

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

SAMUEL D. NUNLEY v. CARRIER CORPORATION

**Chancery Court for Grundy County
No. 4697**

No. M1999-01640-WC-R3-CV - Decided - July 27, 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 the appellant, 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

SAMUEL D. NUNLEY v. CARRIER CORPORATION

**Direct Appeal from the Chancery Court for Grundy County
No. 4697 Jeffrey F. Stewart, Chancellor**

**No. M1999-01640-WC-R3-CV - Mailed - June 26, 2000
Filed - July 27, 2000**

The sole issue in this workers' compensation appeal is whether the chancellor erred in finding that the plaintiff's injury arose out of his employment with Carrier Corporation. This panel affirms the decision of the trial judge.

Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Chancery Court Affirmed.

KURTZ, SP.J., delivered the opinion of the court, in which BIRCH, J., and LOSER, SP.J., joined.

Timothy S. Priest, Winchester, Tennessee, for the appellant, Carrier Corporation.

Michael Lee Parsons, Nashville, Tennessee, for the appellee, Samuel D. Nunley.

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. For the reasons stated below, the judgment of the trial court granting benefits is affirmed.

The employee initiated this action to recover workers' compensation benefits for an injury which he says occurred when he was pushing some (copper) tubes in a[n air conditioning] unit and

felt something pull in his back. After a trial before the Chancery Court for Grundy County, the chancellor held that the plaintiff should be awarded permanent partial disability benefits based on 25% to the body as a whole. The chancellor found that the plaintiff was entitled to temporary total disability benefits from the date of his surgery until the date that he reached maximum medical improvement (to be off-set by payments already received), and that the workers' compensation rate is \$480.80 per week. He further found that Dr. Schooley's treatment was unauthorized, and therefore, plaintiff would bear the responsibility of any unpaid medical bills. However, the chancellor did order that future medicals remain open. On appeal the employer raises only the issue of whether the appellant sustained a compensable injury.

Mr. Nunley has a history of back problems dating back to 1993. On April 24, 1996, while working at Carrier Corporation ("Carrier"), he sustained an injury to his low back that required medical treatment. At the time of this injury, Mr. Nunley was 41 years old and had worked at Carrier since he graduated from high school, a period of more than 20 years. He was initially treated by Darlene Merritt who is a registered nurse employed by Carrier to treat on-the-job injuries. She also handles workers' compensation claims. Ms. Merritt testified that she treated Mr. Nunley who went to the emergency room that same evening. Mr. Nunley saw Ms. Merritt again on April 26, 1996 to file a workers' compensation claim and be referred to a doctor. She referred him to Dr. Warren McPherson, M.D.

Mr. Nunley first saw Dr. McPherson on April 29, 1996. At that time, Mr. Nunley was examined and had a negative straight leg raising test. Dr. McPherson reviewed Mr. Nunley's M.R.I. that had been performed on December 29, 1994 (he only saw the films and did not review the report). He stated that the M.R.I. showed an abnormality, but that he determined Mr. Nunley was

suffering from muscular pain at the time of his visit. Dr. McPherson prescribed exercises for Mr. Nunley to perform at home. Mr. Nunley saw Dr. McPherson again on May 28, 1996. Dr. McPherson again concluded that Mr. Nunley was suffering from muscular pain, and did not have any diagnostic studies performed to rule out the possibility of nerve root entrapment.

Mr. Nunley continued to work at Carrier following the reported accident. He took a leave of absence from July 8, 1996 through October 24, 1996 to spend time with his son who had terminal cancer. During that time he saw his personal doctor who treated him for ongoing back pain. The testimony indicated that he did very little work around the home because his family didn't want him to cause further injury to his back.

Dr. Brandon, Mr. Nunley's personal doctor, eventually referred him to Dr. William Schooley, M.D., a neurosurgeon. (Mr. Nunley testified that he had requested to see another workers' compensation approved doctor, but that request was denied. Ms. Merritt disputed this.) Dr. Schooley first saw Mr. Nunley on December 5, 1996. Dr. Schooley reviewed the M.R.I. report from December 1994 that showed "a mild bulging of the L3-4 and the L5-S1 disc, producing old nerve root impingement." Dr. Schooley performed a straight leg raising test that was positive. He then ordered a CAT scan of Mr. Nunley's back that showed "a disc protrusion typical of herniation at the L5-S1 level with significant neural impingement" (pinching of the nerve) and "severe narrowing of the spinal canal secondary to the herniation of the disc and of a congenital defect of having a short pedicle syndrome at that level." Dr. Schooley determined that surgery was necessary; he performed a discectomy, foraminotomy, and laminectomy on January 15, 1997, continued to treat Mr. Nunley, and released him to return to work on April 22, 1997 (At trial Mr. Nunley testified that he was working at Carrier in the conversion group). Dr. Schooley placed restrictions on Mr. Nunley that

include not lifting more than 25 pounds frequently and 50 pounds infrequently, use of proper mechanical bending techniques, supporting his weight when bending, not doing rotary motion at the waist, and not remaining in one position for an extended period of time (more than 45 minutes) either seated or standing. He rated Mr. Nunley's permanent medical impairment at 10% to the body as a whole. Dr. Schooley determined that the herniation of Mr. Nunley's low back was caused by bending and lifting at work. Our review is de novo upon the record of the trial court, accompanied by a presumption of the correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. §50-6-225(e)(2).

First of all, any reasonable doubt as to causation is to be resolved in favor of the employee. See Anderson v. Save-A-Lot, Ltd., 989 S.W.2d 277, 279 (Tenn. 1999). Furthermore, in a workers' compensation case the fact finder may properly predicate the award on medical testimony to the effect that a given incident could be the cause of the claimants' injury, when from other evidence, it may be reasonably inferred that the incident was in fact the cause of the injury. See McCaleb v. Saturn Corp., 910 S.W.2d 412, 415 (Tenn. 1995).

Carrier does not dispute that Mr. Nunley injured his back at work in April 1996. Carrier, however, argues that this injury did not cause the condition that was diagnosed in December 1996, resulting in surgery. Carrier asserts that Mr. Nunley suffered another injury sometime between April 1996 and December 1996, and emphasizes that during this time he was on leave of absence from work for approximately four months (July 8, 1996 through October 24, 1996). Carrier attempted to show at trial that Mr. Nunley injured his back while lifting his terminally ill son. However, the only witness testifying to this effect was Pasty Castle who stated that Mr. Nunley told her that "he had to care and assist in caring" for his son and that this bothered his back. There was no testimony that

Mr. Nunley told Ms. Castle he had injured his back or that he had lifted his son.

Mr. and Mrs. Nunley both testified that Mr. Nunley suffered no injury during his leave of absence from Carrier. In fact, the testimony was that Mrs. Nunley and the children did the necessary work around the house, allowing Mr. Nunley to rest his back. The Nunleys also testified that their son's cancer did not prevent their son from doing daily activities such as getting out, driving, and mowing the yard; he was encouraged to be as active as he felt like being. Mr. Nunley's assistance to his son was in the form of "a leaning arm for him, you might say, to sort of support himself." Their son did not require extensive assistance such as lifting until July 1997, quite some time following Mr. Nunley's surgery.

The chancellor pointed out that Dr. McPherson and Dr. Schooley have different opinions regarding causation of the injury. He emphasized that Dr. McPherson did not contradict Dr. Schooley's opinion that surgery was necessary at the time it was performed, but that Dr. McPherson stated that something had changed in the interim. As to this dispute between the physicians regarding causation, the chancellor emphasized that the workers' compensation laws are remedial in nature and that disputes regarding causation are to be resolved in favor of the injured worker. Implicitly, the chancellor credited Dr. Schooley's testimony.¹

The chancellor also credited Mr. Nunley's testimony regarding his condition and that it gradually worsened following the April 1996 injury.

Our examination of the record shows that the evidence does not preponderate against the findings of the trial judge. Therefore, the judgment of the trial court is affirmed. Costs are taxed to the appellant.

¹The chancellor's findings are extensive, covering ten (10) complete transcript pages.

