

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

FILED

July 30, 1996

Cecil Crowson, Jr.
 Appellate Court Clerk

JOYCE JONES, Plaintiff/Appellee v. NEW YORK UNDERWRITERS INSURANCE COMPANY, Defendant/Appellant))))))))))))	SULLIVAN CHANCERY NO. 03S01-9505-CH-00050 Hon. Richard E. Ladd
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For the Appellant:

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MEMORANDUM OPINION

Members of Panel:

Justice Penny J. White
 Senior Judge John K. Byers
 Special Judge Joseph C. Loser

AFFIRMED.

BYERS, Senior Judge

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.

Plaintiff alleged injury to her back and neck at work. The trial judge awarded her 15 percent permanent partial disability to the body as a whole.

We affirm the judgment of the trial court.

Plaintiff was working for at Arcata Graphics on March 17, 1992 when her right index finger was caught in a re-press roller. She tried to jerk her finger out of the roller, fearing her whole hand and arm would be caught, and her supervisor pushed her back from the machine while trying to turn the machine off. She was treated in the emergency room and subsequently referred to Dr. James Phillips, orthopedic surgeon. She received anti-inflammatory medication and underwent physical therapy. Two weeks later she began experiencing increasing pain, "moving up her arm and in her shoulder and neck area," and still later she began having severe headaches on the right side of her head.

Dr. Gregory Corradino, a neurologist, began treating plaintiff in late 1993 and performed surgery on her cervical spine. When deposed, Dr. Phillips opined that if plaintiff's finger crush injury were accompanied by a jerking maneuver, it could have caused her disc rupture, and that this possible causal connection would be strengthened if surgery resolved her complaints.

Dr. Gregory Corradino found that plaintiff had a herniated cervical disc at C4/5 and performed surgical removal of the disc. When asked whether the disc herniation had been caused by plaintiff's jerking her finger out of the press at work, he opined that such motion could cause a disc herniation.

Dr. John Marshall, physiatrist, evaluated plaintiff for defendant and treated her for nine months. He opined that although the jerking motion could herniate a disc, he did not think that it had done so in this case.

Plaintiff testified that she jerked her head and neck hard to remove her finger from the press. She further said that prior to the injury at Arcata Graphics, she had

never had any injury or trauma to the upper part of her body or shoulders. She felt the surgery helped her a great deal but that she still has pain in her neck and shoulder.

The trial court considered both the lay and expert testimony and found that the preponderance of the evidence supports the plaintiff's claim that her jerking motion caused the herniated disc.

Defendant appeals the trial court's award of permanent partial disability, asserting that plaintiff has failed to prove by a preponderance of the evidence that her accident at work, which defendant admits injured plaintiff's finger, also caused her herniated disc.

Our 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 finding, unless the preponderance of the evidence is otherwise. TENN. CODE ANN. § 50-6-225(3)(2). *Stone v. City of McMinnville*, 896 S.W.2d 584 (Tenn. 1991).

The plaintiff in a workers' compensation suit has the burden of proving every element of her case by a preponderance of the evidence. *Tindall v. Waring Park Ass'n.*, 725 S.W.2d 935, 937 (Tenn. 1987). Causation and permanency must be shown in most cases by expert medical evidence. *Id.* "Causal connection" means "cause in the sense that the accident had its origin in the hazards to which the employment exposed the employee while doing her work." *Tapp v. Tapp*. 236 S.W.2d 977, 979 (Tenn. 1951). Although absolute certainty is not required for proof of causation, medical proof that the injury was caused in the course of the employee's work must not be speculative or so uncertain regarding the cause of the injury that attributing it to the plaintiff's employment would be an arbitrary determination or a mere possibility. If, upon undisputed proof, it is conjectural whether disability resulted from a cause operating within petitioner's employment, or a cause operating without employment, there can be no award. If, however, equivocal medical evidence combined with other evidence supports a finding of causation, such an inference may nevertheless be drawn by the trial court under the case law. *Livingston v. Shelby Williams Indus., Inc.*, 811 S.W. 2d 511 (Tenn. 1991).

An accidental injury arises out of one's employment when there is apparent to the rational mind, upon a consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. *Fink v. Caudle*, 856 S.W.2d 952 (Tenn. 1993).

The trial court held that the plaintiff met her burden of proving causation by the equivocal medical testimony of two treating physicians combined with plaintiff's own credible testimony and the testimony of her supervisor.

The judgment of the trial court is affirmed and the case is remanded. Costs are assessed to the appellant.

John K. Byers, Senior Judge

CONCUR:

Penny J. White, Justice

Joseph C. Loser, Jr., Special Judge

