

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

November 3, 2000 Session

GERALD ATKINS v. WOZNIAK INDUSTRIES, INC., ET AL.

**Direct Appeal from the Chancery Court for Gibson (Humboldt) County
H-3954 George R. Ellis, Chancellor**

No. W2000-00665-WC-R3-CV - Mailed December 19, 2000; Filed February 7, 2001

Employee suffered a brown recluse spider bite while at work. The incident resulted in infectious eczematoid dermatitis that affected his ability to work by causing swelling, interfering with sweating, severe itching and required employee to be cautious of overheating from direct rays of sunlight, justifying an award of forty percent to the body as a whole.

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

JOE H. WALKER III, SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and JOE C. LOSER, JR., SP. J., joined.

George Lee Morrison III, Jackson, Tennessee, Kathryn M. Tucker, Milan, Tennessee, and Mary Dee Allen, Cookeville, Tennessee, for the appellee, Gerald Atkins.

Catherine Bulle Clayton and Michael Lynn Russell, Jackson, Tennessee, for the appellants, Wozniak Industries, Inc. d/b/a GMP Metal Products and Liberty Mutual Insurance Co.

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 employee was sixty years of age, has a GED degree, and a history of working as a laborer in an iron works factory, truck driver, mechanic, painter, welder, machine operator, and tow motor driver.

He had worked for employer a short while in a painting position. After he arrived at work on the morning that he was bit, he obtained his coveralls which were kept at the plant and were hanging in an unclean area in a dark corner. His boots were untied and the tongue was pulled out. A short while after putting on his coveralls and beginning work he felt a burning or stinging sensation on the top of his right foot. He removed his boot and saw a red spot on his foot.

Plaintiff testified that he had seen spiders in that work area on previous occasions. He had also seen spiders in the bin where gloves were kept. He had to shake out his gloves before putting them on to make certain no spiders were in them. His testimony about spiders in the plant was corroborated by an exterminator who had treated defendant's plant for brown recluse infestation in the past. Another employee also testified that he had seen spiders in different parts of the plant, but not in the paint department. Plaintiff testified he had not seen any brown recluse spiders at his home.

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). Where the trial judge has seen and heard the witnesses, considerable deference must be accorded those circumstances on review. McCaleb v. Saturn Corp., 910 S.W.2d 412 (Tenn. 1995).

The Chancellor credited the testimony of the employee. The employee testified that the place the coveralls were kept was filthy. In his words, it was the dirtiest place he ever worked. His boot was not tied when he put his overalls on, and he believed that the spider must have fallen from the coveralls into the boot. The employee testified that he did not have spiders at his house and that there was no bite of any type when he put on his sock and shoe that morning.

Employer's plant had been treated for brown recluse infestation in the past, and the exterminator set traps and caught brown recluse spiders at the plant.

The employee reported the injury immediately after it occurred. A physician testified that he treated employee for the spider bite and the injury was consistent with the history plaintiff gave him and chronology of events.

In Electro-Voice v. O'Dell, Inc., 519 S.W.2d 395 (Tenn. 1975), a plant had been treated for bee infestation approximately two years before the plaintiff was stung. Bees had been seen on the premises before the sting. The court found that upon consideration of all the circumstances, a causal connection existed between the condition under which the work is required to be performed and the resulting injury. The court relied upon Oman Construction Company v. Hodge, 205 Tenn. 627, 329, S.W.2d 842 (1950), in which the employee was struck by lightning under conditions which were created by his employer as being more hazardous with regard to being struck by lightning than the position of others in the community, not so located.

There is evidence in the record to support the finding of the Chancellor that a causal connection existed between the spider bite received by the employee and the work environment, that it occurred during the scope and course of his employment, and arising out of his employment.

There is evidence in the record to support a finding of forty percent disability to the body as a whole. Dr. Sterling Craig, a dermatologist, testified that he treated employee for the spider bite. The employee had multiple round areas of infectious eczematoid dermatitis over his body secondary to the bite, and this has affected his skin on a permanent basis. Dr. Craig assessed the permanent disability as fifteen percent to the body as a whole. This condition would continue to affect normal functions of bathing, sweating, and working by causing pain, itching, swelling, and difficulty with maintaining hygiene. Plaintiff is required to avoid direct rays of sunlight now, and should not be in either too hot or too cold environment, and neither too high or too low humidity.

Plaintiff testified that he now works for the state as a road maintenance worker, making less money than he did at employer's plant. That as a result of the spider bite he itches constantly, which is aggravated by the hot and cold. Rain aggravates the itching. He breaks out in a rash, and is much more limited in his ability to work than he was prior to the condition he developed as a result of the spider bite.

Judgment of the trial court is affirmed. Costs are taxed to defendants/appellants.

JOE H. WALKER, III, SPECIAL JUDGE

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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 on appeal are taxed to the Defendants/Appellants, Wozniak Industries, Inc., d/b/a GMP Metal Products, and Liberty Mutual Insurance Co. for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM