

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
AUGUST 2, 2004 Session

LIFEPOINT HOSPITAL, INC. v. ANN MORGAN

**Direct Appeal from the Circuit Court for Giles County
No. 1899 Stella L. Hargrove, Judge**

**No. M2003-02365-WC-R3-CV - Mailed: January 14, 2005
Filed - April 28, 2005**

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 determined that the employee was entitled to retain temporary total disability benefits paid by the employer, but was not entitled to any additional benefits. On appeal, the employee submits that the trial court erred in (1) holding that her injury did not entitle her to further benefits or reimbursement of past medical expenses, (2) adopting inappropriate contingent findings of fact, and (3) making a factual finding that she resigned from her employment. The employer raises the additional argument that the trial court erred by denying its motion for reimbursement of temporary total disability benefits. For the reasons set forth below, we affirm the judgment of the trial court.

Tenn. Code Ann. § 50-6-225(e)(3) Appeal as of Right; Judgment of the Circuit Court Affirmed.

STAFFORD, Sp. J., delivered the opinion of the court, in which DROWOTA, C.J., and SCOTT, Sp. J., joined.

Michelle M. Benjamin, Winchester, Tennessee, for appellant, Ann Morgan.

Terry L. Hill, Manier & Herod, Nashville, Tennessee, for appellee, Lifepoint Hospital, Inc.

MEMORANDUM OPINION

The employee in this workers' compensation case, Ann Morgan (hereinafter known as Morgan), is a 49-year-old registered nurse who was employed by Hillside Hospital as Director of Surgery. She had at least 15 years of work experience in a variety of clinical settings. On

February 8, 2001, Morgan was assisting in surgery when the patient she was attending fell from the operating room gurney. The fall caused the release of cerebrospinal fluid from the patient's skull. According to the Director of Human Resources ("H.R. director"), Morgan became very emotional after the incident. Morgan contacted the H.R. director at home on February 10 and informed her that she was having difficulty handling the incident and that she intended to seek treatment from Dr. Robert Gregory, director of the general psychiatric unit at Hillside.

Beginning February 11, 2001, Morgan left work for a week at the recommendation of Dr. Gregory. During this period, she indicated to the H.R. director that she believed her emotional state qualified her for workers' compensation benefits. Subsequently, Dr. Gregory returned her to work with the understanding that her duties should be strictly administrative with no clinical or patient care. Morgan worked in this capacity for five weeks. According to the injury report filed by the H.R. director, Morgan notified Hillside on March 5, 2001 that her injury was work related.

On April 5, 2001, Morgan handed the H.R. director a handwritten document that appeared to be her resignation. Five days later, the H.R. director received a letter stating that Morgan would be off work indefinitely. Attached to the letter was a note from Dr. Gregory stating that Morgan's depression had worsened. Consequently, the H.R. director wrote a letter to Morgan accepting her apparent resignation.

Prior to trial, the court granted Morgan's motion to compel payment of temporary total disability benefits. However, the court ultimately ruled in favor of the employer and found that she did not suffer a compensable injury. The trial court refused to order reimbursement of the temporary total disability benefits already paid by the employer.

MEDICAL EVIDENCE

Dr. Roderick R. Gregory and Dr. William Bernet testified at trial. Dr. Gregory is a practicing psychiatrist and the director of the general psychiatric unit at Hillside. Following the operating room incident, Dr. Gregory began to see Morgan approximately three times per week.

Dr. Gregory restricted Morgan to administrative duties because he believed she was unable to return to the operating room due to post-traumatic stress disorder ("PTSD") stemming from the operating room incident. Dr. Gregory recommended that Morgan stay away from the hospital because of the associated stress and ultimately referred her for electroconvulsive therapy. During one of these treatments in 2002, Morgan was diagnosed with borderline personality disorder. However, Dr. Gregory disagreed with this diagnosis and testified that it was Morgan's PTSD that rendered her unemployable.

Dr. Bernet is a board certified psychiatrist who was asked by Dr. Gregory to render a second opinion regarding Morgan. He saw her on two occasions. After Morgan's first visit, Dr. Bernet

agreed that she had sustained significant psychological trauma from the incident and that she had related symptoms consistent with PTSD and depression. At that point, he believed that she should temporarily avoid the operating room.

Dr. Bernet examined Morgan again in May 2002. At this point, he found Morgan's reaction to the operating room incident to be "way, way out of proportion with what one would normally expect." He believed that "something more had to be going on with Morgan that made it so hard for her to get over the incident." Dr. Bernet cited a number of factors that could be involved, including resentment over being released from the hospital, a problematic family life, and lingering psychological effects of a childhood illness. He also found that while her symptoms seemed to be genuine, she had a tendency to exaggerate.

Dr. Bernet concluded that Morgan's test results were consistent with borderline personality disorder. While he noted that she might have lingering PTSD, he testified that Morgan should be able to work in the operating room at this point if PTSD were the only thing wrong with her. Dr. Bernet attributed her current disability to borderline personality disorder combined with a number of other external stressors.

STANDARD OF REVIEW

Review of the findings of fact made by the trial court is de novo upon the record, accompanied by a presumption of the correctness of the findings, 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 court in a workers' compensation case. Advo, Inc. v. Phillips, 989 S.W.2d 693, 693 (Tenn. 1998). However, considerable deference must be given to the trial judge who has seen and heard witnesses, especially where issues of credibility and weight of oral testimony are involved. Story v. Legion Ins. Co., 3 S.W.3d 450, 451 (Tenn. 1999).

I.

The first issue raised on appeal is whether the trial court erred in holding that Morgan did not suffer a compensable psychiatric injury entitling her to further benefits. To establish that a compensable psychiatric injury arose out of employment, the employee must prove that the mental injury was caused by an identifiable, stressful, work-related event producing sudden mental stimulus such as fright, shock, or excessive unexpected anxiety. Goodloe v. State, 36 S.W.3d 62, 65-66 (Tenn. 2001). However, "the stress produced may not be usual stress, but must be extraordinary and unusual in comparison to the stress ordinarily experienced by an employee in the same type duty." Gatlin v. City of Knoxville, 822 S.W.2d 587, 592 (Tenn. 1991). Additionally, there can be no recovery for aggravation of an alleged occupational disease which pre-existed an employee's current employment. Gregg v. J.H. Kellman Co. Inc., 642

S.W.2d 715, 716 (Tenn. 1983). However, if a compensable injury occurs, recovery may include aggravation of an existing condition by the compensable injury. Id.

In this case, both experts testified that Morgan witnessed a horrible and stressful event resulting in her post-traumatic stress disorder. Dr. Gregory went on to testify that Morgan's PTSD stemmed directly from the operating room incident and that it rendered her unemployable. Dr. Bernet partially concurred with this analysis but stated that Morgan's current psychiatric injuries were not attributable to PTSD, but to borderline personality disorder combined with a number other stressful factors, especially her separation from the hospital. According to Dr. Bernet, the PTSD initially left Morgan unable to return to the operating room, but it was no longer the operative force rendering her unable to work.

We again note that both medical experts testified at trial and that we therefore must give deference to the trial court's determinations of credibility. After seeing and hearing the medical experts' testimony, the trial court gave greater weight to the testimony of Dr. Bernet. Because Dr. Bernet opined that Morgan's current disability was not caused by PTSD, but by borderline personality disorder combined with other, non-compensable stressors, we cannot say that the evidence preponderates against the trial court's finding that Morgan did not suffer a compensable injury entitling her to further benefits.

Morgan argues that even if she suffers from a pre-existing condition such as borderline personality disorder, her injuries should still be compensable because they result from aggravation of this pre-existing condition by her work-related PTSD. However, our review of Dr. Bernet's testimony does not support this proposition. Although Dr. Bernet stated that Morgan's PTSD was perpetuated by her personality disorder, he went on to explain that the lingering effects of PTSD were not what was preventing her from returning to work. Dr. Bernet opined that the PTSD only prevented Morgan from working in the operating room for a few months. He attributed her current inability to work to other stress related problems, such as rage over leaving the hospital and the ongoing effects of her personality disorder.

Finally, we observe that the trial court's determination that Morgan did not suffer any compensable injury was incorrect. Both experts testified that she suffered a temporary period of total disability caused by her PTSD. However, because Morgan has already been compensated by her employer for this temporary period of disability, we affirm the trial court's decision to deny any further benefits.¹ Consequently, the issue of reimbursement of medical expenses and post judgment interest is moot.

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On May 30, 2002, the trial court issued an order compelling the employer to pay temporary total disability benefits through the date of maximum medical improvement. The employer paid \$24,728 in compliance with this order. No argument has been raised that this amount was insufficient to compensate Morgan for her temporary period of total disability.

II.

The next issue raised on appeal is whether the trial court erred in adopting the employer's proposed contingent findings of facts. When a trial court intends to rule in the employer's favor on a ground, as here, precluding all recovery, the court should also make contingent findings concerning the extent the employee would otherwise be entitled to recover. Braden v. Sears, Roebuck and Co., 833 S.W.2d 496, 499 (Tenn. 1992). In doing so, the trial court obviates the need for remand in those cases where its decision is reversed or modified. After the trial court rendered its decision in this case, Morgan filed a motion asking the court to amend its judgment or, in the alternative, to adopt contingent findings of fact. The court denied the motion to amend but agreed to adopt contingent findings.²

We observe that contingent findings were appropriate here due to the court's threshold finding that "any impairment Morgan has does not result from this accident." However, the "contingent" facts adopted by the court simply reiterate its original observations and provide no insight into the extent of Morgan's actual physical impairment and vocational disability. To this end, the trial court appears to have misconstrued the suggestion in Braden. When making contingent findings of fact, the trial court's purpose should be to articulate the employee's degree of impairment and vocational disability, if any, assuming that the employee's injuries are later found to be compensable. Therefore, Morgan is correct in arguing that the trial court's findings were an inappropriate response to her motion for adoption of contingent facts. However, because these findings do not affect the substantive outcome of this case, we find the court's action in this regard to be harmless error.

III.

Morgan also argues that the trial court erred when it made factual findings relating to her resignation. She claims that evidence regarding this issue was presented only to show that her separation from work had complicated her recovery from PTSD. Therefore, she argues that she had no notice of the trial court's intent to make findings on this issue. We agree that the trial court's apparent findings regarding the nature of Morgan's separation from the hospital were not essential to its ultimate holding; however, any error in that regard does not affect the ultimate disposition of this appeal.

IV.

² In its order responding to Morgan's motion for contingent findings, the trial court mistakenly referred its findings of fact as "specific findings."

Finally, the employer argues that the trial court, after finding that Morgan did not suffer a compensable injury, should have granted its motion for reimbursement of temporary total disability benefits.

We have held that the trial court has the authority to order an employee to reimburse the employer for any temporary benefits improperly paid. McCall v. National Health Corp., 100 S.W.3d 209, 213 (Tenn. 2003). In making this determination, the trial court should employ a fundamental fairness analysis. Frazier v. AFG Ind., 1994 WL 901467, *4 (Tenn. 1994) The burden of showing entitlement to reimbursement rests upon the employer, and the trial court should resolve the issue in favor of the employee where there is any doubt as to whether repayment should or should not be made. Id.

In the current case, both medical experts agreed at trial that Morgan's PTSD stemmed from the trauma caused by the operating room incident and that, at least for a time, it completely prevented her from returning to the operating room. Additionally, it appears that this portion of Morgan's psychiatric injuries was appropriately addressed by the employer's payment of temporary total disability benefits. Therefore, we find that the evidence does not preponderate against the trial court decision to deny reimbursement.

CONCLUSION

We are unable to say that the trial court erred in denying Morgan's claim for further benefits or in denying the employer's motion for reimbursement. Therefore, the judgment of the trial court is affirmed. Costs are taxed equally to Ann Morgan and LifePoint Hospital, Inc., for which execution may issue if necessary.

J. STEVEN STAFFORD, SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

LIFE POINT HOSPITAL, INC. v. ANNE MORGAN

**Circuit Court for Giles County
No. 1899**

No. M2003-02365-SC-WCM-CV - Filed - April 28, 2005

JUDGMENT

This case is before the Court upon the motion for review filed by Anne Morgan 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.

It appears to the Court that the motion for review is not well-taken and is therefore denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are taxed equally to Anne Morgan and LifePoint Hospital, Inc., and their sureties, for which execution may issue if necessary.

DROWOTA, C.J., AND ANDERSON, J., NOT PARTICIPATING