

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
July 25, 2002 Session

**GLENN ELIZABETH TEFFT v. WEAKLEY COUNTY AMBULANCE
SERVICE**

**Direct Appeal from the Circuit Court for Humphreys County
No. 8888 Allen W. Wallace, Judge**

**No. M2001-02270-WC-R3-CV - Mailed - October 14, 2002
Filed - November 15, 2002**

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. In this appeal, the employer insists (1) the evidence preponderates against the trial judge's finding that the plaintiff sustained a back injury on September 13, 1999 from lifting a patient where the evidence shows the plaintiff never lifted a patient, (2) the evidence preponderates against the trial judge's finding that the plaintiff gave proper notice as required by Tenn. Code Ann. § 50-6-201 where, without a reasonable excuse for delay, plaintiff began treatment but did not inform defendant that plaintiff's alleged injury was work related until a month and fourteen days later, (3) the trial judge erred in admitting the plaintiff's entire deposition into evidence, over the objection of the defendant, when the plaintiff offered the same after excerpts of the deposition were properly offered by defendant pursuant to Tenn. R. Civ. P. 32.01, and (4) the trial judge erred in awarding the plaintiff medical expenses paid by the plaintiff's health insurance, a nonparty. As discussed below, the panel has concluded the judgment should be affirmed.

**Tenn. Code Ann. § 50-6-225(e) (2001 Supp.) Appeal as of Right; Judgment of the Circuit
Court Affirmed**

JOE C. LOSER, JR., SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and JAMES L. WEATHERFORD, SR. J., joined.

Sean Antone Hunt, Spicer, Flynn & Rudstrom, Memphis, Tennessee, for the appellant, Weakley County Ambulance Service

Charles L. Hicks, Camden, Tennessee, for the appellee, Glenn Elizabeth Tefft

MEMORANDUM OPINION

The employee or claimant, Ms. Tefft, initiated this civil action to recover workers' compensation benefits, as provided by Tenn. Code Ann. § 50-6-101 et seq, for injuries allegedly suffered in a work related accident on September 13, 1999. Following a trial on August 9, 2001, the trial court awarded to her, among other things, permanent partial disability benefits based on 35 percent to the body as a whole. The employer, Weakley County Ambulance Service, has appealed.

For injuries occurring on or after July 1, 1985, 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) (2001 Supp.). The reviewing court is required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. Wingert v. Government of Sumner County, 908 S.W.2d 921, 922 (Tenn. 1995). The standard governing appellate review of findings of fact by a trial court requires the Special Workers' Compensation Appeals Panel to examine in depth a trial court's factual findings and conclusions. GAF Bldg. Materials v. George, 47 S.W.3d 430, 432 (Tenn. 2001). Where the trial judge has seen and heard the witnesses, especially if issues of credibility and weight to be given oral testimony are involved, considerable deference must be accorded those circumstances on review, because it is the trial court which had the opportunity to observe the witnesses' demeanor and to hear the in-court testimony. Long v. Tri-Con Ind., Ltd., 996 S.W.2d 173, 178 (Tenn. 1999). The trial court's findings with respect to credibility and weight of the evidence may generally be inferred from the manner in which the court resolves conflicts in the testimony and decides the case. Tobitt v. Bridgestone/Firestone, Inc., 59 S.W.3d 57, 61 (Tenn. 2001). The appellate tribunal, however, is as well situated to gauge the weight, worth and significance of deposition testimony as the trial judge. Walker v. Saturn Corp., 986 S.W.2d 204, 207 (Tenn. 1998). The extent of an injured worker's vocational disability is a question of fact. Seals v. England/Corsair Upholstery Mfg., 984 S.W.2d 912, 915 (Tenn. 1999). Where the medical testimony in a workers' compensation case is presented by deposition, the reviewing court may make an independent assessment of the medical proof to determine where the preponderance of the proof lies. Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 167 (Tenn. 2002).

The claimant worked for the employer as an emergency medical technician. On the date of the injury, she and her partner/supervisor, Joe David Laws, responded to an emergency call issued because R. C. Lamb, a 5'11" 240 pound man, had fallen. The claimant claims she felt a pull in her lower back during the process of lifting the patient onto a stretcher. A couple of days later, she verbally reported the injury to Laws. She continued working, but with increasingly severe pain. On October 5, 1999, she visited her physician, Dr. Richard Jackson.

Dr. Jackson noted that Tefft was tender in the lumbar region of her back, had decreased range of motion and had inflammation in her back. He ordered a CT scan, which revealed a bulging disc at L5-S1 and a central herniation at L4-L5. Tefft received the results of the test on October 6, 1999. She immediately called, verbally notifying the employer and relating her belief that the injury had occurred at the Lamb home on the claimed date and insisting her claim should be covered by workers' compensation. Her claim was eventually denied.

The employer contends the accident did not happen, relying on testimony by Laws and another witness that the claimant did not lift the patient. Their testimony is in direct conflict with the testimony of the claimant. Lamb testified that he thought he was lifted by both Laws and Tefft. The trial court believed Tefft and Lamb. Giving due deference to the findings of the trial court, we cannot say the preponderance of the evidence is otherwise.

The appellant further contends the claimant failed to give proper notice of her injury. Immediately upon the occurrence of an injury, or as soon thereafter as is reasonable and practicable, an injured employee must, unless the employer has actual knowledge of the accident, give written notice of the injury to the employer. Tenn. Code Ann. § 50-6-201(a). It is significant that written notice is unnecessary in those situations where the employer has actual knowledge of the injury. George v. Building Materials Corp., 44 S.W.3d 481, 485 at n 1 (Tenn. 2001). In this case, the evidence fails to preponderate against a finding that the employer had actual notice resulting from the claimant's verbal notification to her immediate supervisor and to the employer's office manager.

The appellant further contends the trial court erred in allowing the claimant to introduce her entire deposition into evidence after the appellant introduced a portion of it. By Tenn. R. Civ. P. 32.01(4), if part of a deposition is offered into evidence by a party, an adverse party may require the offering party to introduce any other part which ought in fairness to be considered with the part introduced. In this case, the employer introduced approximately sixteen pages of the claimant's deposition. The claimant then introduced the entire deposition to allow for consideration of the parts introduced by the employer. The trial court agreed that the entire deposition was needed to consider the various parts introduced.

The admissibility of such evidence rests largely within the discretion of the trial court and such rulings should not be overturned unless there has been an abuse of that discretion. We are not persuaded the trial court abused its discretion by allowing the entire deposition to be introduced. Moreover, by Tenn. R. App. P. 36(b), a final judgment from which relief is available and otherwise appropriate should not be set aside unless, considering the whole record, the error involving a substantial right more probably than not effected the judgment. This issue is resolved in favor of the claimant.

Finally, the employer contends the trial court erred in ordering medical benefits paid directly to the claimant instead of the health care providers. The trial court ordered the employer to be "responsible for plaintiff's medical treatment rendered to her as a result of her work related injuries of September 13, 1999 to her back...." The employer is required to provide, free of charge to the injured employee, all medical and hospital care which is reasonably necessary on account of the injury. Tenn. Code Ann. § 50-6-204(a)(1). We find no error in the trial court's ruling.

For those reasons, the judgment of the trial court is affirmed. Costs are taxed to the appellant.

JOE C. LOSER, JR.

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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, Weakley County Ambulance Service, Inc., for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM