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

(June 29, 1998 Session)

CONNIE S. COVINGTON,	)	HOUSTON CHANCERY
	)	
Plaintiff/Appellant	)	NO. 01S01-9709-CH-00183
	)	
v.	)	HON. ROBERT E. BURCH
	)	CHANCELLOR
NAGLE INDUSTRIES, INC.,	)	
	)	
Defendant/Appellee	)	
	)	

For the Appellant:
James B. Crenshaw
108 South Second Street
Clarksville, TN 37040

For the Appellee:
Sean Antone Hunt
Spicer, Flynn & Rudstrom, PLLC
424 Church Street, Suite 1350
Nashville, TN 37219-2305

M E M O R A N D U M O P I N I O N

Members of Panel:

Justice Frank F. Drowota, III
Senior Judge William H. Inman
Special Judge Joe C. Loser, Jr.

AFFIRMED INMAN, 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 to the Supreme Court of findings of fact and conclusions of law.

In this case the plaintiff ran afoul of the well-settled principle that the issues in a workers' compensation case, like any other, must be proved by a preponderance of the evidence. The trial judge ruled that the appealing plaintiff failed to carry her burden of proving causation and dismissed her claim for permanent, partial disability benefits. Our 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 finding, 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 plaintiff alleged that on September 9, 1993 she sustained an injury to her elbow, arm, and both wrists, diagnosed as bilateral carpal tunnel syndrome which in the passage of time resulted in permanent, partial disability.

The defendant filed its answer admitting that the "plaintiff sustained an injury in the course and scope of plaintiff's employment,"[1] and denying all other allegations.

The plaintiff testified that she began working for the defendant in May, 1991, doing assembly line work which she described as repetitive.[2] After four or five months "into the job," her hands became swollen at the end of the

[1]But when the case was called for trial, the parties stipulated that causation was an issue. It proved to be dispositive. The answer was not amended, but the case was tried as if the defendant denied causation.

[2]Likely over-done, since she testified that she processed 800 parts per day.

working day and by night time were "tight, tender, aching and hurting." She was shifted to different tasks, but the pain persisted, even while wearing wrist bands. In August, 1993 she sought medical treatment from Dr. Stephen Salyers,[3] an orthopedic surgeon, who prescribed anti-inflammatory medication and a wrist splint. After further testing by himself and a neurologist, Dr. Salyers told her that "I had carpal tunnel in my right hand and some in my left hand" and that he probably would have to do surgery. Dr. Salyers performed a right carpal tunnel release, which was followed by a work-hardening regimen and therapy.

She testified that she wanted to return to her job, but "there was no work available for me." She made application for work at various places but was always rejected when she revealed that she had undergone a carpal tunnel release.

The pain persisted, according to the plaintiff, who testified that when she was finally employed at a human resource agency, she was unable to "lift things" and that "driving is just tearing me up." At trial she complained of pain in her shoulder, of her hands "getting cold as ice," becoming "numb and blue," to where "I can't use it at all."

Dr. Salyers testified that he first saw the plaintiff on September 9, 1993. After taking her history, he performed an examination, which revealed no pathology. Because of her complaints he diagnosed a low grade tendinitis and prescribed an anti-inflammatory medication. She returned from time to time still complaining of pain; an electrodiagnostic test revealed "borderline" carpal tunnel. Finally, the carpal tunnel release was performed on August 31, 1994 which Dr. Salyers described as successful, but which the plaintiff essentially

---

[3]She denied any prior medical problems other than "female problems." As the trial progressed, however, the proof revealed a litany of health problems and complaints.

described as unsuccessful. When asked a plenary question as to whether she had suffered any permanent disability as a result of her work, Dr. Salyers replied:

> "Well, I have assigned her an impairment rating to both hands due to the medical condition . . . I wouldn't say it was certain that her work caused her problems. I think it was, it contributed to her problems."

An independent medical examiner, Dr. Vera Huffnagle, opined that "initially the symptoms of carpal tunnel syndrome may have related [to employment] but not presently."

The trial judge observed:

> "The problem here, as both counsel have focused on, is that of causation. The Court rules that the plaintiff has failed in the burden of proving to show that her condition was, in fact, work-related. Essentially, there are two reasons for that. Actually, the best proof that the plaintiff can come up with is Dr. Salyers stating: I think it contributed to her symptoms. That just simply is not convincing, at least, certainly, by the preponderance of the evidence. Then, Dr. Huffnagle stated definitely that they were not, and that just pretty well seals it."

The plaintiff had the burden of proving causation by a preponderance of the evidence. *Elmore v. Travelers Ins. Co.*, 824 S.W.2d 541 (Tenn. 1992). And causation, in all but obvious cases, must be proved by expert testimony. *Thomas v. Aetna Life & Cas.*, 812 S.W.2d 278 (Tenn. 1991). Dr. Huffnagle opined that the plaintiff was suffering from a condition known as fibromyalgia, and otherwise presented a host of complaints, none of which could be characterized as job-related.

So far as this record reveals, with emphasis upon the testimony of the plaintiff, the surgical procedure was not productive. The plaintiff's complaints of headaches, pain in her hands, arms, and shoulders, her inability to lift, or difficulty in driving a vehicle are not proved to be causally related to employment. Superimposed on all this is the crucial issue of credibility, the resolving of which is within the peculiar province of the trial judge. *McCaleb v.*

Saturn Corp., 910 S.W.2d 412 (Tenn. 1995). In light of the latter issue, the equivocal testimony of Dr. Salyers and the straightforward opinion of Dr. Vera Huffnagle, we are unable to find that the evidence preponderates against the judgment which is affirmed at the cost of the appellant.

_____
William H. Inman, Senior Judge

CONCUR:

_____
Frank F. Drowota, III, Justice

_____
Joe C. Loser, Jr., Special Judge

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

CONNIE S. COVINGTON	*}*	*HOUSTON CHANCERY*
	}	*No. Below 4-304*
Plaintiff/Appellant	*}*	
	}	*Hon. ROBERT E. BURCH*
vs.	*}*	*Chancellor*
	}	
	}	*No. 01S01-9709-CH-00183*
NAGLE INDUSTRIES, INC.	*}*	
	}	
Defendant/Appellee	*}*	*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 Plaintiff/Appellant and Surety, for which execution may issue if necessary.

IT IS SO ORDERED on October 26, 1998.

PER CURIAM