

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

FILED

April 25, 1997

**Cecil W. Crowson
Appellate Court Clerk**

CAROLYN F. HUMPHRIES,)
)
Plaintiff/Appellee)
)
v.)
)
)
)
KFC USA INC.,)
)
Defendant/Appellant)

DAVIDSON CHANCERY
NO. 01S01-9607-CH-00147
HON. ROBERT S. BRANDT,
CHANCELLOR

For the Appellant:

Daniel C. Todd
Evans & Todd
Suite Three Hundred
219 Second Avenue North
Nashville, TN 37201

For the Appellee:

David Burlison
Abbott & Burlison
6263 Poplar Avenue
Suite 1130
Memphis, TN 38119

Mailed March 1, 1997

MEMORANDUM OPINION

Chief Justice Adolpho A. Birch, Jr.
Senior Judge James L. Weatherford
Special Judge Joe C. Loser, Jr.

AFFIRMED.

WEATHERFORD, 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. Section 50-6-225 (e) (3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

The trial court awarded the plaintiff 30% permanent partial disability to the body as a whole. The plaintiff was also awarded medical expenses she had to pay herself. Plaintiff's group insurance had paid a part of the medical expenses regarding plaintiff's March, 1994 back treatment, resulting in surgery and subsequent follow-up care. The trial court did not award any amount for temporary total benefits.

The defendant below appeals the judgment, asserting that the evidence preponderates against the trial court's finding that plaintiff's injuries were the result of a job related injury that occurred on or about March 4, 1994.

The plaintiff below appeals the judgment, asserting that the trial court erred in not awarding any amount for temporary total benefits, not awarding medical expenses except the amount that plaintiff paid herself, and awarding only 30 percent

permanent partial disability to the body as a whole.

We affirm the judgment of the trial court.

The plaintiff was 50 years old at the time of trial, April 25, 1996. She had been employed by the defendant for approximately twelve (12) years, six (6) or seven (7) years in North Carolina and four (4) or five (5) years in Tennessee. Plaintiff went to the 10th grade in school, had no specialized training. She had worked in a daycare center preparing food prior to her employment with the defendant.

Plaintiff was working 40 hours per week prior to her injury and sometimes worked overtime.

On the morning of March 4, 1994, when plaintiff was doing a lot of lifting, she commented to a co-employee, "Dang, I think I broke my back". She felt like something had "pulled or snapped". Plaintiff continued to work until late in the afternoon. The manager told plaintiff to take off early and go to the doctor. The manager instructed plaintiff to write a check for this medical service and that they would reimburse her.

Plaintiff went back to work for a week or so and because of persistent pain, consulted another doctor. At this time, plaintiff asked her manager to put her on a weeks vacation. Dr. West sent plaintiff to Lebanon Medical Center where she saw Dr. John Guillermin, a neurosurgeon. Dr. Guillermin performed

surgery on March 16, 1994 for a right ruptured disk at L-5. Plaintiff never returned to work. Dr. Guillermin fixed plaintiff's anatomical impairment at 10 percent to the body as a whole. He opined that these findings were consistent with the history and complaints provided by the plaintiff.

Dr. Guillermin had no reference in his notes concerning when plaintiff would have reached maximum medical recovery, and therefore stated it would be 12 months after surgery.

Our review is de novo with a presumption that the findings of the trial court are correct, unless the evidence preponderates otherwise. Tenn. Code Ann. Section 50-6-225 (e) (2).

We find, as did the trial judge, the medical evidence given by Dr. John Guillermin to be credible on the issues of causation and disability.

We find that the evidence does not preponderate against the trial court's findings that the plaintiff suffered a 30% permanent disability resulting from her work related accident.

We find that the evidence in the record does not preponderate against the trial court's finding that plaintiff was entitled to only the medical expense she had paid herself. Also we concur with the trial court's finding that there was not sufficient evidence to make an award of temporary total benefits.

The party claiming the benefits of the Worker's Compensation Act has the burden of proof to establish her claim

by a preponderance of all the evidence, **Oster, A Div. of Sunbeam Corp. v. Yates, 845 SW2d 215, 217 (Tenn. 1992).**

We find that the evidence does not preponderate against the trial court's finding on any of the issues raised on this appeal.

Therefore, we affirm the Judgement of the trial court.

Costs are taxed to the appellant.

James L. Weatherford, Senior Judge

CONCUR:

Adolpho A. Birch, Jr., Chief Justice

Joe C. Loser, Jr., Special Judge

