

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS COMPENSATION APPEALS PANEL  
AT KNOXVILLE  
FEBRUARY 28, 2002 Session

**LISA GREGORY v. BRADLEY COUNTY SHERIFF'S DEPARTMENT**

**Direct Appeal from the Chancery Court Bradley County  
No. 00-290 Jerri Bryant, Chancellor**

**Filed May 20, 2002**

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**No. E2001-01393-WC-R3-CV  
Decided**

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This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with Tenn. Code Ann. § 50-6-225(e) for hearing and reporting of findings of fact and conclusions of law. The employee appeals the denial of worker's compensation benefits on the basis that the trial court used an incorrect standard of proof in evaluating the medical evidence. We affirm the judgment of the trial court.

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

HOWELL N. PEOPLES, SP. J., delivered the opinion of the court, in which WILLIAM M. BARKER., JUSTICE, and JOHN K. BYERS, SR. J., joined.

Bert Bates, Cleveland, Tennessee, for the Appellant, Lisa Gregory.

William A. Lockett and Michael A. Kent, Cleary and Lockett, Chattanooga, Tennessee, for the Appellee, Bradley County Sheriff's Department.

## MEMORANDUM OPINION

### Facts

On December 5, 1999, Lisa Gregory was employed as a correctional officer by the Bradley County Sheriff's Department. She observed an inmate hanging inside a holding tank and ran into the cell to assist. She lifted the inmate and felt something pop in her left wrist. That evening she went to the emergency room and was advised to follow up with an orthopedic surgeon. She went to Dr. Robert Beasley who advised her to wear a wrist brace for two weeks. Ms. Gregory returned to Dr. Beasley on December 27, 1999 and she had improved considerably, and had just about returned to her baseline condition. She was returned to her regular work duties with some restrictions. She was asked to return in six weeks, but did not return until May 9, 2000.

Ms. Gregory acknowledged that she had returned to work in her same job when her condition seemed to worsen in May, 2000. On May 9, 2000, Dr. Beasley took x-rays that revealed that her condition had changed and that the lunate bone in her wrist was deteriorating, which Dr. Beasley believed was a result of the progression of her Kienbock's disease.

Dr. Beasley had treated Ms. Gregory for a work-related injury on July 25, 1992 when she fell down some steps and landed on her left wrist. The fall caused Ms. Gregory to develop Kienbock's disease in which the blood supply to the lunate bone is lost. Dr. Beasley testified that this condition is progressive and, over time, causes the lunate bone to hurt, fragment and ultimately collapse. In January 1993, Dr. Beasley had performed an intercarpal fusion in order to transfer some of the load away from the lunate bone. He assigned a 20 percent impairment rating to the left arm for the 1992 injury and she was awarded a judgment for worker's compensation benefits for 30 percent disability to the left arm on December 13, 1994.

Dr. Beasley continued to follow Ms. Gregory and her condition gradually worsened. In July 1997, x-rays obtained by Dr. Beasley showed that Ms. Gregory's wrist bones were changing for the worse and carpal collapse was occurring. Dr. Beasley testified that the incident of December 5, 1999 seemed to be a "turning point," that "provoked symptomatology but did not do damage." He also testified that the lifting incident possibly was a cause of the fragmentation of the lunate bone. Dr. Beasley performed a wrist fusion on July 19, 2000 and opined that Ms. Gregory had a 22 percent permanent impairment to the left arm.

### **Standard of Review**

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 findings, 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 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). Conclusions of law are subject to *de novo* review with no presumption of correctness. *Ganzevoort v. Russell*, 949 S.W.2d 293 (Tenn. 1997). Where the trial judge has made a determination based upon the testimony of witnesses whom he has seen and heard, great deference must be given to that finding in determining whether the evidence preponderates against the trial judge's determination. *Humphrey v. David Witherspoon, Inc.*, 734 S.W.2d 315 (Tenn. 1987). When the medical testimony is presented by deposition, as it was in this case, this Court is able to make its own independent assessment of the medical proof to determine where the preponderance of the evidence lies. *Cooper v. INA*, 884 S.W.2d 446, 451 (Tenn. 1994).

## Issue

The employee, Lisa Gregory contends that the trial court committed reversible error (1) by applying an incorrect standard of proof in evaluating the medical evidence concerning whether the injury was work-related, and (2) by failing to hold the employer liable for the entire damages since Tennessee does not apportion between successive employers.

## Discussion

### I.

The trial judge, at the conclusion of the proof, heard argument on the issue of whether the incident of December 5, 1999 caused a new injury or whether Ms. Gregory's condition was merely the natural progression of the Kienbock's disease from the 1992 injury. She then stated the standard of proof as follows:

The plaintiff in this case must prove an anatomical change or worsening of condition by the medical evidence. In most cases, an increase in pain is not enough for recovery. The question in this case comes down to causation. Is this increase in pain that she is suffering from the old injury or because of a new injury? Medical proof must be within a reasonable degree of medical certainty or more probable than not. "Possibilities, probabilities, might, could have been or tends to" is not enough without additional proof.

The standard of proof is more concisely and precisely stated in *Reeser v. Yellow Freight Sys., Inc.*, 938 S.W.2d 690 at 692 (Tenn. 1997) as follows:

Although causation cannot be based upon merely speculative or conjectural proof, *Simpson v. H. D. Lee Park Ass'n*, 793 S.W.2d 929, 931 (Tenn. 1990), absolute certainty is not required. *Tindall v. Waring Park Ass'n*, 725 S.W. 2d 935, 937 (Tenn. 1987). Any reasonable doubt in this regard is to be construed in favor of the employee. *White v. Wertham Industries*, 824 S.W.2d 158, 159 (Tenn. 1992). We have thus consistently held that an award may properly be based upon medical testimony to the

effect that a given incident “could be” the cause of the employee’s injury, when there is also lay testimony from which it reasonably may be inferred that the incident was in fact the cause of the injury. *P & L Const. Co. v. Lankford*, 559 S.W.2d 793, 794 (Tenn. 1978).

We reach the same conclusion as the trial court when we apply the law to the facts in this case. Ms. Gregory sustained a painful injury at work on December 5, 1999, however, the x-rays showed no anatomical change following that injury. She returned to work performing her regular duties. On May 9, 2000, some five months later, she returned to Dr. Beasley and x-rays then revealed the lunate bone was separated. When we consider the medical testimony that the findings in May 2000 were consistent with the natural progression of Kienbock’s disease caused by the 1992 injury, the medical testimony that the incident of December 5, 1999 could be the cause of Ms. Gregory’s condition, and the lay testimony that following that incident she returned to work at her regular duties and did not seek medical treatment until five months later, no inference reasonably arises that the December 1999 incident caused a new permanent injury.

Our disposition of the first issue pretermits consideration of the second issue.

### **Conclusion**

The judgment of the trial court is affirmed. Costs of the appeal are taxed to the Appellant, Lisa Gregory, and the case is remanded for any necessary proceedings.

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Howell N. Peoples, 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 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 Appellant, Lisa Gregory, for which execution may issue if necessary.