

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
June 11, 2004 Session

JANET SIMPSON v. DONALDSON CO., INC.

**Direct Appeal from the Circuit Court for Greene County
No. 01CV123 Ben W. Wexler, Judge**

Filed October 12, 2004

No. E2003-02347-WC-R3-CV - Mailed August 3, 2004

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 dismissed the claim finding the employee's condition did not arise out of her employment. Plaintiff appeals and argues the evidence preponderates against the conclusion of the trial court. Judgment affirmed.

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

ROGER E. THAYER, SP. J., delivered the opinion of the court, in which E. RILEY ANDERSON, J., and WILLIAM H. INMAN, SR. J., joined.

Howard R. Dunbar, Johnson City, Tennessee, for appellant, Janet Simpson.

Alexandra S. Deas and Jimmy D. Holbrook, Jr., Knoxville, Tennessee, for appellee, Donaldson Co., Inc.

MEMORANDUM OPINION

The employee, Janet Simpson, has appealed from the trial court's order dismissing her claim upon finding her condition and/or injury was not caused by her employment activity.

Facts

The employee, a forty-six year old assembly line worker, began working for Donaldson Co., Inc. on November 9, 1992. At the time in question, her job was to take filters off the assembly line

and put a label on it. The filters weighed from several ounces to several pounds. She said the work involved stooping and bending and that during March 2000 her back was hurting so bad she had to stop working. She was off work from April 18, 2000 to July 7, 2000.

Ms. Simpson had surgery in 1996 for a herniated disc and was off work for a period of five months. She testified that her back had bothered her on and off for some period of time prior to March 2000. When she requested medical leave in March 2000, she completed a form and indicated both “yes” and “no” to a question asking whether her condition was work-related.

Dr. Richard Kind, a chiropractor, testified he had originally seen Ms. Simpson in 1994 or 1995 but he did not have records available as to her complaints at that time. He said he next saw her on April 18, 2000. After taking a history and examining her, he was of the opinion that she had aggravated her pre-existing condition and that the aggravation was due to her work activity. He testified she had a permanent injury and that her impairment under the AMA Guidelines was 26 percent but he attributed one half of the impairment to her pre-existing condition.

Dr. Richard Duncan, an orthopaedic surgeon, testified by deposition and indicated he first saw Ms. Simpson on January 5, 1995, when she was suffering from a herniated disc. In February 1996, he performed a laminectomy which resulted in fusing the 4th and 5th vertebrae. Dr. Duncan continued to see and treat her until April 6, 2001, which was over a year after her alleged work-related injury. He stated that she never told him she had been injured at work and that there was no evidence of any anatomical change in her condition. He said her present complaints about her back was related to degenerative disc disease at multiple levels in her back and she had not sustained a permanent injury as a result of her work activity during March 2000.

Dr. Norman Hankins, a vocational assessment witness, testified he was of the opinion the employee was 100 percent vocationally disabled based on the testimony and restrictions of Dr. Kind.

Witness Stephanie Mitchell, co-worker of plaintiff, testified her work station was next to Ms. Simpson and that she complained often about her back hurting.

Witness Nellie Davis, the human resource manager for defendant, testified she hired the employee on November 9, 1992 and that prior to the time in question, Ms. Simpson had been off work on medical leave at various times due to her back problems. She stated that in March 2000 she came to their office and advised that she needed some time off as she had hurt her back and that she had lifted a lot of firewood the night before. In a written request for medical leave, she answered “yes” and “no” to a question as to whether her condition was work-related. Ms. Davis stated she called her about the inconsistency of the answer and was told that she did not know how she had hurt her back and that she had been lifting wood the night before. A report was obtained from Dr. Duncan indicating the back problem was due to degenerative disc disease and not work-related and then the claim was processed under short term health and accident insurance benefits.

The circuit judge was faced with a conflict on the question of causation of injury and resolved

the conflict by accepting the testimony of the treating orthopaedic doctor over the opinion of the treating chiropractor.

Standard of Review

The review of the case is *de novo* accompanied by a presumption of the correctness of the findings of the trial court unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). Where the trial court has seen and heard witnesses and issues of credibility and the weight of oral testimony is involved, the trial court is usually in a better position to judge credibility and weigh evidence but where evidence is introduced by deposition, the appellate court is in the same position as the trial court in reviewing and weighing testimony. *Landers v. Fireman's Fund Ins. Co.*, 775 S.W.2d 355, 356 (Tenn. 1989).

Analysis of Issue

The employee contends the evidence preponderates against the conclusion of the court that the claim was not work-related. While it would appear that both the chiropractor and orthopaedic surgeon were treating experts, the court choose to accept the opinion of the orthopaedic doctor on causation question. In our examination of the record, we cannot say the evidence preponderates against this conclusion. Since we concur in the disposition of the case, we do not find it necessary to address the questions raised in regard to an award of permanent disability.

Conclusion

The judgment of the trial court is affirmed. Costs of the appeal are taxed to the plaintiff.

ROGER E. THAYER, SPECIAL JUDGE

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AT KNOXVILLE

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No. E2003-02347-SC-WCM-CV

JUDGMENT

This case is before the Court upon motion for review pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), 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 motion for review is not well-taken and should be denied 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 Janet Simpson.

IT IS SO ORDERED this 12TH day of October, 2004.

PER CURIAM

Anderson, J. - not participating.