

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

February 24, 2005 Session

**EMMA LYNN NUCHOLS v. METHODIST MEDICAL CENTER OF OAK  
RIDGE**

**Direct Appeal from the Circuit Court for Anderson County  
No. A2LA0491 James B. Scott, Jr., Judge**

**Filed May 9, 2005**

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**No. E2004-01191-WC-R3-CV - Mailed April 15, 2005**

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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 awarded the employee 50 percent disability to the body as a whole based upon a 20 percent impairment. The employer contends the award was excessive because the trial court failed to allocate impairment to a preexisting spondylolisthesis. Judgment is modified to find impairment to be 11 percent from last injury and recovery is limited to two and one-half times impairment rating.

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

ROGER E. THAYER, SP. J., the opinion of the court, in which E. RILEY ANDERSON, J., and DON HARRIS, SR. J., joined.

Broderick L. Young, Knoxville, Tennessee, for appellant, Methodist Medical Center of Oak Ridge.

Roger L. Ridenour and J. Timothy Bobo, Clinton Tennessee, for appellee, Emma Lynn Nuchols.

**MEMORANDUM OPINION**

Defendant has appealed from the trial court's action awarding plaintiff 50 percent permanent partial disability as a result of sustaining a back injury with a 20 percent medical impairment.

**Facts**

Plaintiff, Emma Lynn Nichols, was 41 years of age and a high school graduate with some

vocational training. She was employed as a CNA with defendant, Methodist Medical Center of Oak Ridge. In about 1992 she had a prior injury to her back while working for another employer and she was paid a settlement based on an 8 percent medical impairment and a 20 percent vocational disability. At the time of this prior injury, it was determined she had a spondylolisthesis.

She testified she had recovered well from the prior injury and had been working for defendant hospital for nine and one-half years before the incident in question. During this long period of time, she said her back was not causing any problems and was normal and she was lifting on a daily basis.

On March 6, 2002 she was transferring a patient and the patient passed out. In her effort to catch the patient, she hurt her back. She described it as feeling some burning and some pain in her leg and low back. She was treated conservatively for a period of several months and her condition did not seem to improve. She underwent surgery on July 3, 2002 and her doctor eventually released her to return to work. Upon returning to work, she was not able to resume her normal duties but worked as a phlebotomist (drawing blood) and EKG technician. At the time of the trial, she said she was then only working three days a week.

Plaintiff's treating doctor, Dr. Joel B. Ragland, a neurosurgeon, testified by deposition. His history indicated the prior work-related injury and that she seemed to have fully recovered as she had "been functioning at a fairly high level." The doctor recommended she have fusion surgery at L4-5 since conservative treatment had not improved her condition. He testified she had a spondylolisthesis at L4-5 and surgery did improve her condition. He was of the opinion the accident in question had "a symptomatic aggravation effect" on her preexisting spondylolisthesis as she indicated she was not having symptoms until the last injury. The doctor gave an impairment rating of 21 percent based on the loss of motion referred to in the AMA Guidelines, Fifth Edition.

On cross-examination the doctor was asked what portion of the 21 percent impairment was attributable to her pre-existing spondylolisthesis and what portion was due to the current injury. The doctor said it was difficult to separate the two but he was of the opinion she had impairment due to her pre-existing condition and he allocated 10 percent to the pre-existing spondylolisthesis and 11 percent due to the last injury. In explaining this allocation, he stated that fusion surgery was due to the pre-existing condition and if she had not had this condition, her impairment would have been in the 10-13 percent range.

### **Standard of Review**

The review of the issue on appeal 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).

### **Analysis**

The employer argues that the trial court was in error in finding medical impairment to be 20

percent without reducing the percentage due to the pre-existing condition.

An employer is responsible for workers' compensation benefits, even though the claimant may have been suffering from a serious pre-existing condition or disability, if employment causes an actual progression or aggravation of the prior disabling condition or disease which produces increased pain that is disabling. *Hill v. Eagle Bend Manufacturing, Inc.*, 942 S.W.2d 483 (Tenn. 1997); *Fink v. Caudle*, 856 S.W.2d 952, 958. Also it is a general rule that an employer takes an employee as he or she is and assumes the responsibility for having a pre-existing condition aggravated by a work-related injury which might not affect a normal person. *Id.*

We agree with the hospital's contention concerning the impairment question. Dr. Ragland was the only medical witness to testify about the injury in question. On direct examination, he was not asked about pre-existing impairment but when asked that question on cross-examination, he clearly admitted there was pre-existing impairment due to plaintiff's previously diagnosed spondylolisthesis. His opinion allocated 11 percent to the last injury and since plaintiff had returned to work her recovery is limited to two and one-half times her impairment from the last injury.

### Conclusion

We find the evidence preponderates against the award fixed by the trial court and the judgment is modified to find the impairment to be 11 percent from the last injury and the recovery is modified and fixed at two and one-half times said 11 percent impairment according to Tenn. Code Ann. § 50-6-241(A)(1). Costs of the appeal are taxed to the plaintiff.

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ROGER E. THAYER, SPECIAL JUDGE

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AT KNOXVILLE, TENNESSEE

**EMMA LYNN NUCHOLS V. METHODIST MEDICAL CENTER OF OAK  
RIDGE**

**Anderson County Circuit Court  
No. A2LA0491**

**May 9, 2005**

**No. E2004- 01191-WC-R3-CV**

**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 plaintiff, Emma Lynn Nuchols, for which execution may issue if necessary.