

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

September 26, 2001 Session

HELEN L. SIZEMORE v. QUEBECOR PRINTING, INC.

**Direct Appeal from the Circuit Court for Hawkins County
No. 8286 Ben K. Wexler, Circuit Judge**

Filed April 1, 2002

No. E2000-02624-WC-R3-CV

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. The trial court awarded the employee 39 percent permanent partial disability to the body as a whole. The employer appealed insisting the employee's condition was not work-related. Judgment of the trial court is affirmed.

**Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Circuit Court
Affirmed**

THAYER, SP. J., delivered the opinion of the court, in which ANDERSON, J. and BYERS, SR. J., joined.

Steven H. Trent and Timothy B. McConnell, of Johnson City, Tennessee, for Appellant, Quebecor Printing, Inc.

Phillip L. Boyd, of Rogersville, Tennessee, for Appellee, Helen L. Sizemore.

MEMORANDUM OPINION

The trial court awarded the employee, Helen L. Sizemore, 39 percent permanent partial disability to the body as a whole. The employer, Quebecor Printing, Inc., appeals insisting the employee's condition was not work-related.

Brief Facts

The employee started working for the defendant printing company on November 11, 1996, at its Hawkins County plant. On the third day of work, November 13, she testified she injured her

back while lifting books. She described the incident as feeling sharp pain in her low back. As to her prior physical condition, she stated she had not had any real back problems except for some pulled muscles which healed. The day after the work incident, she went to the hospital emergency room where she was released to return to light duty work. She worked a day or two and then stopped saying her condition was such that she could not do the work. She testified she has not worked since leaving employment with the defendant. During the course of her testimony, she said she had also experienced numbness in her legs and left arm and hand.

Medical Evidence

The record indicates she has seen numerous doctors for her condition. Some of the doctors gave testimony at the trial below. All of this medical evidence was presented by deposition except for reports, etc.

Dr. William E. Kennedy, a retired orthopedic surgeon now engaged in performing independent medical examinations, testified he saw her on December 1, 1998; he reviewed ten different records including films of the original MRI study, CT myelogram and records from other doctors. Based on the history of the November 13 incident, he concluded she had sustained an injury at work to the L5 disc and he described her condition as a small herniated disc which he said was difficult to detect. Dr. Kennedy was of the opinion she should be subject to certain restrictions at work and he gave a 13 percent medical impairment. He said she reached her maximum medical impairment on June 6, 1998, when she received the last treatment from Dr. Harlan Simpson. He did not feel surgery was warranted at the present time. The doctor gave a second deposition after another MRI study was done and said his original opinion had not changed.

Dr. John B. Raff, an orthopedic surgeon, stated he saw the employee about three months after the alleged incident at work; that x-rays were normal and he could not find any reason for her discomfort; and that he proceeded on the assumption that she had a back strain or sprain. (At this time the MRI study had not been performed).

Dr. Fred A. Killeffer, a neurosurgeon, testified he performed an independent medical examination during February 1999 and he felt she was exaggerating her symptoms; that the MRI study indicated mild degenerative changes and the disc had lost some of its fluid and was slightly dehydrated; and that she had a disc bulge posteriorly which was due to aging and not from an injury. He gave no impairment and did not impose any work restrictions.

Dr. Steven J. Addonizio, a radiologist at the hospital where the MRI studies were performed, testified the films indicated degenerative disc disease at the L5-S1 disc with mild posterior central bulging. He did not find evidence of nerve root impingement. He stated that a disc can move from time to time - - be in place one day and then shift and impinge upon a nerve root at another time.

A letter signed by Dr. Josefina Q. Marcelo and dated December 12, 1997 was introduced into evidence. It merely recited that the patient had been found to have a herniated disc and that she had

been referred to a neurosurgeon. The record indicates the referral was to Dr. Paul C. Peterson who saw her three times during late 1997 and early 1998. Dr. Peterson's medical records were introduced into evidence during the deposition testimony of Dr. Killeffer. Dr. Peterson could not find anything to explain her problems from all of the testing and examinations. He did note the scan of the lumbar spine showed a small posterior central bulge at L5-S1 with no evidence of nerve root compromise.

Other Conflicting Evidence

The employee testified she told her supervisor, Walter Collins, she had been injured while working; Mr. Collins denied the statement and said the first he was aware of an injury at work was when the suit was filed. He also denied having anything to do with sending her to the plant doctor. Witness Newana Christian, the defendant's human resource manager at the time in question, also denied being aware of a work-related injury. However, she admitted during her testimony that the company had received a bill from a Dr. Bambino (plant doctor) which indicated he saw the employee on November 15 and 27, 1996 and the bill stated "thoracic strain, contused thigh" and that it was marked "work-related."

Standard of Review

We must review the case *de novo* accompanied by a presumption of the correctness of the findings of fact by the trial court unless we find the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2).

Analysis

Two issues are raised on appeal. The employer argues the evidence preponderates against the conclusion of the trial court that the condition of the employee was work-related. The issues of causation and notice of injury involved sharply conflicting testimony from most all of the witnesses. Drs. Bambino and Raff saw the employee rather soon after the incident at work and did not have the benefit of various x-rays and imaging studies which were later conducted. Drs. Killeffer and Peterson concluded her condition was not work-related and this evidence conflicted with extensive testimony by Dr. Kennedy that her condition was a result of the lifting incident.

The trial judge is primarily responsible to resolve conflicting evidence and on appeal the decision will not be disturbed unless the evidence preponderates against the conclusion of the court. Thus, the trial judge has discretion to conclude that the opinion of a particular witness or expert should be accepted over that of another witness or expert. *Johnson v. Midwesco, Inc.*, S.W.2d 804 (Tenn. 1990).

On these disputed issues, the court accepted the evidence of the employee and her witnesses supporting the conclusion the injury or condition was work-related. From our independent review of the record, we cannot say the evidence preponderates against the conclusion of the trial court.

The other issue relates to the award of temporary total disability benefits. The trial court allowed temporary total benefits from the date of the injury up to June 6, 1998. The employer says the evidence is not sufficient to support this award.

Temporary total disability benefits are allowed when it is established the employee was (1) totally disabled to work by a compensable injury, (2) that there was a causal connection between the injury and the inability to work; and (3) the duration of that disability. *Simpson v. Satterfield*, 564 S.W.2d 953, 955 (Tenn. 1978). Temporary total benefits end when the employee becomes able to work at any employment permitted by the nature of his/her injuries or when the employee has reached maximum recovery or improvement. *Lock v. National Union Fire Ins. Co. of Pittsburg, Pa.*, 809 S.W.2d 483 (Tenn. 1991).

The judgment entered by the trial court recited that the employee was unable to work from the date of the injury of November 13, 1996 until June 8, 1998, when she reached maximum medical improvement. Dr. Kennedy testified that in his opinion she reached maximum medical improvement on June 8, 1998, which was the last day of treatment by Dr. Harlan Simpson. This evidence coupled with the employee's testimony as to her injury and ability to work is sufficient and competent evidence to support the award.

The judgment of the trial court is affirmed. Costs of the appeal are taxed to the employer.

ROGER E. THAYER, SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

**HELEN L. SIZEMORE, Appellee v. QUEBECOR PRINTING, INC.,
Appellant**

**Circuit Court for Hawkins County
No. 8286 Ben K. Wexler, Judge**

No. E2000-02624-WC-R11-CV

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 Quebecor Printing, Inc. for which execution may issue if necessary.

PER CURIAM

Anderson, J., not participating