

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

FILED

June 25, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

AT KNOXVILLE
(March 6, 1996 Session)

BRENDA GAIL WARD,)
)
Plaintiff-Appellee,) Hon. Billy Joe White,
) Chancellor.
v.)
) No. 03S01-9509-CH-00109
UNITED STATES FIDELITY AND)
GUARANTY COMPANY,)
)
Defendant-Appellant.)

For Appellant:

Robert R. Davies
Fansler & Williams
Knoxville, Tennessee

For Appellee:

David H. Dunaway
David H. Dunaway & Associates
LaFollette, Tennessee

MEMORANDUM OPINION

Members of Panel:

Penny J. White, Associate Justice, Supreme Court
William H. Inman, Senior Judge
Joe C. Loser, Jr., Special Judge

REVERSED AND REMANDED

Loser, 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 of findings of fact and conclusions of law. In this appeal, the employer's insurer contends the evidence preponderates against the award of permanent disability benefits. The panel concludes the judgment should be reversed and the case dismissed. The only issue litigated at trial was the extent of the claimant's permanent disability, if any.

On February 19, 1993, the employee or claimant, Brenda Gail Ward, was sweeping a floor for her employer, United Parcel Service, when she suddenly slipped and fell, injuring her back, neck and shoulder. On April 7, 1993, she visited Dr. David Hauge, who treated her until January 26, 1994.

Dr. Hauge diagnosed chronic degenerative changes unrelated to the above accident. His diagnosis was confirmed by an MRI of the spine. He found no evidence of an acute injury, except some muscle spasm which was resolved with physical therapy. He estimated her permanent impairment from her degenerative changes at nine percent to the whole body, but provided no proof of medical causal connection to the work-related accident.

Approximately two years after the accident, the claimant was evaluated by Dr. William E. Kennedy, who found no permanent anatomical injury or change as a result of the work-related accident, but assessed her permanent impairment from her subjective complaints of pain at eight percent to the whole person. A vocational expert, Norman Hankins, estimated her industrial disability at between thirty-four and sixty-one percent, depending on her physical restrictions.

The chancellor awarded permanent partial disability benefits based on forty-five percent to the body as a whole. Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings of the trial court, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. section 50-6-225(e)(2). This tribunal 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 (Tenn. 1995).

Unless admitted by the employer or its insurer, the employee has the burden of proving, by competent evidence, every essential element of her claim. Oster v. Yates, 845 S.W.2d 215 (Tenn. 1992). The employee must prove, among other things, that her injury was one arising out of the employment relationship. In order to establish that an injury was one arising out of the employment, the cause of the injury must be proved. In all but the most obvious cases, causation may only be proved through expert medical

testimony. See Floyd v. Tennessee Dickel Distilling Co. and its progeny, 225 Tenn. 65, 463 S.W.2d 684 (1971).

All of the medical proof in this case was by deposition. This tribunal is therefore as well situated to gauge the weight, worth and significance of the medical proof as the trial court. Seiber v. Greenbrier Industries, Inc., 906 S.W.2d 444 (Tenn. 1995).

From a deliberate consideration of the record, the panel finds that the evidence preponderates against the findings of the trial judge and in favor of a finding that the claimant did not suffer a permanent injury arising out of her employment by United Parcel Service. The judgment of the trial court is accordingly reversed and the case dismissed. Costs on appeal are taxed to the plaintiff-appellee.

Joe C. Loser, Jr., Judge

CONCUR:

Penny J. White, Associate Justice

William H. Inman, Senior Judge