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

LANDSTAR POOLE, INC. v. GEORGE HUGH RHOADES, JR.

Chancery Court for Davidson County
No. 97-1529-I

No. M1999-00040-WC-R3-CV - Filed May 24, 2000

JUDGMENT

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 appellant, Landstar Poole, Inc., for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM

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

LANDSTAR POOLE, INC. v. GEORGE HUGH RHOADES, JR.

Direct Appeal from the Chancery Court for Davidson County
No. 97-1529-I Irvin H. Kilcrease, Jr., Chancellor

No. M1999-00040-WC-R3-CV - Mailed April 19, 2000
Filed May 24, 2000

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) (1999) for hearing and reporting of findings of fact and conclusions of law. Appellate review of factual issues in workers' compensation cases is *de novo* with a presumption that the trial court's findings are correct, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. §50-6-225(e)(2) (1999); Hill v. Eagle Bend Mfg., Inc., 942 S.W. 2d 483, 487 (Tenn. 1997). When a trial court has seen and heard witnesses and issues of credibility and weight of testimony are involved, considerable deference is afforded the trial court's findings of fact. See Humphrey v. David Witherspoon, Inc., 734 S.W. 2d 315, 315-16 (Tenn. 1987).

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

SAMUEL L. LEWIS, SP. J., delivered the opinion of the court, in which FRANK F. DROWOTA, III, J., and TOM E. GRAY, SP. J., joined.

Kent. E. Krause, Nashville, Tennessee, for the appellant, Landstar Poole, Inc.

Alan Wise, Nashville, Tennessee, for the appellee, George Hugh Rhoades, Jr.

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) (1999) for hearing and reporting of findings of fact and conclusions of law. Appellate review of factual issues in workers' compensation cases is *de novo* with a presumption that the trial court's findings are correct, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. §50-6-225(e)(2) (1999); Hill v. Eagle Bend Mfg., Inc., 942 S.W. 2d 483, 487 (Tenn. 1997). When a trial court has

seen and heard witnesses and issues of credibility and weight of testimony are involved, considerable deference is afforded the trial court's findings of fact. See Humphrey v. David Witherspoon, Inc., 734 S.W. 2d 315, 315-16 (Tenn. 1987).

The Plaintiff/Employer Landstar Poole, Inc. (hereinafter referred to as "Plaintiff or Employer") filed an action for declaratory judgment in the Chancery Court for Davidson County seeking a determination of Defendant/Employee George Hugh Rhoades, Jr.'s (hereinafter referred to as "Defendant or Employee") workers compensation benefits. The Defendant filed an Answer and Counterclaim for workers' compensation benefits pursuant to Tennessee Workers' Compensation statute. The issue before the Chancery Court were (1) whether or not an intervening cause broke the casual connection of the work related injury; (2) whether or not the Defendant suffered a permanent impairment to his left elbow; (3) whether or not the Defendant is entitled to temporary total benefits; and (4) whether or not Defendant is entitled to recover medical expenses already paid for by another insurance carrier.

The Chancellor found the following facts: The employee is 44 years of age and a resident of Dickson County, Tennessee. He did not complete High School but obtained his GED in 1991.

Prior to working with Plaintiff, Defendant worked as a mechanic, drove a truck and was in construction work. In 1996, the employee came to work with the employer as a safety line inspector where he was responsible for changing tires.

On July 6, 1996 while rolling tires across the floor to place on a truck, the employee slipped in a pool of water and tire soap injuring his left knee and elbow. The employee informed the Dispatcher who instructed him to go to Baptist Hospital.

The employee eventually sought treatment from Dr. Kurt Spindler who had treated both the employee's knees at a prior time. The employee was taken off work on July 17, 1996 and returned to work on October 16, 1996 after his knee surgery had heeled. However, after Dr. Spindler released the employee to return to work, the Defendant learned that his employer had closed. Subsequently, in November while lifting a tire Defendant experienced pain in his left elbow. He saw Dr. Spindler who instructed him to see Dr. Douglas Weikert. Dr. Weikert performed surgery on Defendant's left elbow and assigned him a 4% permanent impairment to the left upper extremity.

