

IN THE SUPREME COURT OF TENNESSEE  
WORKERS' COMPENSATION APPEALS PANEL  
KNOXVILLE, MARCH 1998 SESSION

**FILED**

September 25, 1998

Cecil Crowson, Jr.  
Appellate Court Clerk

THE TRAVELERS INSURANCE	)	JEFFERSON COUNTY
COMPANY	)	
	)	
Plaintiff/Appellee	)	
	)	
V.	)	Hon. Chester S. Rainwater, Jr.
	)	Chancellor
KAREN MORRISETT	)	
	)	
Defendant/Appellant	)	NO. 03S01-9708-CH-00097

**For the Appellant:**

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**For the Appellee:**

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**MEMORANDUM OPINION**

**Members of Panel:**

Adolpho A. Birch, Jr., Justice  
William H. Inman, Senior Judge  
Roger E. Thayer, Special Judge

AFFIRMED.

THAYER, Special 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. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

The appeal has been perfected by the employee-defendant, Karen Morrisett, from a ruling of the trial court in dismissing her complaint for benefits against the plaintiff-insurance carrier, The Travelers Insurance Company. The Chancellor held the employee had failed to carry the burden of proof in establishing a physical and/or mental injury had occurred as a result of her employment activities.

Defendant, 34 years of age, possessed a G.E.D. certificate and had worked for her employer, Rittenhouse, for about eight years. She did heavy work and operated a machine that cut large rolls of paper. On April 19, 1995, she testified she was rolling a 200-250 lb. roll of paper underneath a conveyor belt and as she pushed it, she felt a "pull" in her back and upon raising up, she felt pain.

She reported the incident and was taken to the emergency room where she said she saw a Dr. Ellis. The next day she saw Dr. John W. Fetzer, the company doctor, who referred her to Dr. Sidney L. Wallace at the Knoxville Orthopedic Clinic. Later she saw several other doctors.

She stated her job caused a lot of stress; that she had been told by her supervisor that if her production rate did not increase she would be fired. She also accused her supervisor of sexual abuse. When questioned about this allegation, she said "He liked to touch me." When asked how long this had been going on, she responded, "As long as he was supervisor, but I would always tell him to leave me alone." Counsel asked if anything ever happened between her and the supervisor to which she replied, "No." There were no other details concerning this subject. She also testified she experienced difficulty in walking and sometimes she could not get out of bed on her own movement; that her legs would be numb.

On cross-examination, she admitted she had seen a therapist at Cherokee Mental Health Center on April 13, 1995, which was several days prior to the incident in question. She told the therapist she suffered from stress at work; that sometimes she could not swallow her food; that she had panic attacks while driving a vehicle; and she suffered from head pain and dizziness. She admitted she had been

sexually abused as a child; had some problems because of friction between co-workers.

The only expert medical testimony regarding any physical injury was presented by the introduction of the medical records of Dr. John W. Fetzer, Dr. Sidney L. Wallace and Dr. Gilbert L. Hyde.

Dr. Fetzer's medical notes indicated he first saw defendant on April 7, 1995, about twelve days before the incident in question. She was complaining of stress and anxiety. On an April 20th visit, she appeared to have a lumbar and cervical strain saying she was injured at work; she told him of being seen at Cherokee Mental Health Center. He concluded her depression was not her employer's responsibility and the depression makes the pain worse; he advised her to return to the mental health center as "this is not back problem but a psychiatric problem"; when she returned on May 9, 1995, his notes indicated he could not tell what was psychological and what was real. An M.R.I. report showed minimal degenerative changes of lower lumbar spine without significant stenosis. He indicated if she had sustained a physical injury, it would appear to be work-related.

Dr. Wallace, an orthopedic surgeon, saw defendant on April 24, 1995, with a diagnosis of (1) thoracic and lumbar syndrome and (2) anxiety reaction. He did not observe any objective findings from x-rays and released her.

Dr. Hyde, also an orthopedic surgeon, saw her on September 21, 1995 and was of the opinion she was suffering from cervical and lumbar strain and strain of right shoulder. He gave a 10% impairment to the body as a whole.

The expert medical testimony regarding any mental injury was presented by the introduction into evidence of the depositions of two psychiatrists.

