IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
August 20, 2001 Session

JANET CRAME v. GRINNELL CORPORATION

Direct Appeal from the Chancery Court for Chester County
No. 9541 Joe C. Morris, Chancellor

No. W2001-00542-SC-WCM-CV - Mailed February 6, 2002; Filed April 30, 2002

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. In this appeal, the employer, Grinnell Corporation, contends the evidence preponderates against the trial court's award to the employee, Janet Crame, of twenty-two percent (22%) permanent partial disability to both arms. For the reasons stated in this opinion, we affirm the judgment of the trial court.

Tenn. Code Ann. § 50-6-225(e) (2000) Appeal as of Right; Judgment of the Chancery Court Affirmed

W. MICHAEL MALOAN, SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and JOE C. LOSER, JR., SP. J., joined.

Jeffrey P. Boyd, Jackson, Tennessee, for the appellant, Grinnell Corporation

George L. Morrison, III, Jackson, Tennessee, for the appellee, Janet Crame

MEMORANDUM OPINION

The plaintiff, Janet Crame (Crame), was thirty-six (36) years old at the time of trial. She graduated from high school and began, but did not finish, some cosmetology courses. Before working at Grinnell in 1990, she worked for Dollar General Store and IAPPEL, a shipping company. For the first two years at Grinnell, Crame worked in the labor pool at various packing and assembly jobs. Crame was then assigned the job of "threader" where she repetitively operated hand machines.

After about two years as a threader, Crame began to experience pain, numbness, and weakness in both hands. Grinnell referred her to Dr. James Spriull, a neurologist, who found early signs of carpal tunnel syndrome and encouraged her to wear braces on her wrists. She was reassigned to the labor pool and her pain subsided.

Grinnell later returned Crame to the assembly department and she began to have pain and numbness in both hands again. She saw Dr. Kenneth Warren, a family practitioner, on July 21, 1999, with complaints of numbness and tingling in both hands. Dr. Warren ordered a nerve conduction study which was normal. Dr. Warren saw her again on July 30, 1999. He released her to regular duty with no impairment and referred her to Dr. Claibome Christian, an orthopedic surgeon

Crame saw Dr. Christian, on August 3 and August 16, 1999. Dr. Christian diagnosed "fairly classic tendinitis" and advised her to either "put up with her current complaints or seek alternative employment." Dr. Christian returned her to work with no impairment rating.

Because Crame continued to experience problems with her hands, Grinnell referred her to Dr. Keith Nord, an orthopedic surgeon. On October 25, 1999, Dr. Nord diagnosed overuse syndrome and issued work restrictions of no twisting or forceful gripping. Dr. Nord released her on November 3, 1999, with recommendation that she wear carpal tunnel wrist splints and she should consider other employment. Dr. Nord was of the opinion Crame's work can cause the overuse syndrome. He did not assign any impairment due to the lack of objective findings. He stated, "She does not have a medically documented injury that we can see."

Crame continued to experience problems and Grinnell referred her to Dr. Carl Huff, an orthopedic surgeon, on November 9, 1999. She had complaints of pain, numbness and weakness in both hands and arms. Dr. Huff ordered a repeat nerve conduction study which was also normal. Dr. Huff released her with no restrictions or impairment.

At her attorney's request, Crame was evaluated by Dr. Joseph Boals, an orthopedic surgeon, on May 3, 2000. She gave a history of repetitive heavy twisting and gripping of both hands. Dr. Boals' physical exam showed a positive Phalen's test on the right arm and positive cubital tunnel syndrome in both arms. Dr. Boals indicated in a C-32 form that Crame's injury more probably than not arose out of her employment. He stated "In my opinion this woman has impairment from her cumulative trauma disorder, or overuse syndrome." Dr. Boals assigned a ten percent (10%) permanent impairment to each upper extremity according to the *AMA Physicians Guide to Evaluation of Permanent Impairment* based on bilateral overuse syndrome, probable mild cubital tunnel syndrome bilaterally, and probable mild carpal tunnel syndrome bilaterally, worse on the right. He recommended no repetitive or heavy gripping and no temperature extremes or vibration.

During her treatment in 1999, Crame was moved to a job assembling smaller, lighter parts and she continued to hold that job at trial. From the time she first reported problems with her arms she missed two days of work. Crame testified she continues to have pain, numbness, and tingling

in both hands and arms, and "it affects everything I do." She stated she continues to work out of necessity.

After hearing all the evidence at trial on January 10, 2001, the trial court entered his findings on February 5, 2001, and judgment on March 1, 2001, in favor of the plaintiff, Janet Crame, and assessed her vocational disability at twenty-two percent (22%) to both arms. The defendant, Grinnell Corporation, has appealed and submits two issues on appeal: the trial court's finding of a compensable permanent injury and the extent of vocational disability.

ANALYSIS

The scope of review of issues of fact is *de novo* upon the record of the trial court, accompanied by a presumption of correctness of the findings, unless the preponderance of evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). *Lollar v Wal-Mart Stores, Inc.*, 767 S.W.2d 143 (Tenn. 1989). When a trial court has seen and heard witnesses, especially where issues of credibility and weight of oral testimony are involved, considerable deference must be accorded the trial court's factual findings. *Krick v City of Lawrenceburg*, 945 S.W.2d 709, 712 (Tenn. 1997). However, where the issues involve expert medical testimony which is contained in the record by deposition, as it is in this case, then all impressions of weight and credibility must be drawn from the contents of the depositions, and the reviewing court may draw its own impression as to weight and credibility from the contents of the depositions. *Overman v Williams Sonoma, Inc.*, 803 S.W.2d 672, 676-77 (Tenn. 1991). Where medical testimony differs, the trial court may accept the opinion of one medical expert over the opinions of others unless the preponderance of the evidence is otherwise. *Kellerman v Food Lion, Inc.*, 920 S.W.2d 333, 335 (Tenn. 1996); *Johnson v Midwesco*, 801 S.W.2d 804, 806 (Tenn. 1990).

In a workers' compensation case, the employee has the burden of proving by a preponderance of the evidence each and every element of her claim. *White v Werthan Industries*, 824 S.W.2d 158 (Tenn. 1992). Except in the most obvious case, the employee must establish causation and permanency of her injury through expert medical testimony. *Tindall v Waring Park Association*, 725 S.W.2d 935 (Tenn. 1987). To establish causation, the employee may also introduce lay as well as expert medical testimony and any reasonable doubt as to whether an injury arose out of the employment is to be resolved in favor of the employee. *Legions v Liberty Mutual Ins. Co.*, 703 S.W.2d 620, 622 (Tenn. 1986). Absolute certainty is not required and testimony of "could be" or "is possibly" the cause of any injury combined with lay testimony of a work-related injury have been held to be sufficient to support an award of benefits. *Thomas v Aetna Life & Casualty Co.*, 812 S.W.2d 278 (Tenn. 1991).

As to permanency, expert medical testimony must preponderate in favor of permanency. Proof of permanency must be more than "possible," *Singleton v. Procon Products*, 788 S.W.2d 809, 811-12 (Tenn. 1990), and must be "reasonably certain," *Kerr v. Magic Chef, Inc.*, 793 S.W.2d 927, 929 (Tenn. 1990), or "preponderates in favor of permanency," *Owens Illinois, Inc. v Lane*, 576 S.W.2d 348, 350 (Tenn. 1978). A doctor describing a plaintiff's condition as "chronic"

and placing restrictions on activities have been held to be sufficient to establish permanency. *Walker Saturn Corp*, 986 S.W.2d 204, 207 (Tenn. 1998). The medical expert's finding of permanency may be based on subjective symptoms or objective findings. *Haley v Dyersburg Fabrics, Inc.*, 729 S.W.2d 665 (Tenn. 1987).

Grinnell submits the evidence in this case preponderates against the trial court's finding of causation and permanency of a work-related injury. Grinnell focuses on Dr. Boals' use of the word "probable" as being too speculative or conjectural to support an award of benefits. We disagree. Dr. Boals' report clearly states Crame's condition was more likely than not caused by her employment; a permanent impairment rating to each arm was assigned according to the *AMA Guide*; and no repetitive or heavy gripping or vibration was recommended. Dr. Boals states unequivocally that "This woman has impairment from her cumulative trauma disorder, or overuse syndrome."

In addition to Dr. Boals' opinions, Dr. Spruill found early carpal tunnel syndrome; Dr. Christian diagnosed fairly classic tendinitis; and Dr. Nord diagnosed overuse syndrome and assigned work restrictions of no twisting or forceful gripping. The fact that none of these treating physicians assigned any permanent impairment rating does not preclude an award of vocational disability. *Walker v Saturn Corp.*, 986 S.W.2d 204, 207 (Tenn. 1998); *Corcoran v Foster Auto GMC., Inc.*, 746 S.W.2d 452 (Tenn. 1988).

Further, we find "probable" is more certain than "possible"; is more likely than not, or preponderates in favor of; and is reasonably certain to support an award in the present case. The evidence does not preponderate against the trial court's finding of causation and permanency of a compensable work-related injury.

The extent of vocational disability is a question of fact to be determined from all the evidence, including both expert and lay testimony. *Collins v Howmet Corp.*, 970 S.W.2d 941, 943 (Tenn. 1998). In assessing vocational disability, the trial court is required to consider many pertinent factors such as the age, education, skills, and training, local job opportunities and capacity to work at types of employment available in the worker's disabled condition. Tenn. Code Ann. § 50-6-241 (a)(1); *Worthington v Modine*, 798 S.W.2d 232, 234 (Tenn. 1990); *Roberson v Loretto Casket Co.*, 722 S.W.2d 380, 384 (Tenn. 1986). In his findings, the trial court considered these relevant factors and specifically found Crame had no vocational skills. We find the evidence does not preponderate against the trial court's award of twenty-two percent (22%) permanent partial disability to both arms.

CONCLUSION

The judgment of the trial court is affirmed. The costs of this appeal are taxed to the defendant, Grinnell Corporation.

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W. MICHAEL MALOAN, SPECIAL JUDGE

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JUDGMENT

This case is before the Court upon Applicant's 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 will be assessed to Grinnell Corporation for which execution may issue if necessary.

PER CURIAM

Holder, J., not participating