In November 1996, Appellee had a flat tire on his personal car and used his right hand to break the lug nuts off the wheel with a tire iron. He used both arms to pick up the tire, subsequently his left elbow once again began to swell and he returned to Dr. Spindler for treatment. The Appellee was referred to Dr. Weikert for treatment of the left elbow. Prior to surgery on the elbow in July, 1997, the Appellee had problems with elbow swelling, bruising and popping. Other than the fall onto the elbow at work, the Appellee insists that he suffered no other trauma to his elbow.

After the tire changing incident, the Appellee's elbow condition did not change much. The Appellee stated that the elbow started bothering him more.

It is well settled in Tennessee that the employee has the burden of proving that his injury was casually connected to his employment. A casual connection is defined as an action that has its origin and hazards to which the employment expose the employee while doing work. Swaney v. Cavalier Axquisition Corporation, 1995 West Law 605, 547 * 3 (Tennessee Special Workers' Comp.) However, a casual connection can be broken by an intervening cause. Generally, an employer is responsible for every natural consequence that flows from an injury "unless a subsequent injury is the result of an independent intervening cause attributable to the Claimant's own negligence or misconduct". Id. When determining if an injury is a result of a work related accident or a subsequent intervening event, the Court considers the medical evidence in lay testimony. Id.* 4. It is sufficient for the Court to rely on medical testimony that concludes that the work related accident "could be" the cause of the employee's injury when the Court also has before it lay testimony from which it may be reasonably inferred, that the work related incident was in fact the cause of the injury. P & L Construction Company, Inc. v. Lankford, 559 S.W. 2d. 793 (Tenn. 1978).

The Defendant/Employee contends that his elbow injury is casually connected to the July 11, 1996 incident. His treating physician, Dr. Spindler unsuccessfully treated his left elbow prior to and after the alleged intervening act. As a result, Dr. Spindler referred the Defendant to Dr. Weikert who specializes in the hand and elbow. Dr. Weikert was of the opinion that the nature of the injury indicated an origin with a July 11, 1996 accident. Moreover, Dr. Weikert noted that post-traumatic bursitis is not always readily apparent and can flare up if one over extends himself. Dr. Spindler observed a significant change in Defendant's elbow condition after the November incident in comparison to his condition prior to the incident. Dr. Spindler avers, however, that his primary concern with the Defendant's knee and that he would have no reason to disagree with Dr. Weikert's conclusions. Additionally, Defendant/Employee testified that he had never had pain in his elbow prior to the July 11, 1996 accident.

The Chancellor found that he could reasonably infer that while the November tire incident may have aggravated Defendant's condition, the July 11, 1996 accident was the actual cause of Defendant's condition. We are of the opinion that the preponderance of the evidence supports this finding. We agree with the Chancellor that taking into consideration all of the evidence, there was no intervening event and that the Defendant's condition was in fact casually connected to Defendant's employment.

The employer also insists that the evidence at trial did not support an award of 24% permanent partial disability.

The record shows that the employee was not able to return to work at his employment after he was released because the employer had shut down and moved its business out of town. Dr. Weikert gave the employee restrictions to not lift more than 30 pounds.

The employee testified that he does not even attempt to lift 30 pounds because he can not only pick up 10 to 15 pounds then he cannot "stand there and hold it".

The employee is not able to return to work as a truck mechanic because "I used to have to lift brake drums, lift up tires and put them on the truck." "I had to lift up the heavy parts and put them back together on the drum and slide it back in."

The employee cannot straighten his elbow all the way out and does not have the strength in his elbow that he had before he was injured. The employee has difficulty reaching for things and cannot reach very high. He has difficulty feeding his farm animals and difficulty reaching for items in his home.

The employee suffered a substantial loss of income and makes substantially less money working as a Deputy Sheriff. The employee gave up his 20 year career as a truck mechanic to work as a jail Deputy and security guard. He testified that even these comparative light jobs cause him problems because typing for a long period of time or lifting heavy items causes him much problems.

The employee is 44 years of age and has a minimal education. The employee's only transferable job skill is that of a truck mechanic and he is now unable to work in that occupation. He is not made a meaningful return to work to his previous employer. Taking all of these vocational disabilities into account, we are of the opinion that the Chancellor's award of 24% vocational impairment is within the findings shown by the record.

The findings of the Chancellor are supported by the evidence and we affirm them in all respects. The cost of appeal are taxed to the Appellant. The cause remanded to the Trial Court for enforcement of this judgment.