Dr. Bruce Q. Green, who was associated with Cherokee Health Systems first saw defendant on June 7, 1995. He said she related a history of a hostile environment as a child; and that this problem could cause her to break down under stress. He was of the opinion the pressure of her general work activities caused her ultimate breakdown. His diagnosis was: (1) major depression disorder, severe, with psychotic features (2) post-traumatic stress disorder and (3) bipolar disorder. He stated she was not employable under A.M.A. guidelines as her impairment was "severe". The intake record indicated her problem had existed for about two years.

Dr. Ben Bursten examined defendant at her attorney's request. He took the same history of the childhood environment and reviewed the medical records of the various doctors she had seen, her deposition, some records of her employer, etc. He classified the diagnosis somewhat different than that given by Dr. Green. His conclusions were: (1) conversion disorder. He said this is where a person has difficulty with movement that's not neurologically based such as her numbness in her leg and the difficulty with swallowing. (2) pain disorder. This is when the perceived pain is in excess of that which one would expect from the nature of the physiological condition or when there is no physiological condition altogether. (3) anxiety such as panic when driving or other nervous spells. He was of the opinion her problems were connected with her work. He also noted from reading all the medical records, there was some question as to whether she had sustained a physical injury.

Dr. Norman E. Hankins, a vocational rehabilitation witness, testified by deposition and was of the opinion defendant was 100% disabled considering the psychological condition.

On appeal employee Morrisett argues the evidence preponderates against the conclusion of the trial court. We have carefully examined the evidence and do not find this to be true.

The review of the case is de novo accompanied by a presumption of the correctness of the findings of fact unless the preponderance of the evidence is otherwise. T.C.A. § 50-6-225(e)(2).

In a workers' compensation action, the employee has the burden of proving every element of the case, including causation and permanency by a preponderance of the evidence. *Tindall v. Waring Park Ass'n*, 725 S.W.2d 935, 937 (Tenn. 1987). Causation and permanency must as a general rule be established by expert medical testimony. *Johnson v. Midwesco, Inc.*, 801 S.W.2d 804 (Tenn. 1990); *Thomas v. Aetna Life & Casualty Co.*, 812 S.W.2d 278 (Tenn. 1991).

With respect to the evidence regarding a physical injury as a result of defendant's work activities, we find there is some question among the doctors as to whether an injury actually occurred. Also, Dr. Fetzer and Dr. Wallace did not note any permanent impairment. Although Dr. Hyde gave a 10% impairment, his report is not worded in such a manner as to establish causation of the impairment. Thus, we

find adequate reasons exist to support the trial court's denial of benefits for a physical injury.

The evidence regarding a claim for a mental condition or disorder must be examined under different rules to determine compensability. Recovery of benefits is appropriate for a mental injury by accident or occupational disease, standing alone, if the mental disorder is caused by an identifiable, stressful, work-related event producing a sudden mental stimulus such as fright, shock or excessive unexpected anxiety. Also, compensation for psychological disorders has been allowed when an employee sustains a compensable work-related injury by accident and thereafter experiences a mental disorder which is caused by the original compensable work-related injury. *Hill v. Eagle Bend Mfg., Inc.*, 942 S.W.2d 483 (Tenn. 1997).

The second rule would not have any application to the present case since we have held the evidence does not preponderate against the trial court's conclusion on the physical injury issue. Therefore, any recovery for a mental illness or condition must meet the test of the first mentioned rule, which requires the employee to establish the mental illness or condition has resulted from a specific incident producing fright, shock or excessive unexpected anxiety.

We are of the opinion that a fair construction of defendant's testimony did not attempt to establish her problem arose from any specific event but was predicated on general working conditions. Nor did she give the two psychiatrists any history of a specific event as causing any of her problems. Both Dr. Green and Dr. Bursten concede her stress is of long duration and was aggravated by her general working conditions. Stress which builds up and occurs over a period of time due to general working conditions is generally not compensable. *Batson v. Cigna Property & Casualty Companies*, 874 S.W.2d 566 (Tenn. 1994).

The evidence does not preponderate against the trial court's decision on this second issue.

The judgment entered by the trial court is affirmed. Costs of the appeal are taxed to the defendant-employee.

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Roger E. Thayer, Special Judge

CONCUR:

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Adolpho A. Birch, Jr., Justice

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William H. Inman, Senior Judge

