

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

March 25, 2003 Session

ANGELINA GILLEY v. EXPRESS CHECK ADVANCE, ET AL.

**Direct Appeal from the Chancery Court for Madison County
No. 57141 Joe C. Morris, Chancellor**

No. W2002-02506-WC-R3-CV - Mailed July 7, 2003; Filed August 18, 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. Section 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 that the employee was permanently and totally disabled through age sixty-five as a result of compensable injuries, including a herniated disk and Post Traumatic Stress Disorder. In this appeal, the employer questions the court's findings as to causation, amount of disability, temporary benefits and medical benefits. As discussed below, the panel has concluded the evidence fails to preponderate against the findings of the trial court. Therefore, we affirm the judgment of the trial court.

**Tenn. Code Ann. § 50-6-225(e) (2002 Supp.) Appeal as of Right; Judgment of the
Chancery Court Affirmed**

ALLEN W. WALLACE, SR. J., delivered the opinion of the court, in which JANICE M. HOLDER, J. and D. J. ALISSANDRATOS, SP. J., joined.

Kenneth R. Rudstrom, Memphis, Tennessee and Mildred L. Sabbatini, Memphis, Tennessee for Appellants, Express Check Advance and Gary Frazier, d/b/a/Express Check Advance.

Jeffery A. Garrety, Jackson, Tennessee and Joseph R. Taggart, Jackson, Tennessee, for Appellee, Angelina Gilley.

MEMORANDUM OPINION

The employee, or claimant, Angelina Gilley, initiated this civil action to recover workers' compensation benefits. Following a trial on March 14, 2002, the trial court awarded permanent and total disability and past and future medical bills. 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) (2002 Supp.). The reviewing court is required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. *Winegert v. Government of Sumner County*, 908 S.W.2d 921, 922 (Tenn. 1995). The standard governing appellate review of findings of fact by a trial court requires the Special Workers' Compensation Panel to examine in depth a trial court's factual findings and conclusions. *GAF Bldg. Materials v. George*, 47 S.W.3d 430, 432 (Tenn. 2001). 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 extent of an injured worker's vocational disability is a question of fact. *Seals v. England/Corsair Upholstery Mfg.*, 984 S.W.2d 912, 915 (Tenn. 1999). Where the medical testimony in a workers' compensation case is presented by deposition, the reviewing court may make an independent assessment of the medical proof to determine where the preponderance of the proof lies. *Whirlpool Corp. v. Nakhoneinh*, 69 S.W.3d 164, 167 (Tenn. 2002).

Claimant was born on September 5, 1958, and her past work experience consisted primarily of bookkeeping, customer service and data processing. She completed 11th grade and does not have a GED.

On October 22, 1999, claimant was assaulted during a robbery that occurred during the course and scope of her employment. She testified the robber grabbed her arms, led her around the office, and pushed her against a sink, office furniture and filing cabinets, which led to pain in her lower back. Further, the robber kept telling her he was going to kill her if she did not cooperate. The robber instructed claimant to remain in a corner and count to 100. She panicked and attempted to flee. The robber again physically assaulted her. During these assaults claimant was violently jerked, pushed forcefully down a hallway, had her lower back forced against a bathroom sink and was otherwise pushed and jerked through the premises. The employer urged the court to consider that the employee did not report an injury to her lower back to police. The evaluation of such testimony involves credibility issues, and this panel is required to give due deference to the findings of the trial court.

Claimant was seen by Dr. Lowell Stonecipher who diagnosed her as having a ruptured L2-3 lumbar disk with large extruded fragments as a result of the assault. He assigned her a 5% impairment to the body as a whole. The claimant was also seen by Dr. Elias King Bond, a psychiatrist, who diagnosed her as having a permanent post-traumatic stress disorder as a result of the assault. He testified that she is permanently and totally disabled as the robbery not only caused her new psychological problems, but aggravated preexisting psychological problems. Dr. Bond assigned her an 18% impairment rating, but further testified that under AMA Guidelines, fifth edition, page 325, table 1308, she would be in class 2. Under class 2 her impairment would be 15 to 29 percent. Dr. Joseph C. Boals, III also examined claimant and assigned her a 10% impairment to the body as a whole.

At the time of trial claimant was not working. She testified she has pain 24 hours a day, seven days a week. Her legs hurt and feel numb. Her left hand draws up and goes numb. She has pain in her neck and arm. It is uncomfortable for her to sit, move around or lift things. She still has fear of people, and does not go anywhere by herself. She is depressed, has nightmares and flashbacks. She has panic attacks, her palms get sweaty and her heart beats "real fast". She cannot sleep well, and only gets 4 to 5 hours of sleep each night at an hour or two at a time.

The employer contends the claimant did not suffer a compensable back injury during the course and scope of her employment, and that the incident did not cause a ruptured disc. Further, the employer contends that the claimant sustained, at most, a mild injury to her mental faculties. In Tennessee, workers' compensation benefits are allowable for psychological disorders when such disorders are caused by an identifiable, stressful work-related event producing a sudden mental stimulus such as fright, shock, or excessive unexpected anxiety. *Hill v. Eagle Bend Mfg. Co.*, 942 S.W.2d 488, 489 (Tenn. 1997). The employer further contends claimant previously had psychological illness. If claimant had previous psychological problems and she was free from symptoms to the extent she was able to work and as a result of her recent injury now has permanent injuries and restrictions that she did not have before, claimant would be entitled to recover for the injuries in this case. *Sweet v. Superior Indus., Inc.* 966 S.W.2d 31 (Tenn. 1998).

The trial court found, as a result of her injury, claimant suffered both physical and psychological injuries resulting in permanent and total disability pursuant to Tenn. Code Ann. § 50-6-207(4)(A)(i) to age 65. The extent of an injured worker's vocational disability is a question of fact. *Seals v. England/Corsair Upholstery Mfg.*, 984 S.W.2d 912, 915 (Tenn. 2002). Considerable deference must be accorded to the trial court's credibility determinations 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).

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 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. Moreover, trial courts are not bound to accept physicians' opinions regarding the extent of a claimant's disability, but should consider all the evidence, both expert and lay testimony, to decide the extent of an employee's disability. *Whirlpool Corp. v. Nakhoneinh*, 69 S.W.3d 164, 170 (Tenn. 2002). From our consideration of the pertinent factors, to the extent they were established by the proof in this case, and giving due deference to the findings of the trial court, we cannot say the evidence preponderates against the trial court's award.

CONCLUSION

For the above reasons, the judgment of the trial court is affirmed. Costs are taxed to the appellants, Express Check Advance and Gary Frazier, d/b/a Express Check Advance.

ALLEN W. WALLACE, 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, Express Check Advance and Gary Frazier, d/b/a Express Check Advance, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM