IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE

BONNIE MAE DOS KNUTSON, Plaintiff/Appellee	)	HUMPREYS COUNTY CIRCUIT
v.	)	No. 01S01-9709-CV-00207
DOLLAR GENERAL CORPORATION, Defendant/Appellant	)	HON. ALLEN W. WALLACE, JUDGE

FOR THE APPELLANTS:

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MEMORANDUM OPINION

MEMBERS OF PANEL

FRANK F. DROWOTA, III, ASSOCIATE JUSTICE
JOHN K. BYERS, SENIOR JUDGE
WILLIAM S. RUSSELL, RETIRED JUDGE

AFFIRMED, AS MODIFIED RUSSELL, SP. J.

This appeal in a workers' compensation case has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated Section 50-6-225 (e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

The plaintiff, Bonnie Mae Dos Knutson, worked for the Dollar General corporation for about ten years. Her position at the time of her injuries was that of store manager.

On April 14, 1995, while helping to unload a truck, she twisted her body to her left and felt her neck pop. She reported the injury, was treated by Dr. Noel R. Dominquez, M.D., and returned to work.

Six weeks later, on May 24, 1995, while again unloading a truck, she was struck in the back by a falling box or boxes. Upon seeking treatment again by Dr. Dominguez, he referred her to Dr. John McInnis, a neurologist, who treated her.

Dr. McInnis diagnosed her injuries as cervical and lumbar strains. He assessed a 2 1/2% permanent partial anatomical impairment for each of the separate injuries; and imposed permanent restrictions against her lifting over 30 pounds, or

lifting over five pounds above shoulder height. He cleared her to return to light work on August 3, 1995; and to regular duty on September 18, 1995. She never returned to work after the second injury.

The trial court had the benefit of the deposition testimonies of Dr. Waylon Brooks, D.C.; Dr. Robert Barnett, M.D., who did a disability evaluation at the request of plaintiff's counsel; and Dr. Kurt Berger, M.D., a radiologist who examined the three M.R.I.s and X-rays generated by the treating doctors. Dr. Barnett opined that the plaintiff suffered a total of 20% whole body anatomical impairment, Dr. Brooks 31%, and Dr. Berger negated any disc herniation or evidence of skeletal changes between M.R.I.s taken before and after the subject accidents.

The trial court judged that the plaintiff suffered a 35% permanent partial vocational disability from each of the accidents, for a total of 70% to the body as a whole.

The appellant contends that these injuries are not compensable because in its view the pain was not the result of identifiable new injuries. Dr. McInnis, the approved specialist who treated the plaintiff, confirmed a cervical sprain and a lumbar sprain. These were not confirmed or subject to confirmation by the M.R.I.s; but they were diagnosed and satisfactorily proved. This issue raised by the defendant is without merit.

The central issue is the appropriate vocational disability rating. We review the record de novo, accompanied by a presumption of correctness of the findings below, unless the

preponderance of the evidence is otherwise, T.C.A. Sec. 50-6-225 (e)(2)(1991). This standard of review requires this court to weigh in depth the factual findings and conclusions of the trial court. Humphrey v. David Witherspoon, Inc., 734 S.W. 2d 315 (Tenn. 1987).

Where the medical evidence is presented by deposition, as it was in this case, no presumption accompanies the trial court's evaluation of that evidence. Landers v. Fireman's Fund Ins. Co., 775 S.W. 2d 355, 356 (Tenn. 1989).

We have carefully reviewed all of the evidence. We conclude that Dr. McInnnis' diagnosis of a cervical strain and a lumbar strain are supported by the greater weight of the evidence. There was no convincing proof of disc herniation nor bulge impingement. The plaintiff had a pre-existing straightening of her cervical lordotic curve, and a prior neck injury.

Whether she was terminated by the defendant or not was disputed. It is undisputed that she did not return to her prior job. She could not have done the occasional heavy lifting that she had done previously. Her strain injuries never fully resolved, and she had degenerative disc disease common to her age. We hold that the cap of 2.5 times the anatomical impairment does not apply.

We affirm the trial judge's award of 35% permanent partial vocational disability to the lumbar spine (body as a whole), but we reduce to 15% the permanent partial vocational disability based upon the cervical sprain. This results in a modification of the

trial court's judgment from 70% vocational whole body disability to 50% of the body as whole. Plaintiff's own expert, Dr. Barnett, on July 1, 1996, found no evidence of spasm to the neck. He based his impairment to the neck upon the straightening of the lordotic curve. Other proof established that this was pre-existing. She lost no work immediately after the neck injury.

The judgment of the trial court is affirmed, as so modified.

Costs on appeal are assessed to the appellant.

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WILLIAM S. RUSSELL, SPECIAL JUDGE

CONCUR:

_____
FRANK F. DROWOTA, III,
ASSOCIATE JUSTICE

_____
JOHN K. BYERS, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

BONNIE MAE DOS KNUTSON,	}	HUMPHREYS CIRCUIT
	}	No. 8514 Below
Plaintiff/Appellee	}	
	}	Hon. Allen W. Wallace
vs.	}	Judge
	}	
DOLLAR GENERAL CORPORATION	}	No. 01S01-9709-CV-00207
	}	
Defendant/Appellant	}	AFFIRMED, AS MODIFIED

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 October 12, 1998.

PER CURIAM