

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE

(January 23, 1997 Session)

FILED
June 24, 1997
Cecil W. Crowson
Appellate Court Clerk

CAROLE SIMPSON,)
)
Plaintiff/Appellee,)
)
VS.)
)
SATURN CORPORATION,)
)
Defendant/Appellant.)

MAURY CIRCUIT
Hon. Jim T. Hamilton,
Judge
No. 01S01-9607-CV-00146

For the Appellant:

Thomas H. Peebles, IV
Dana C. McLendon
WALLER, LANSDEN, DORTCH
& DAVIS
Columbia, Tennessee

For the Appellee:

N. Houston Parks
TRABUE, STURDIVANT
& DeWITT
Columbia, Tennessee

MEMORANDUM OPINION

Members of Panel:

Adolpho A. Birch, Jr., Chief Justice, Supreme Court
Robert S. Brandt, Senior Judge
Joe C. Loser, Jr., Special Judge

AFFIRMED

Brandt, Senior Judge

MEMORANDUM OPINION

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 of findings of fact and conclusions of law.

Saturn Corporation appeals from the trial court's award of permanent partial benefits based upon a 65% disability to the whole body. The fundamental issue is whether the plaintiff's disability from depression is caused by her work injury at Saturn. The Court concludes that it is and affirms the trial court.

Carole Simpson, the plaintiff, on August 19, 1991 fell down some stairs and hurt her left shoulder, arm, and hand. She eventually came under the care of Dr. Robert F. Clendenin, III, a Nashville physical medicine and rehabilitation specialist. He concluded that she suffers from a spinal nerve root irritation and assessed her impairment at 5% to the whole body. The doctor restricted the plaintiff's lifting to twenty pounds frequently and forty pounds occasionally and instructed her not to do repetitive overhead work.

With those restrictions, the plaintiff has not been able to do her normal work at Saturn. Instead, she has been assigned the less strenuous job of putting together foam clips. At the time of the trial, the plaintiff testified her work consisted mostly of waiting in the cafeteria to be called to perform some duty her injuries would allow.

The problem in this case is caused by the plaintiff's depression. She believed her co-workers were constantly harassing her. She was depressed, she testified, because of "all the harassment" she was receiving and because of her pain. She felt constantly harassed by her fellow workers. When asked point blank what she attributed the depression to, the plaintiff said "the lack of a job, the harassment that I have had to endure, the doors that keep closing in my face every

time I request help or look for a job or anything along those lines. **It's mainly the constant harassment and the lack of a job**" (emphasis added).

Dr. John Cain, a Franklin psychiatrist, started treating the plaintiff for depression for the first time three years after the injury. According to Dr. Cain, her work injury at Saturn is the "contributing cause" of the depression. Some of her depression-causing stress, according to Cain, results from the plaintiff's feeling that Saturn has not supported her or accommodated her work restrictions.

Dr. Nicholas Sieveking, a clinical psychologist who examined and tested the plaintiff at the request of her attorney, testified that the abuse the plaintiff suffered as a child at the hands of her mother and step-father make the plaintiff vulnerable to depression. He stressed the impact of accusations of co-workers that after the accident the plaintiff was not giving it her best.

Saturn did not present any medical evidence. Instead, it merely challenges the sufficiency of the plaintiff's medical evidence.

Saturn emphasizes other stressors in the plaintiff's life. Her husband had a cocaine habit before they moved to Tennessee less than a year before the injury. The plaintiff had filed bankruptcy back in Michigan. She had been called to school several times to deal with her adolescent children's behavior problems. She had a hysterectomy just a few weeks before she saw Dr. Cain for the first time.

But neither Dr. Cain nor Dr. Sieveking seem to think that these events would have caused the plaintiff's depression. It was, instead, the situation at Saturn. But it was not just the disability and pain, and therein lies the problem in this case. Both Cain and Sieveking seem to place more emphasis on the plaintiff's treatment by her co-workers and Saturn's response to the plaintiff's disability. Their emphasis, of course, is consistent with the plaintiff's own explanation of why she is depressed.

The question on this appeal, then, is whether depression partially caused, or even mostly caused by co-worker treatment and the perception that the employer was not accommodating her disability justifies an award of workers' compensation for the depression. It is a close question.

The plaintiff's injury is the underlying cause of her trouble at work. Without the injury, there would have been no co-worker harassment charging that she was not doing her best. Without the injury, there would have been no disability for Saturn to accommodate, and thus no cause for the plaintiff to believe Saturn was not doing all it could to accommodate her. It would seem, then, that just as a matter of fact, the cause of the depression is traced back to the injury.

That was the holding of this court in *Batson v. Cigna Property and Casualty Companies*, 874 S.W.2d 566 (Tenn. 1994). Batson, a concrete truck driver, hurt his knee resulting in a 5% impairment to the leg - a relatively minor injury. After returning to a light duty job the employer created for him, Batson started experiencing psychiatric problems, including depression. He claimed he was being mistreated by supervisors.

Shortly after he started seeing a psychiatrist, Batson voluntarily left his job, but was not rehired due to lack of work. This aggravated Batson's hostility toward his former supervisors and the company. Just like the plaintiff in this case, he testified that his emotional problems resulted from the way the employer treated him after his injury. The trial court concluded that Batson was 100% disabled. It found that his mental condition was caused by the knee injury and the care and treatment for it.

This Court in *Batson* did not focus on the distinction between a mental condition resulting from disability and pain as opposed to a mental condition resulting from the employee's perception of mistreatment by the employer. Instead, the Court focused on the distinction between a mental condition resulting from a sudden event as opposed to day-to-day stress.

The holding in *Batson* is applicable here, nevertheless. It set the precedent by holding that disability from a mental condition resulting from the employee's perception of mistreatment by his employer is traced back to the original physical injury. The mental condition is considered to be caused by the injury.

In this case, of course, there is a slightly different twist. The plaintiff's depression is caused by perceived mistreatment by her co-workers as well as perceived mistreatment by her employer. But the result is the same. It was her injury that caused the reaction of her co-workers.

In its appeal, Satum also complains about the trial court's finding of permanency and complains about the amount of the award.

Dr. Cain believes that the plaintiff's condition is, as he put it, "either long-term or permanent." It will not end in the foreseeable future, he testified. "Indefinitely," he said. This is sufficient for the trial court to conclude that the plaintiff's depression is permanent. Dr. Cain, as he said, cannot predict the future. The plaintiff's condition might improve. But it is likely the depression will be with her for the rest of her life even if she does see some improvement.

Dr. Clendenin's restrictions have already been discussed. Dr. Jeffery T. Adams, a Columbia orthopedic surgeon, treated the plaintiff before Dr. Clendenin. He instructed the plaintiff not to do any work "above 70 degrees" which means not to raise her arms higher than a little below the shoulder level. Dr. Adams, by the way, found the plaintiff to be depressed two years before she first saw Dr. Cain.

Dr. Sieveking, the clinical psychologist who was asked by the plaintiff's attorney to assess her, considered the medical reports, his own independent testing, and his visit with the plaintiff. He found that the plaintiff has a 92% disability. Just relying on the medical evidence alone and disregarding the plaintiff's own self-described limitations, Dr. Sieveking found the plaintiff to be 51% disabled.

Considering all the evidence, the trial court's award of 65% is not excessive.

For the above reasons, we conclude that the trial court's judgment should be affirmed. Costs are taxed to the defendant-appellant.

Robert S. Brandt, Senior Judge

CONCUR:

Adolpho A. Birch, Jr., Chief Justice

Joe C. Loser, Jr., Special Judge

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

FILED
June 24, 1997
Cecil W. Crowson
Appellate Court Clerk

CAROLE SIMPSON,	}	MAURY CIRCUIT
	}	No. 5566 Below
<i>Plaintiff/Appellee</i>	}	
	}	Hon. Jim T. Hamilton
vs.	}	Judge
	}	
SATURN CORPORATION,	}	No. 01S01-9607-CV-00146
	}	
<i>Defendant/Appellant</i>	}	AFFIRMED.

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 and Surety, for which execution may issue if necessary.

IT IS SO ORDERED on June 24, 1997.

PER CURIAM