

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

October 18, 2001 Session

ROBERTSON COUNTY BOARD OF EDUCATION
V.
KAREN PRICE KNIGHT

Direct Appeal from the Circuit Court of Robertson County
No. 9138 John Gasaway, III, Circuit Judge

No. M2001-00516-WC-R3-CV - Mailed - March 1, 2002
Filed - April 2, 2002

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with Tenn. Code Ann. § 50-6-225(e) for hearing and reporting of findings of fact and conclusions of law. The employer appeals an award of 50 percent disability to the body as a whole as excessive, and an award of past and future chiropractic expenses as unauthorized. We modify the judgment below to award 40 percent disability to the body as a whole.

Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Robertson County Circuit Court is Modified in Part and Affirmed in Part.

HOWELL N. PEOPLES, SP. J., delivered the opinion of the court, in which ADOLPHO A. BIRCH, JR., JUSTICE, and WILLIAM H. INMAN, SR. J., joined.

James H. Tucker, Jr. and Stacey Billingsley Cason, Manier & Herod, Nashville, Tennessee, for the Appellant, Robertson County Board of Education.

Larry L. Roberts and D. Stuart Caulkins, Roberts and Associates, Nashville, Tennessee, for the Appellee, Karen Price Knight.

MEMORANDUM OPINION

Facts

Karen Price Knight, age 34, was employed as a cafeteria worker for the Robertson County Board of Education (“Board of Education”) on March 5, 1999 when she injured her back. She was initially treated at the emergency room at Northcrest Medical Center and referred to Dr. Tommy Crunk, a general practitioner, in the event her pain did not subside. Dr. Crunk saw her on three occasions and referred her to Dr. Douglas C. Mathews, a neurosurgeon, who sent her to physical therapy and a work hardening program. When her symptoms did not abate, Dr. Mathews informed her that her injury was “beyond his realm of expertise” and referred her back to Dr. Crunk, who released her.

Knight received a letter from the Tennessee Department of Labor advising that she was entitled to a panel of three physicians. She requested additional medical treatment and eventually it was provided. Dr. Jack Miller was selected to provide a second opinion and determined she could do her regular job and advised rest for a few minutes after every couple of hours of work if discomfort occurred. He returned her to work without any permanent impairment. When she returned to him with complaints of pain all over her back and of soreness and numbness in her right arm, he took her off work and recommended that she be seen by Dr. Robert Clendenin. Dr. Clendenin saw her one time. He did not find any objective signs of injury and declined to assign an impairment rating for purely subjective complaints. In October 1999, Knight was informed there would be no further authorized medical treatment; Knight testified that she understood that to mean the employer’s carrier would no longer pay for her medical treatment. She then sought medical treatment on her own. She was referred to Dr. Rodney Wachter, a chiropractor, who testified that he found spasm, an objective sign of injury, in spinal muscles, and that there was a causal connection between the injury at work and her resulting impairment. According to Dr. Wachter, she has a permanent medical impairment of 10 percent to the body, and cannot engage in repetitive lifting, bending, stooping or stretching, but can perform a job that requires her to stand for six hours a day as long as she has sit-down periods or breaks.

She has incurred bills in the amount of \$2,037 for treatment by Dr. Wachter, who testified, without contradiction, that his bills were reasonable and necessary. Although Knight is a high school graduate, she has no employment skills other than as a cafeteria worker. Based upon these facts, the trial court awarded a 50 percent disability to the body as a whole, and ordered the Board of Education to pay for past and future treatment by Dr. Wachter.

Standard of Review

Review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, 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 courts in workers’

compensation cases. *Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452 456 (Tenn. 1988). Conclusions of law are subject to *de novo* review with no presumption of correctness. *Ganzevoort v. Russell*, 949 S.W.2d 293 (Tenn. 1997). Where the trial judge has made a determination based upon the testimony of witnesses whom he has seen and heard, great deference must be given to that finding in determining whether the evidence preponderates against the trial judge's determination. *Humphrey v. David Witherspoon, Inc.*, 734 S.W.2d 315 (Tenn. 1987). When the medical testimony is presented by deposition, as it was in this case, this Court is able to make its own independent assessment of the medical proof to determine where the preponderance of the evidence lies. *Cooper v. INA*, 884 S.W.2d 446, 451 (Tenn. 1994).

Issues

The Board of Education presents the issues on appeal as follows:

1. "The trial judge's award of vocational disability benefits in the amount of 50 percent to the body as a whole is excessive based upon the facts of this case."
2. "The trial judge erred in determining that the Plaintiff is responsible for the Defendant's unauthorized past and future chiropractic expenses with Dr. Wachter."

Discussion

I.

The extent of vocational disability is a question of fact to be determined from all of the evidence, including lay and expert testimony. Tenn. Code Ann. § 50-6-241(c); *Worthington v. Modine Mfg. Co.*, 798 S.W.2d 232, 234 (Tenn. 1990). In making determinations of vocational disability, the court must consider all pertinent factors including lay and expert testimony, employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's disabled condition. Tenn. Code Ann. § 50-6-241(c); *Roberson v. Loretto Casket Co.*, 722 S.W.2d 380, 384 (Tenn. 1986). If the court makes an award five times or more than the medical impairment of the employee, the court must make specific findings of fact detailing the reasons for awarding the maximum impairment. Tenn. Code Ann. 50-6-241(c). At age 34, Knight is relatively young. She was released to return to work with restrictions on June 1, 2000. She has made no effort to return to the job market, and has offered no evidence that employment within her restrictions is not available. Pursuant to our *do novo* review, we find that the evidence establishes that Knight has a vocational disability of 40 percent to the body as a whole, and the award of the trial court is modified accordingly.

II.

The Board of Education says it should have no liability for the charges of Dr. Wachter because an employee who is dissatisfied with the medical care provided by an employer is under

a duty to notify the employer before incurring alternative medical assistance. Tenn. Code Ann. § 50-6 204(a)(4); *Buchanan v. Mission Insurance Company*, 713 S.W.2d 654 (Tenn. 1986). The issue of whether an employee is justified in seeking additional medical services without consulting the employer is a question of fact and depends on the circumstances of each case. *Bazner v. American States Ins. Co.*, 820 S.W.2d 742, 746 (Tenn. 1991); *Dorris v. INA Insurance Co.*, 764 S.W.2d 538, 541 (Tenn. 1989); *Pickett v. Chattanooga Conval. & Nursing Home*, 627 S.W.2d 941, 944 (Tenn. 1982). The evidence in this case establishes that the employer's insurance carrier told Knight that it would not be liable for further medical treatment. Even after a trial, a judge may not limit or deny medical benefits that may be incurred as a result of an injury. *Roark v. Liberty Mut. Ins. Co.*, 793 S.W.2d 932, 935 (Tenn. 1990); *Underwood v. Liberty Mutual Insurance Co.*, 782 S.W.2d 175, 176 (Tenn. 1989). Where, as here, (a) medical treatment has been provided that fails to resolve the work-related injury, (b) further medical treatment is not authorized by the employer, and (c) the employee, in good faith, obtains further medical services for the injury, the employer is liable for the additional medical services. *Atlas Powder Company v. Grant*, 200 Tenn. 617, 293 S.W.2d 180 (1956). We agree with the trial court that Knight was justified in obtaining additional medical treatment for her injury and that the Board of Education is liable for the reasonable charges for same.

CONCLUSION

The award of permanent partial disability is modified to 40 percent to the body as a whole, and the award of medical benefits is affirmed. Costs of the appeal are taxed against the Appellant and its surety.

Howell N. Peoples, Special Judge

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**ROBERTSON COUNTY BOARD OF EDUCATION v. KAREN PRICE
KNIGHT**

**Circuit Court for Robertson County
No. 9138**

No. M2001-00516-WC-R3-CV - Filed - April 2, 2002

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 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 paid by the Appellant, Robertson County Board of Education, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM