

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
May 23, 2002 Session

**JANET BACA v. LIBERTY MUTUAL INSURANCE COMPANY AND IH
SERVICES, INC.**

**Direct Appeal from the Chancery Court for Bradley County
No. 01-213 Jerri Bryant, Chancellor**

Filed August 19, 2002

No. E2002-00273-WC-R3-CV

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. The plaintiff appeals the trial judge's decision that the plaintiff's medical proof was insufficient to establish causation. We affirm the judgment of the trial court.

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

BYERS, SR.J., delivered the opinion of the court, in which ANDERSON, J., and THAYER, SP.J., joined.

Jimmy W. Bilbo, of Cleveland, Tennessee, for Appellant, Janet Baca.

David C. Nagle, of Chattanooga, Tennessee, for Appellees, Liberty Mutual Insurance Company and IH Services, Inc.

MEMORANDUM OPINION

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

The plaintiff was thirty-six years of age at the time of trial. She has an eleventh grade education with limited vocational training and is the mother of six dependent children. She testified at trial that she has had various jobs in her working life that have involved lifting and manual labor. She began working for the defendant company IH Services, Inc., on June 16, 2000.

The plaintiff testified that on June 20, 2000, four days after she began working for the defendant company, a fire ignited near her and a co-worker. She and the co-worker ran to escape injury from the fire and as she was fleeing, the plaintiff stepped in what she described as a "pot-hole" in the ground, causing her to "twist and jar" her back. She testified that after this accident she became very sore and was in "intense pain," with her leg, hip, and back hurting.

The plaintiff reported the accident and injury and was sent by her supervisor to a chiropractor. She saw the chiropractor for a period of four to six weeks and was then referred to Dr. Gary Voytik at Tri-State Orthopedics. Dr. Voytik saw the plaintiff twice and then released her to return to work with no restrictions. The plaintiff testified that upon her return to work, her supervisor told her to "take it easy" and not do any lifting for a few weeks. She later attempted to resume her normal duties (which included lifting,) but she testified that she was never able to do the same amount of work again because of her pain.

The plaintiff continued to work for the defendant company until October of 2000, when she voluntarily resigned over a disagreement with her supervisor that she testified was about the amount of work she was doing and the pain she was experiencing.

In March of 2001, the plaintiff went to the hospital for treatment of increased back pain. Testimony showed that she reported she had been helping her father move boxes. She was treated by Dr. Darin Wilbourn of Tri-State Orthopedics. The plaintiff has not worked since she left the defendant company in October of 2000.

Medical Evidence

The medical evidence for the purpose of the issues raised in this trial was provided by the deposition testimony of Dr. Darin Wilbourn, M.D. Dr. Wilbourn, a physician with Tri-State Orthopedics, was the plaintiff's treating physician in March of 2001 and is the partner of her other treating physician, Dr. Voytik.

Dr. Wilbourn testified that Dr. Voytik's initial diagnosis was significant degenerative disc disease of the thoracic spine, upper lumbar strain, and obesity. Dr. Wilbourn testified that the plaintiff had bilateral lumbar facet disease, arthritis in facet joints, and minimal degenerative disc change. He rated the plaintiff's permanent disability at eight percent to the body as a whole.

Dr. Wilbourn testified that the work accident of the plaintiff "possibly" and "could have"

caused an anatomical change in her back, but he did not know if the degenerative disc disease was advanced by the accident. He also testified that advancement of her condition could have been caused by aging, obesity, as well as her helping her father move in March of 2001. He testified that he could not state the likely cause of the plaintiff's back pain to a reasonable degree of medical certainty, nor could he state that there was any anatomical change caused by the June, 2000, accident.

Discussion

Although we are required to weigh the evidence in a case in depth to determine where the preponderance of the evidence lies, we are required to make such evaluation within the confines of established rules in evaluating the propriety of the trial court.

In order to be eligible for workers' compensation benefits, an employee must suffer "an injury by accident arising out of and in the course of employment which causes either disablement or death." Tenn. Code Ann. § 50-6-102(a)(5). The phrase "arising out of" refers to causation. The causation requirement is satisfied if the injury has a rational, causal connection to the work. *Reeser v. Yellow Freight Sys., Inc.*, 938 S.W.2d 690, 692 (Tenn. 1997) (citations omitted); *Fink v. Caudle*, 856 S.W.2d 952 (Tenn. 1993).

Although causation cannot be based upon merely speculative or conjectural proof, absolute certainty is not required. Any reasonable doubt in this regard is to be construed in favor of the employee. 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. *Reeser v. Yellow Freight Sys., Inc.*, 938 S.W.2d 690, 692 (Tenn. 1997) (citations omitted). Where equivocal medical evidence combined with other evidence supports a finding of causation, such an inference may be drawn under the case law. *White v. Werthan Industries*, 824 S.W.2d 158 (Tenn. 1992); *Smith v. Empire Pencil Co.*, 781 S.W.2d 833 (Tenn. 1989); *Jackson v. Greyhound Lines, Inc.*, 734 S.W.2d 617 (Tenn. 1987); *Tindall v. Waring Park Assoc.*, 725 S.W.2d 935 (Tenn. 1987).

In all but the most obvious cases, such as the loss of a member, expert testimony is required to establish causation. *Thomas v. Aetna Life & Casualty Co.*, 812 S.W.2d 278 (Tenn. 1991). 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); *Landers v. Fireman's Fund Ins. Co.*, 775 S.W.2d 355, 356 (Tenn. 1989).

In this case, the trial judge heard the testimony of the plaintiff and reviewed the deposition testimony of one treating physician. The plaintiff testified that her back problems began with the work accident of June 20, 2000, but she also admitted that she was returned to work with no restrictions and did not have any problems again until she helped her father lift and move boxes. Dr.

Wilbourn testified that he could not state with a reasonable degree of medical certainty what had caused the plaintiff's back to hurt.

The trial court could have accepted the medical testimony that the work incident "could have" caused the injury if there was credible lay testimony from which it may be inferred that the incident in fact caused the injury. Here we have no such corroborative lay testimony. That the plaintiff was released to return to work with no restrictions and that she did not have any further problems until she helped her father move boxes, only cast the issue of causation further into doubt.

The treating physicians in this case were unable to find any anatomical change, and the trial court did not find causation. In the absence of any more evidence than what is in the record, we will not disturb the trial court's finding that the plaintiff has failed to meet her burden of proof. We therefore affirm the decision of the trial court. The cost of this appeal is taxed to the appellant.

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 Appellant, Janet Baca and its surety, for which execution may issue if necessary.