IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT JACKSON
(November 27, 1996 Session)

CARMELLA McCADAMS,	)	HENRY CIRCUIT
	)	
Plaintiff-Appellee,	)	Hon. Julian P. Guinn,
	)	Judge.
v.	)	
	)	No. 02S01-9606-CV-00055
HENRY COUNTY BOARD OF EDUCATION,	)	
	)	
	)	
Defendant-Appellant.	)	

For Appellant:

Russell E. Reviere
Rainey, Kizer, Butler, Reviere & Bell
Jackson, Tennessee

For Appellee:

Gary Swayne
Paris, Tennessee

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

Members of Panel:

Lyle Reid, Associate Justice, Supreme Court
Joe C. Loser, Jr., Special Judge
Cornelia A. Clark, Special Judge

REVERSED AND DISMISSED Loser, 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. section 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. The issue in this appeal is whether the evidence preponderates against the trial court's award of permanent disability benefits for a claimed back injury. This tribunal has concluded the judgment should be reversed for insufficient evidence of permanency. Because we do not reach a second issue, involving the method by which the employee's average weekly wage is determined, that issue is pretermitted.

At the time of the trial, the employee or claimant, McCadams, was thirty-six years old, with a twelfth grade education and 800 hours of training in cosmetology. Her work history includes sewing shoes at Brown Shoe, sewing clothes at HIS, baby sitting at home, cleaning houses, working at a florist and working in the cafeteria at Henry County High School.

She began working for the employer, Henry County Board of Education, in March of 1993, as a substitute cook. On November 18th of the same year, while standing on a ladder to reach vents she was cleaning, she lost then quickly regained her balance. When she did, she felt pain in her neck and back. She did not fall. She finished working that day and, except for the following day when she worked only three hours and twenty-five minutes, worked regularly until December 6th of the same year. She has voluntarily quit working.

On December 3rd and 13th, she sought treatment from Dr. Walter Griffey for pain in her back and neck and a funny feeling in both feet. In January of 1994, she sought treatment from Dr. Carl W. Huff, who diagnosed neck pain without objective findings, back pain without objective findings and symptom magnification syndrome. Dr. Huff prescribed return to work without limitations and with no permanent impairment.

She has been also seen by three neurosurgeons, none of whom found evidence of injury, other than preexisting degenerative disc disease. One of them described the claimant as a malingerer. Her husband called the doctor a quack.

The claimant was finally referred to a Dr. Mark Crawford, whose specialty and qualifications are not in the record. Dr. Crawford wrote, "(B)ased on the AMA Guidelines to the Evaluation of Permanent Impairment, 4th Edition and based on moderate degenerative disc disease of L4 and L5 with residuals, she would have an impairment of 8% of the whole person. This degenerative disc disease was an asymptomatic pre-existing condition brought into disabling reality by her work related injury." None of the other medical experts assigned any permanent impairment.

The trial court awarded permanent partial disability benefits on the basis of forty percent to the body as a whole. Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. section 50-6-225(e)(2). This tribunal is required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. Wingert v. Government of Sumner County, 908 S.W.2d 921 (Tenn. 1995). Moreover, we are as well situated to gauge the weight, worth and significance of written reports of experts as the trial judge. See McCaleb v. Saturn Corp., 910 S.W.2d 412 (Tenn 1995).

Where a claimant's work aggravates a pre-existing condition merely by increasing pain, there is no compensable injury by accident. Id. Additionally, it is well settled that causation and permanency may only be established by expert medical testimony. Kellerman v. Food Lion, Inc., 929 S.W.2d 333 (Tenn. 1996). Here, all of the medical proof is by written reports. From our independent examination of those reports and the record of oral testimony by lay witnesses, as well as consideration of the above principles of law, we find the evidence preponderates against any award of disability benefits in this case.

Accordingly, the judgment of the trial court is reversed and the case dismissed. Costs on appeal are taxed to the plaintiff-appellee.

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Joe C. Loser, Jr., Judge

CONCUR:

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Lyle Reid, Associate Justice

_____

Cornelia A. Clark, Judge

IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

CARMELLA McCADAMS,	)	HENRY CIRCUIT
	)	NO. 91
Plaintiff/Appellee,	)	
	)	Hon. Julian P. Guinn,
vs.	)	Judge
	)	
HENRY COUNTY BOARD OF EDUCATION,	)	NO. 02S01-9606-CV-00055
	)	
Defendant/Appellant.	)	REVERSED & DISMISSED.

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 Appellee, for which execution may issue if necessary.

IT IS SO ORDERED this 10th day of February, 1997.

PER CURIAM

(Reid, J., not participating)