefits for an injury by accident arising out of and in the course of her employment as a nurse for Beverly Healthcare. The employer denied liability and denied the claimant suffers any permanent disability. Following a trial on the merits on May 21, 2001, the trial court resolved the issues in favor of the claimant and awarded, inter alia, permanent partial disability benefits based on 65 percent to the leg. The employer has appealed.

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). The reviewing court is required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. Wingert v. Government of Sumner County, 908 S.W.2d 921, 922 (Tenn. 1995). Conclusions of law are subject to de novo review on appeal without any presumption of correctness. Nutt v. Champion Intern. Corp., 980 S.W.2d 365, 367 (Tenn. 1998). Issues of statutory construction are solely questions of law. Bryant v. Genco Stamping & Mfg. Co., 33 S.W.3d 761, 765 (Tenn. 2000). Where the trial judge has seen and heard the witnesses, especially if issues of credibility and weight to be given oral testimony are involved, considerable deference must be accorded those circumstances on review, because it is the trial court which had the opportunity to observe the witnesses' demeanor and to hear the in-court testimony. Long v. Tri-Con Ind., Ltd., 996 S.W.2d 173, 177 (Tenn. 1999). The trial court's findings with respect to credibility and weight of the evidence may generally be inferred from the manner in which the court resolves conflicts in the testimony and decides the case. Tobitt v. Bridgestone/Firestone, Inc., 59 S.W.3d 57, 61 (Tenn. 2001).

The claimant is a high school graduate and a licensed practical nurse. She has worked as a LPN at Manchester Hospital, Harton Regional Hospital in Tullahoma, Children's Hospital in San Francisco, California, and Crestwood Nursing Home in Manchester. She began working for Beverly in 1986. Her duties include administering medication and treatment, working on a computer, calling a doctor if one is needed, taking doctor's orders, filling out summaries and filling out insurance reports. She typically works eight hour shifts, of which approximately six hours, she testified, is spent on her feet. Since graduation from high school, she has not worked at any job other than as a nurse. She had surgery on her right knee in 1989 and has suffered from seizures since childhood, for which she takes medication and is treated by a Dr. Zimmerman. Her most recent seizure was in 1990. Even before her fall at work, she had some knee problems, for which she received a cortisone shot on February 23, 2000.

On February 25, 2000, at about 9:30 a.m., she fell on her left knee while administering medication to a patient in furtherance of her duties as a nurse for the employer. Under questioning by her attorney, she testified as follows:

Well, Ms. - - I went over to Ms. Sherill's bed. I gave - - I was giving her medication; and she had a wheel chair backed up next to her wall; and I turned around; and, when I turned around, I hit the wheelchair leg and I fell down. The bedside table was on the left side; and I fell down and hit my knees.

A co-worker put some ice on her knee. The claimant continued working with discomfort. She visited Dr. Lloyd Keith Brown, an orthopedic surgeon, on March 13, 2000. On March 29, 2000, she again fell on her left knee, but not at work. The next day, Dr. Brown performed surgery on her left knee. The claimant did not return to work for the employer.

Dr. Brown testified by deposition. He diagnosed a torn medial meniscus, torn lateral

meniscus, grade IV chondromalacia of the medial tibial plateau and femoral condyle and chondromalacia of the patella, grade III. He opined, to a reasonable degree of medical certainty, that her injuries were either caused or aggravated by her fall at work and estimated her permanent impairment to be 27 percent to the leg. He restricted the claimant from kneeling and climbing ladders.

The claimant testified that she is not able to perform any duties which would require her to stand on her feet for long periods of time. The trial court found her to be a credible witness.

The appellant's first contention is that the medical proof is insufficient to establish causation. Unless admitted by the employer, the employee or claimant has the burden of proving, by competent evidence, every essential element of his claim. Oster v. Yates, 845 S.W.2d 215, 217 (Tenn. 1992). The claimant must prove that she is an employee, that she suffered an injury by accident, and that such injury by accident arose out of and in the course of his employment by the employer. Anderson v. Save-A-Lot, Ltd., 989 S.W.2d 277, 279 (Tenn. 1999). An accidental injury arises out of one's employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. GAF Bldg. Materials v. George, 47 S.W.3d 430, 432 (Tenn. 2001). In all but the most obvious cases, causation and permanency must be established by expert medical testimony. Wade v. Aetna Casualty and Surety Company, 735 S.W.2d 215, 217 (Tenn. 1987). Any reasonable doubt as to whether such an injury arises out of the employment should be resolved in favor of the employee. Tapp v. Tapp, 192 Tenn. 1, 236 S.W.2d 977, 978 (1951).

The appellant would have us disregard Dr. Brown's testimony as being flawed because the claimant gave him an inaccurate history. As with many of us, Ms. Coker is a poor medical historian, but both Dr. Brown and the chancellor believed the claimant when she said the injury occurred while performing her nursing duties at work. Giving due deference to the findings of the trial court, we cannot say the evidence preponderates against the finding that the claimant suffered a compensable injury. The first issue is resolved in favor of the appellee.

The appellant next contends the award of permanent partial disability benefits based on 65 percent to the leg is excessive because permanency was not proved and because the claimant is able to work. Permanency was established by the testimony of Dr. Brown. We are not at liberty to disregard the testimony of Dr. Brown. His testimony is not rebutted. Once the causation and permanency of an injury have been established by expert testimony, the trial judge may consider many pertinent factors, including age, job skills, education, training, duration of disability, and job opportunities for the disabled, in addition to anatomic impairment, for the purpose of evaluating the extent of a claimant's permanent disability. McCaleb v. Saturn Corp., 910 S.W.2d 412, 416 (Tenn. 1995). The opinion of a qualified expert with respect to a claimant's clinical or physical impairment is a factor which the court will consider along with all other relevant facts and circumstances, but it is for the court to determine the percentage of the claimant's industrial disability. Miles v. Liberty Mut. Ins. Co., 795 S.W.2d 665, 666 (Tenn. 1990). From a consideration of the pertinent factors, to

the extent they were established by the proof in this case, we cannot say the preponderance of the evidence is other than as found by the trial court.

For the above reasons, the judgment of the trial court is affirmed. Costs on appeal are taxed to the appellant.

---

JOE C. LOSER, JR.

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

**BETSY D. COKER v. BEVERLY ENTERPRISES TENNESSEE, INC.**

Chancery Court for Franklin County  
No. 16,294

---

No. M2000-01630-WC-R3-CV - Filed - June 25, 2002

---

**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 will be paid by the appellant, Beverly Enterprises, Inc., for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM