

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

FILED March 8, 2000 Cecil Crowson, Jr. Appellate Court Clerk

PEGGY HAMMONDS,)	
)	
Plaintiff/Appellee,)	MCMINN CHANCERY
)	
v.)	NO. 03S01-9812-CH-00149
)	
NATIONAL HEALTH CORP.,)	HON. EARL HENLEY
d/b/a ATHENS HEALTH CARE CENTER,)	CHANCELLOR
)	
Defendant/Appellant.)	

For the Appellant:

Paul Campbell, III
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Chattanooga, TN 37402

For the Appellee:

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MEMORANDUM OPINION

Members of Panel:

Justice William M. Barker
Special Judge Robert E. Corlew, III
Special Judge Robert Vann Owens

This worker's compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with the provisions of *Tennessee Code Annotated* §50-6-225 (e) (3) (1998 Supp.) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The Trial Court found the worker to suffer from a condition known as reflex sympathetic dystrophy, and awarded the Appellee forty-five percent vocational disability apportioned to the body as a whole. The employer appeals asserting a number of grounds for reversal. We have considered each of the issues raised on appeal, and further we have weighed the evidence ourselves, as we are required to do, with a presumption of correctness of the decision of the Trial Judge as to factual matters, and without presumption as to legal issues. We have considered the testimony presented in the record, including the depositions of a number of medical professionals, and the record of live testimony presented before the Trial Judge. We find that the award of the Trial Judge should be modified to provide for twenty-five percent vocational disability, and further modified with regard to costs of medical and psychological care, but otherwise the decision of the Trial Judge should be affirmed.

The Appellee is forty-four years of age. She has a high school diploma, but no formal education after high school. She worked for more than a decade as an assistant physical therapist for the Appellant before her injuries occurred.

The Appellee alleged two injuries. She first alleged that on September 1, 1994, as she assisted a patient, the patient began to collapse and the Appellee had the duty of breaking the patient's fall. In doing so she injured her neck and left shoulder. She then alleged a second injury in mid-October, 1995 which she also asserts is a work-related injury. Suit was not filed by the Appellee until December 29, 1995, more than one year after her first injury, and on that basis the Appellant seeks the decision of the Court dismissing the case due to the running of the statute of limitations upon such injuries. A first report of injury was filed by the employer immediately upon the occurrence of the alleged first injury, and treatment was provided for the Appellee. The Appellee was first treated by Dr. Wallace Burroughs, who was one of three physicians then approved by the Appellant for treatment of work-related injuries. At that same time, Dr. Burroughs worked under a contract with the Appellant to

provide medical services for patients at the nursing home operated by the Appellant where the Appellee was employed. The employer paid for medical care for the Appellee for a period of time, including payment for a prescription for pain medication less than one year before suit was filed alleging worker's compensation injuries. Curiously, this prescription was paid by the employer not from funds designated for workers' compensations, but rather from a fund held by the employer at its local nursing home, intended apparently for discretionary purposes for the morale of employees. The purpose for this prescription is in controversy, yet the Appellee has presented evidence that the prescription was for further treatment of her September 1, 1994 work injury. The evidence shows that company policy would have required the submission of a claim for medical treatment for a work-related injury to be processed through the company's home office in Murfreesboro, which was not accomplished. The Appellant is self-insured, the evidence shows, for workers' compensation claims. Dr. Burroughs found that the Appellee had sustained a minimally reduced range of motion, and mild tenderness, but no permanent injury.

The Appellee also saw William Drury, M.D., an orthopedic surgeon, who diagnosed reflex sympathetic dystrophy, but was unable to testify as to whether the Appellee's condition was permanent. He did not provide an anatomical impairment rating. Donald Gibson, M.D., a family practitioner who is certified in medical evaluation of disability claims conducted an independent medical examination after he saw the Appellee once in July, 1996 for purposes of evaluation. Speaking generously, it appears that the counsel for both parties and the doctor demonstrated some frustration during the taking of Dr. Gibson's deposition which further is not a study in congeniality among counsel. Dr. Gibson opined that the Appellee sustained a permanent injury, and he presented his opinion that she sustained twenty percent anatomical impairment to the body as a whole as a result of musculoskeletal diagnoses. Two other doctors testified by C-32 forms developed by the Department of Labor. Archer Bishop, M.D., an orthopedic surgeon, testified that the Appellee sustained no permanent injury, no permanent impairment, no restrictions, and "no sign of injury of the neck or shoulder." Lawrence Ch'ien, M.D., board certified in neurology and psychiatry, testified that the Appellee sustained five percent anatomical impairment which he apportioned to a scheduled member without explanation. He found that the Appellee had

pain in her shoulder and chest. He established a number of medical restrictions including restrictions on lifting, standing, and sitting. The Appellee was also examined by John Bollinger, board certified in psychiatry and neurology, who presented his opinion that the Appellee suffered from somatization disorder which he testified was not a permanent illness. It was further his opinion that these problems sustained by the Appellee were not work-related. Finally, records from Vijai P. Sharma, Ph.D. were introduced. These records reflect that the Appellee suffered chronic pain and depression from mid-September, 1996 through July, 1997. Dr. Sharma's records reflect that he attempted to reduce the Appellee's anger toward the Defendant due to her termination from her employment.

The Trial Court found that the Appellee sustained forty-five percent vocational disability based upon reflex sympathetic dystrophy, but also found that the Appellee did sustain two separate injuries, as she alleges, affecting her neck, shoulder, and arm. The Trial Judge did not award temporary total disability benefits, the issue not being addressed in the final order. The Trial Court did require the payment of various medical and psychological bills. The Judge allowed the Appellee to present evidence that she had a good work record for the Defendant, and excellent employee ratings. He further allowed payments to be made in a lump sum. The order further provided that the Appellee is entitled to retain lifetime further medical benefits with regard to reflex sympathetic dystrophy.

We have undertaken our duty of evaluation of the evidence presented, *de novo*, with a presumption of correctness of the factual findings by the Trial Court, but without presumption as to legal conclusions. Further we have given greater weight to the findings of the Trial Court with regard to witnesses who testified in person before the Trial Court, while we have refrained from so doing when considering evidence presented by deposition. We concur with the decision of the Trial Court that the Appellee has in fact suffered an injury which is compensable, and that she is entitled to receive a percentage of permanent partial disability. We cannot find, however, that any vocational disability may be based upon reflex sympathetic dystrophy, for there is no evidence of permanency of this condition. Similarly, we are unable to find permanent vocational disability based upon somatization found by Dr. Bollinger, again for the reason that there is no evidence of permanency. The only evidence of permanent impairment is that found by Dr. Gibson (twenty percent to the

body as a whole based upon musculoskeletal problems) and Dr. Ch'ien (five percent to a scheduled member, which rating was not further explained). Dr. Burroughs found the Appellee to suffer from chronic shoulder spasms, but did not opine as to an anatomical impairment rating. Drs. Drury, Bollinger, Sharma, and Bishop did not provide anatomical ratings. We have considered the anatomical ratings provided by Dr. Gibson and Dr. Ch'ien, the further testimonies of all experts who testified by deposition, and the oral testimonies of the Plaintiff and two witnesses called by the Appellant. We have considered the Appellee's age, education, prior job experience and transferable job skills, and evidence with respect to her employability within the job market in her disabled condition. We recognize the difficulty which we have in attempting to reconcile the testimonies of the various medical professionals, particularly those in striking contrast with each other, including the finding of Dr. Gibson that the Appellee has sustained twenty percent anatomical impairment to the body as a whole contrasted with Dr. Bishop's opinion that the Appellee has "no sign of injury of the neck or shoulder," no impairment, and no restrictions. We recognize that the Appellee is not further employed by her pre-injury employer, and thus her injury is limited only by the multiplier of six times her anatomical impairment rating, pursuant to the provisions of *Tennessee Code Annotated* §50-6-241 (1998 Supp.). We have proceeded under a presumption of correctness as to the factual findings entered by the Trial Court, but have applied our conclusions of law to the facts without a presumption. Further, we have given no deference to the findings of the Trial Court with respect to deposition testimony or evidence presented through medical records, or through C-32 statements, under the theory that the Trial Court was given only the same opportunity which we have to consider that evidence. After consideration of all of these issues, it is our finding that twenty-five percent vocational disability adequately compensates the Appellee for the injuries she has sustained, and we therefore modify the findings of the Trial Court accordingly.

The Appellant further asks us to consider whether the suit filed by the Appellee should be barred pursuant to the statute of limitations. While we recognize that the circumstances certainly could be clearer as to the payment for a pain prescription in February of 1995, the Trial Court found that the Appellee had carried her burden as to this issue, and we concur. The facts surrounding this issue are stated above. Suit was filed less than one

year after payment of a prescription by the employer in February of 1995, but more than one year after the alleged injury and other treatment. Suit for compensation under the workers' compensation law must be filed within one year of the date of the injury, but is not barred if filed within one year of the last payment made voluntarily by the employer. *Tennessee Code Annotated* §50-6-203 (1998 Supp.). The payment of funds to the Appellee is not in controversy. The purpose for the payment is at issue. The employer asserts that the payment was made for a prescription for an unrelated matter, while the Appellee asserts that the payment was for medication directly related to the injury at issue. The testimonies of the Appellee, of Tanya Johnson, billing clerk for the physician who prescribed the February medication, and Brian Moorhouse, then the Administrator of the Appellant's facility at which the Appellee worked, each addressed this issue. The Trial Judge had the opportunity to see these witnesses testify. We find that the evidence adequately supports the factual finding of the Trial Court that the payment in fact was made by the Appellant to the Appellee for purposes of reimbursement of the prescription which was prescribed due to the September 1 injury alleged by the Appellee. Thus, as a matter of law, the statute of limitations does not bar the suit at issue.

Next, the Appellant asks us to consider whether the Trial Court erred in finding that a second injury was suffered by the Appellee. This issue may be of little significance because we have found that suit as to the first injury is not barred by the statute of limitations. Nonetheless, the evidence concerning this fact was presented primarily through the testimony of the Appellee, with further evidence being presented by deposition. Again recognizing the duty we have to consider factual matters with a presumption of correctness of the Trial Court's findings, and further recognizing our duty further to recognize that as to testimony presented in person before the Trial Judge, he had the opportunity to observe these witnesses and determine their credibility. Therefore we find that the evidence does support the existence of a second injury. We note that the Trial Judge found that injury to have occurred in November, 1995, although the weight of evidence would suggest the injury occurred sometime during the middle part of October.

Next, the Appellant suggests error in the implicit finding by the Trial Court that the Appellee provided notice to her employer with respect to the second injury. Again, the Trial

Court heard the testimony of the Appellee who stated that she provided actual notice to her supervisor, Nancy Tyler within thirty days following the occurrence of the injury. The Trial Court again had the opportunity to observe the Appellee and Ms. Tyler as they testified before him. To the extent that notice was discussed, the evidence before the Trial Judge substantiates his implicit finding that notice was timely provided.

The Appellant further suggests error in the award of temporary benefits, but upon our review of the record, we find no award having been made by the Trial Court, and we find this issue to be moot.

Further the employer complains that the Trial Judge awarded medical and psychological benefits which were not proven to be reasonable or necessary. Specifically, the Appellant asserts that charges totaling nearly \$1,400.00 of Dr. Vijai Sharma and Dr. Delorosa B. Yap were not properly proven. We agree. We recognize that in a worker's compensation action there are a number of issues which are presented, and frequently stipulations are reached as to the reasonableness and necessity of medical bills. Where no such stipulation is reached, however, if the Trial Court is to award payment of medical bills for physicians or other medical professionals whose treatment was not authorized previously by the employer, the worker has the duty to prove the reasonableness and necessity of such bills. Further where such unauthorized treatment is proven to be reasonable and necessary, payment by the employer is not required to be made to the employee for such expenses, except to the extent that the employee shows that he or she has previously paid those debts. Otherwise, payment should be ordered to be made by the employer directly to the health care professional providing those services. *Tennessee Code Annotated* §50-6-204 (a) (1) (1998 Supp.). We find no stipulation in the record concerning these bills, and we further find insufficient proof to justify a finding that such bills were reasonable and necessary. We therefore further modify the decision of the Trial Court directing that the bills of these two medical professionals are not made the responsibility of the employer.

The Trial Court ordered payments to the Appellee in a lump sum. The Appellant complains that the worker did not seek commutation of her award, and that there was no proof concerning the Appellee's ability to manage her money wisely, nor proof that it was in the best interest of the worker to have funds paid to her in a lump sum. While we agree

with the Appellant as to all of these factual issues, the matter is moot due to the accrual of all benefits due and payable to the Appellee.

Finally the Appellant asserts error in the order of the Trial Court allowing testimony to be presented that the Appellee was a good employee, had excellent job evaluations, and generally a good work record until the time of her injury. In other cases, we recognize that prior work performance may be very relevant to the issues, when a comparison of the worker's work performance before and after his injury is a question. Such was not an issue in the suit at bar. We agree with the Appellant that in the present suit, such evidence was presented more in the nature of character proof, showing that the worker had been a dedicated employee previously. When character is impeached, a witness obviously may then rebut such evidence, but such was not at issue here. Certainly great discretion is given to a Trial Judge in his evidentiary decisions as to evidence which should be admitted or excluded. *E.g., State v. Stinnett*, 958 S.W.2d 329, 331 (Tenn. 1997); *Dockery v. Board of Professional Responsibility*, 937 S.W.2d 863, 866 (Tenn. 1996); *Otis v. Cambridge Mutual Fire Insurance Company*, 850 S.W.2d 439, 442 (Tenn. 1992). While we concur with the Appellant that the introduction of this evidence appears to have little relevance in this cause, and while we recognize that the factual circumstance of the Appellee's work record was cited by the Trial Court in rendering his decision, we do not find that such evidence materially affected the Court's decision. Thus we find no reversible error as to this issue.

Thus, we affirm the decision of the Trial Court, modifying it to reduce the percentage of vocational disability awarded to the Plaintiff from forty-five percent to twenty-five percent, apportioned to the body as a whole. We further modify the decision to exclude the responsibility of the employer for the payment of the expenses of Drs. Sharma and Yap.

This cause is remanded to the Trial Court for the collection of costs and other matters consistent with this opinion.

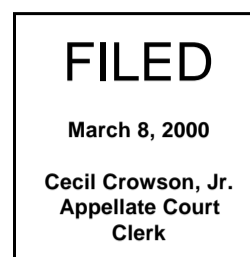
Robert E. Corlew, III, Special Judge

CONCUR:

William M. Barker, Justice

Robert Vann Owen, Special Judge

IN THE SUPREME COURT OF TENN
AT KNOXVILLE



PEGGY HAMMONDS,)	MCMINN CHANCERY
Plaintiff/Appellee)	No.18,914
)	
)	
VS.)	No. E 1998-00735-WC-R3-CV
)	
)	Hon. Earl Henley
NATIONAL HEALTH CORP.)	Chancellor
d/b/a ATHENS HEALTH CARE CENTER)	
Defendant/Appellee.)	

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 facts 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 equally to the Appellee, Peggy Hammonds and Appellant, National Health Corporation, dba Athens Health Care Center and Paul Campbell, III, surety, for which execution may issue if necessary.

03/08/00