

IN THE SUPREME OF TENNESSEE

AT NASHVILLE

FILED

April 21, 1999

Cecil W. Crowson
Appellate Court Clerk

<i>GLOBE BUSINESS FURNITURE</i>	}	<i>SUMNER CIRCUIT</i>
<i>OF TENNESSEE, INC.</i>	}	<i>No. Below 16846-C</i>
	}	
<i>Plaintiff/Appellee</i>	}	
	}	<i>Hon. Thomas Goodall, Jr.</i>
<i>vs.</i>	}	
	}	
	}	<i>No. 01S01-9804-CV-00074</i>
<i>GAYLA YOUNG</i>	}	
	}	
<i>Defendant/Appellant</i>	}	<i>AFFIRMED</i>

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 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 defendant/appellant, for which execution may issue if necessary.

IT IS SO ORDERED on April 21, 1999.

PER CURIAM

MEMORANDUM OPINION

This workers's compensation appeal has been referred to the Special Workers' Compensation Panel of the Supreme Court in accordance with Tenn. Code Ann. §50-6-225 (e)(3) for hearing and reporting of findings of fact and conclusions of law. The employee or claimant, Young, argues that the evidence preponderates against the trial court's finding that she did not suffer a compensable injury within the course and scope of her employment.

The employer, Globe Business Furniture of Tennessee, Inc., filed a complaint for declaratory judgment asking the trial court to declare their rights and duties as they applied to the employee or claimant, Young, under Tennessee's Workers' Compensation Act.

Without knowing of the declaratory judgment action, the employee or claimant Young, filed a complaint seeking worker's compensation benefits against the employer, Globe Business Furniture and its' workers' compensation carrier.

The trial court entered an order consolidating the two cases.

The case was tried as a usual workers' compensation case, and after a trial on the merits, the trial judge dismissed the employee's or claimant's suit for worker's compensation benefits and sustained the employer's position that it owed no benefits to the employee or claimant.

Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless

the preponderance of the evidence is otherwise. Tenn. Code Ann. §50-6-225 (e)(2).

The employee or claimant asserts that in June or July, 1996, she was holding a paint line with another employee when the other employee suddenly dropped his part, which dragged her down, causing her to have pulled muscles in her arm(s), shoulder and neck.

She further insists that in October, 1996, that she was pulling upholstery with her right arm and stapling with her left arm, when she suddenly dropped the stapler. When she tried to catch the stapler, she again pulled the muscles in her left arm, shoulder and neck.

Claimant consulted her family doctor, Dr. J. P. Cox, who referred her to Dr. Jones J. Morgan, a neurologist. Then Dr. Cox referred claimant to Dr. Richard Berkman. Dr. Berkman confirmed that claimant had a large disc rupture at C6-7. He performed surgery on November 4, 1996. Dr. Berkman stated that claimant had reached maximum medical improvement on April 9, 1997 with no work restrictions whatsoever. Dr. Berkman gave complainant a seven (7) percent permanent impairment rating under the American Medical Association Guidelines.

Dr. Berkman testified, "discs can rupture from a number of causes. Sometimes people wake up in the morning and they have a ruptured disc. But for the most part, the majority of patients I have, will have some sort of inciting event. And she seemed to give a history of an inciting event that lead to the symptoms. And I think it's reasonable and it's consistent with a large disc rupture."

Dr. Berkman further testified, "what caused the disc to rupture, I don't

know if it was the first accident in June, or the second accident in October, or even preceding that."

The claimant also saw Dr. Collins in connection with her complaints. Dr. Collins referred claimant back to Dr. Berkman. Dr. Collins was the employer's workers' compensation physician.

The claimant, on January 14, 1998, saw Dr. Leon Ensalada for an Independent Medical Evaluation.

In the course of his evaluation, Dr. Ensalada had the benefit of the medical records of all physicians who had seen claimant and records of Columbia Care Medical Center.

Dr. Ensalada concluded that the claimant had a history of a non-work related cervical radiculopathy which had completely resolved with surgery.

Dr. Ensalada further testified that claimant had not sustained any decrease in her physical capabilities and that she retained the capacity to perform any work in which she was educated, trained or experienced without restriction on a full-time basis.

The trial court found that Dr. Ensalada was in the best position to determine medical causation. He had all of the claimant's medical records going back to her first visit with Dr. Cox.

The trial court further found that claimant was not a credible witness.

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. **Hill v. Eagle**

Mfg., Inc., 942 S.W.2d 483, 487 (Tenn. 1997).

The party claiming the benefits of the Workers' 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 S.W.2d 215, 217 (Tenn. 1992).

For the above reasons, the evidence fails to preponderate against the findings of the trial court. Therefore, the judgment of the trial court is affirmed. Costs on appeal are taxed to defendant/appellant.

James L. Weatherford, Senior Judge

CONCUR:

Adolpho A. Birch, Jr., Associate Justice

Joe C. Loser, Jr., Special Judge