

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

FILED

April 22, 1998

Cecil W. Crowson
Appellate Court Clerk

MARGARET HENRY,)	
)	PUTNAM CIRCUIT
Plaintiff/Appellant)	
)	NO. 01S01-9707-CV-00150
v.)	
)	HON. JOHN A. TURNBULL,
CEDAR CREEK HOME HEALTH)	JUDGE
AGENCY, also known as ELK)	
VALLEY HOME HEALTH CARE)	
AGENCY, INC.,)	
)	
Defendant/Appellee)	

For the Appellant:

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For the Appellee:

Lane Moore
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MEMORANDUM OPINION

Members of Panel:

Justice Frank F. Drowota, III
Senior Judge John K. Byers
Special Judge William S. Russell

AFFIRMED

BYERS, Senior Judge

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 to the Supreme Court of findings of fact and conclusions of law.

Review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). *Stone v. City of McMinnville*, 896 S.W.2d 548, 550 (Tenn. 1995). The application of this standard requires this Court to weigh in more depth the factual findings and conclusions of the trial court in a workers' compensation case. See *Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988).

The trial judge dismissed the plaintiff's case and held there was no evidence that two vaginal prolapses suffered by the plaintiff were caused by her work.

We affirm the judgment.

FACTS

At the time of trial, the plaintiff had been married for 31 years, had four children in the space of approximately four years, had a tubal ligation in 1974, and had a partial hysterectomy in 1978. The plaintiff's employment history includes factory work and working as a certified nursing technician in two different nursing homes.

Prior to working for the defendant, the plaintiff worked for Sunny Point Nursing Home as a certified nursing technician, a job that required heavy lifting. In 1992, while working for Sunny Point, the plaintiff developed her first vaginal prolapse and underwent surgery, performed by a Dr. McGruder in 1993, to remove a baseball size mass which protruded from her vagina. After surgery, the plaintiff continued to work for Sunny Point without any restrictions and continued to do her normal housework and other activities. The plaintiff did not seek or receive workers' compensation benefits for her first vaginal prolapse.

Beginning in the fall of 1993, the plaintiff went to work for the defendant as a certified nursing technician doing home duty nursing. In this capacity, she bathed patients, cooked light meals, did light housework, and cared for the patients' daily needs. On May 28, 1994, the plaintiff was assisting an obese patient into the bathtub when he fell, placing his full weight on her. The plaintiff testified that she immediately noticed pressure and a pulling sensation in her abdominal area and felt symptoms exactly like she had experienced with her first vaginal prolapse. The plaintiff reported this injury to the defendant's Director of Nursing, but she continued to work and did not seek medical care until September 1994 because the pain was not severe.

During the interval between May and September 1994, the plaintiff performed her work duties and personal activities without any restrictions. On a Saturday morning in September 1994, the plaintiff woke up hurting in her lower stomach. She reported to the Director of Nursing that the pain had become intense enough to see her family doctor, whom she saw the next Monday. The defendant informed the plaintiff that her medical care would not be set up as a work related injury unless she had a doctor's statement that the injury was absolutely caused by the lifting incident at work.

The plaintiff's family doctor referred her to a Dr. Goode, a gynecologist who performed her second vaginal prolapse surgery on October 6, 1994 and released her to work with restrictions in November 1994. The plaintiff tried to return to work for the defendant, but she was told there was no work available within her restrictions. The plaintiff's last day of work for the defendant was September 19, 1994.

Between November and December 1994, the plaintiff again developed pressure in her stomach, testifying that it felt like something had come loose. On a Saturday morning in December 1994, the plaintiff testified that she woke up with severe pain in her stomach. She also testified that she had been doing housework and vacuuming the night before. On January 3, 1995, the plaintiff underwent a third surgery by Dr. Goode -- this time a urethral prolapse for urinary stress incontinency. The plaintiff testified that she has had difficulty getting over the third operation and

that she has not worked anywhere because she was restricted from lifting at all and from standing for long periods.

After the third surgery, the plaintiff again developed pressure in her stomach and sought medical care from a Dr. Pickett, who treated her for a bladder infection because he did not feel that a prolapse had reoccurred. The plaintiff seeks workers' compensation benefits from the defendant for her second and third vaginal prolapse surgeries, claiming that her injuries were caused by the lifting incident at work in May 1994.

MEDICAL TESTIMONY

Dr. Walter Derryberry, a gynecologist, testified by deposition. Dr. Derryberry reviewed the plaintiff's history of the three surgeries and the lifting incident at work. He also examined her one time on January 16, 1996 and found a mild urethral prolapse and a well suspended vaginal vault. In lay terms, Dr. Derryberry testified that the plaintiff's condition in September 1994 was that her bladder fell and the rectum bulged forward into her vagina which caused the vaginal wall to prolapse outside of her body. He stated that this condition can occur particularly if the person does a lot of lifting, including housework. He also testified that any lifting by the plaintiff, especially the lifting incident of May 1994, would have been an aggravating factor in causing her condition and the recurrent prolapses. Further, he stated that the plaintiff's vaginal problems were cumulative and not linked to one single episode. Dr. Derryberry opined that the plaintiff sustained a ten percent permanent partial impairment to the body as a whole and advised her never to lift over ten pounds and never to do anything but a desk job in the future. Dr. Derryberry also stated that the plaintiff's restrictions and permanent impairment rating would have been the same after her first vaginal prolapse surgery (before the defendant hired her).

ANALYSIS

The evidence in this case was presented by the deposition of Dr. Derryberry and the oral testimony of the plaintiff. The basic thrust of Dr. Derryberry's testimony is that the work of the plaintiff did not cause the prolapses for which the plaintiff seeks compensation. At best, Dr. Derryberry's testimony is that many things can

cause the problem to manifest itself, including lifting at home, but that the normal cause of a prolapse is because some people's physical condition predisposes them to have this occur.

The plaintiff testified the prolapses for which she seeks compensation were caused by having to do heavy lifting at work. The plaintiff conceded she had done housework at home prior to the occurrence of the third prolapse.

We find the evidence in this case does not preponderate against the finding of the trial judge and we affirm the judgment.

The cost of this appeal is taxed to the plaintiff.

John K. Byers, Senior Judge

CONCUR:

Frank F. Drowota, III, Justice

William S. Russell, Special Judge

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

MARGARET HENRY,	}	PUTNAM CIRCUIT
	}	No. NJ-5756 Below
<i>Plaintiff/Appellant</i>	}	
	}	Hon. John A. Turnbull,
vs.	}	Chancellor
	}	
CEDAR CREEK HOME HEALTH	}	
AGENCY, also known as ELK	}	
VALLEY HOME HEALTH CARE	}	
AGENCY, INC.,	}	No. 01S01-9707-CV-00150
	}	April 22, 1998
<i>Defendant/Appellee</i>	}	AFFIRMED.

<p>FILED</p> <p>No. 01S01-9707-CV-00150 April 22, 1998</p> <p>Cecil W. Crowson Appellate Court Clerk</p>

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 Plaintiff/Appellant and Surety, for which execution may issue if necessary.

IT IS SO ORDERED on April 22, 1998.

PER CURIAM

