

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

November 22, 2002 Session

**STEPHANIE MARIE STEPHENS v. BEKAERT STEEL WIRE
CORPORATION**

**Direct Appeal from the Chancery Court for Lauderdale County
No. 11,536 Martha B. Brasfield, Chancellor**

No. W2002-00341-WC-R3-CV - Mailed January 24, 2003; Filed February 25, 2003

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 trial court found the plaintiff sustained an 80 percent permanent partial disability to the body as a whole as a result of an industrial injury while employed by the defendant.¹ The defendant says the plaintiff cannot recover because the plaintiff had a previous injury which was aggravated by the accident, and further says the award is excessive. The medical evidence, however, shows the plaintiff suffered a new and distinct injury. Furthermore, we do not find the evidence preponderates against the finding of the trial judge regarding the amount of the award.

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

JOHN K. BYERS, SR. J., delivered the opinion of the court, in which JANICE M. HOLDER, J. and JOE C. LOSER, SP. J., joined.

Paul C. Peel, Memphis, Tennessee, for the appellants, Bekaert Steel Wire Corporation and Liberty Mutual Insurance Company.

Jeffrey A. Garrety and Joseph R. Taggart, Jackson, Tennessee, for the appellee, Stephanie Marie Stephens.

MEMORANDUM OPINION

¹ The trial judge ordered a 60 percent set-off against the award because of payment of long-term disability benefits on an insurance policy paid for by the defendant. There is no appeal on this matter.

At the time of trial the plaintiff, the mother of five children, was twenty-nine years of age. She has a high school education and has performed manual labor during most of her adult life.

In 1995, the plaintiff received an injury to her back from which she had a 9 percent anatomical impairment and received an award of 19 percent to the body as a whole for the injury.

On January 11, 2000, the plaintiff fell and injured her back in the course of working for the defendant. The plaintiff testified that as a result of the 2000 injury she has constant low back pain which increases with activity, burning pain in her back, and pain and numbness in her legs. She also testified that the injury has affected her ability to carry out her daily activities at home. The plaintiff does several exercises on a daily basis and walks as recommended by her doctor.

The work that the plaintiff did for the defendant required lifting, standing and twisting. The plaintiff testified that she is no longer able to do this because of her injury.

Medical Evidence

Dr. Stephen M. Waggoner, an orthopedic surgeon, saw the plaintiff on February 24, 2000, on referral from Dr. Riley Jones, who had been seeing the plaintiff since her 2000 injury. Dr. Waggoner found the plaintiff had a pre-existing spondylolisthesis at the L5-S1 level which had been aggravated by the work injury. After a period of treatment, Dr. Waggoner did surgery on the plaintiff and placed a "cage" in the area of the injury to immobilize the vertebra. He testified the need for surgery was caused by the fall of 2000. He testified that the fall of 2000 caused new symptoms which led him to do surgery on the plaintiff's back. He testified the surgery produced new anatomical changes on the plaintiff's back. Dr. Waggoner testified the plaintiff now has limitations on a permanent basis that she did not have before the injury of January 2000. He further testified the plaintiff now had permanent restrictions which she did not have prior to the injury of January 2000.

Dr. Waggoner placed limitations on lifting and prohibited repetitive bending or stooping. He found the plaintiff suffered a 13 percent anatomical impairment as a result of the January 2000 injury.

Dr. Joseph C. Boals, III, an orthopedic surgeon, saw the plaintiff in April 2001, for the purpose of evaluation. Dr. Boals, for the most part, confirmed Dr. Waggoner's findings as to causation and effect. He was of the opinion that the plaintiff suffered a 23 percent impairment to the body as a whole. Dr. Boals was also of the opinion that the injury of January 2000 was a new injury and that the plaintiff suffered new pain and new disablement from the injury.

Brenda Dailey, a vocational rehabilitation expert, testified that she examined the medical evidence concerning the plaintiff's injury, her physical imitations, her education, etc., and concluded the plaintiff could perform between 10 and 12 percent of the jobs available in the country.

Discussion

We are of the opinion that the defendant's argument that the plaintiff showed only an aggravation of a pre-existing injury is not viable in this case. The medical evidence shows the plaintiff suffered a new and distinct injury in January 2000. Therefore, the resolution of this case is based upon whether the plaintiff sustained an injury arising out of and in the course of her employment. The medical evidence in this case supports the finding of the trial judge on causation.

Even if the medical evidence supported simply an aggravation of the plaintiff's old injury, the medical evidence also shows that she had been free from symptoms arising out of her previous injury at the time of her fall in 2000 and that as a result of her recent injury she now has permanent restrictions that she did not have before. This type of medical evidence entitles the plaintiff to recover for the injury in this case. Sweat v. Superior Indus., Inc., 966 S.W.2d 31 (Tenn. 1998).

We do not find the evidence preponderates against the finding of the trial judge regarding the amount of the award. The trial judge considered the medical evidence and the vocational testing of the plaintiff in arriving at an award of 80 percent. The evidence supports this judgment.

Conclusion

We affirm the judgment of the trial court. The costs of this appeal are taxed to the defendant.

JOHN K. BYERS, SENIOR JUDGE

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JUDGMENT ORDER

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 Appellants, Bekaert Steel Wire Corporation and Liberty Mutual Insurance Company, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM