IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
(November 1999 Session)

GERALD M. REED v. GOODYEAR TIRE AND RUBBER COMPANY, ET AL.

Direct Appeal from the Chancery Court for Obion County
No. 18,895 W. Michael Maloan, Chancellor

No. W1999-00184-SC-WCM-CV - Mailed August 11, 2000; Filed December 7, 2000

This case involves injuries sustained to the neck and body as a whole by Gerald Reed on August 8, 1994 while in the employ of Goodyear Tire and Rubber Company. The employee brought suit against the employer and its insurer, The Travelers Insurance Company. The trial court determined that Mr. Reed sustained a compensable work injury and awarded permanent partial disability in the amount of 15% to the body as a whole. The defendant presented one issue on appeal: whether the plaintiff proved by a preponderance of the evidence that his injuries were sustained during the course and scope of his employment. After careful review, we affirm the decision of the trial court.

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

GEORGE R. ELLIS, SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and F. LLOYD TATUM, SP. J., joined.

Randy N. Chism, Union City, Tennessee, for the appellants, Goodyear Tire & Rubber Company, et al.

Charles S. Kelly, Jr., for the appellee, Gerald M. Reed.

MEMORANDUM OPINION

This worker's compensation appeal has been referred to the Special Worker's Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. Section 50-6-225(e) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

Review of the findings of fact made by the trial court is *de novo* upon the record, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. Section 50-6-225(e)(2); *Stone v. City of McMinnville*, 896

S. W. 2d 548, 550 (Tenn. 1995). The application of this standard requires this Court to weigh in more depth the factual findings and conclusions of the trial court in a worker's compensation case. See *Corcoran v. Foster Auto GMC, Inc.* 746 S.W. 2d, 452, 456 (Tenn. 1998). However, considerable deference must be given to the trial judge, who has seen and heard witnesses, especially where issues of credibility and weight of oral testimony are involved. *Jones v. Hartford Accident & Indem. Co.,*811 S.W.2d 516, 521 (Tenn. 1991).

FACTS

Gerald Reed reported experiencing pain to his supervisor on August 8, 1994. Mr. Reed testified that the pain started going up his arm, elbow and shoulder, into his shoulder blade and into his neck. The pain progressively got worse from August until February. Because of a prior carpal tunnel syndrome condition, Mr.Reed was sent for an examination to determine if carpal tunnel was again the problem. Carpal tunnel was ruled out and he sent to Dr. Anthony Segal, a neurosurgeon. Dr. Segal ordered a MRI in September of 1994 which showed degenerative disc problems at C3-4, C5-6 and C6-7.

Mr. Reed returned to Dr. Segal in February of 1995 for an onset of pain in the left neck and shoulder region and down the left arm. Another MRI was performed which showed disc lesions at C3-4 and C6-7. A discectomy and fusion was performed by Dr. Segal at these levels. Dr. Segal assigned an impairment rating to Mr. Reed of 9% to the body as a whole. Dr. Segal opined that

> as we get older . . . degenerative changes occur. If there is severe injury to discs, over time those discs will narrow down and cause degenerative changes. It's hard to say, Mr. Reed is a patient who has a very strenuous job, and repeated injury and using it can do it, but we also see wear and tear changes just as a price for living. So it's impossible to be absolutely sure about the causes for degenerative changes. It seems intrinsic to the patient.

Dr. Segal testified that in September Mr. Reed did not have the ruptured discs. Dr. Segal testified they can occur spontaneously, just by getting up, brushing one's teeth, sneezing and turning the head, but they can also be caused by a lot of twisting or jerking of the neck, sudden flexion of the neck, or a lot of pulling which will throw strain on the neck.

Dr. Lynn Warner of Dyersburg, Tennessee evaluated Mr. Reed. He gave his opinion as to causation based on Mr. Reed's history. Dr. Warner opined that causation was most likely because of his job as a tire builder at Goodyear. He testified that he had no problem accepting the fact that the injury happened on the job because it does not take a sudden onset to cause it. He further opined that the repetitive strain put on Mr. Reed at work would be the most likely cause unless he had some other things at home or away from work to do it.

Mr. Reed testified that he had experienced no injury outside of work.

Ms. Rae Nell McMillin and Mr. James Bramlett testified that they had known Mr. Reed all of his life and for fifty years, respectively and that he had a good reputation in the community for truth and veracity.

ANALYSIS

Goodyear asserts that Gerald Reed has established speculation and mere possibility that the injury could have occurred at work or at home. They urge this court that he has not been able to produce any testimony as to when or how the injury occurred other than to say his pain was increasing for a period of time. The defendant argues that since he could not identify a pain producing event at work he has failed to carry his burden of proof.

Dr. Warner and Dr. Segal opined that the work that Mr. Reed does, building tires at Goodyear, is strenuous and can cause this injury unless he had some other injury at home. The trial judge heard the testimony of Mr. Reed and his character witnesses. Although the medical evidence was equivocal, the trial court chose to believe the testimony of Mr. Reed that he had sustained no injury outside of work and ruled that he had sustained a compensable injury.

> An accidental injury arises out of one's employment when there is apparent to the rational mind, upon a consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury, ... and occurs in the course of one's employment if it occurs while an employee is performing a duty he was employed to do.

Fink v. Caudle, 856 S.W. 2d 952, 958 (Tenn. 1993). "Arising out of" refers to the origin of the injury in terms of causation and "in the course of" relates to time, place and circumstance. *Hill v. Eagle Bend Manuf. Inc.*, 942 S.W.2d 483, 487 (Tenn. 1997). Where a condition develops gradually over a period of time resulting in a definite, work-connected, unexpected, fortuitous injury, it is compensable as an injury by accident. *Brown Shoe Co. v. Reed*, 209 Tenn. 106, 350 S.W. 2d 65 (1961). In making such a determination, this court must give considerable deference to the trial judge's findings regarding the weight and credibility of any oral testimony received. *Townsend v. State*, 826 S.W.2d 434, 437 (Tenn. 1992).

CONCLUSION

For the foregoing reasons, we affirm the trial court's judgment that the plaintiff sustained an injury while in the course and scope of his employment.

The judgment of the trial court is affirmed. The costs of the appeal are taxed to the defendant.

GEORGE R. ELLIS, Special Judge

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ORDER

This case is before the Court upon motion for review pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), 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 motion for review is not well-taken and should be denied 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 on appeal are taxed to the defendant.

IT IS SO ORDERED.

PER CURIAM

Holder, J. - Not participating.