IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
November 3, 2000 Session

RODNEY STAFFORD v. SARA LEE CORPORATION, ET AL.

Direct Appeal from the Chancery Court for Dyer County
No. 97-C-628 R. Lee Moore, Jr., Judge

No. W2000-00705-WC-R3-CV - Mailed December 8, 2000; Filed January 25, 2001

Employee was cleaning a machine at work while it was running, in violation of safety rules, and received an injury to his hand and arm. The trial court found willful misconduct and refused worker's compensation benefits. The panel finds that the evidence fails to preponderate against the Chancellor's findings, and affirms.

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.

Jay E. Degroot, Jackson, Tennessee, for the appellant, Rodney Stafford.

Joe D. Spicer, Nashville, Tennessee, and Kenneth R. Rudstrom, Memphis, Tennessee, for the appellee, Lumbermens Mutual Casualty Company.

Kenneth R. Rudstrom, Memphis, Tennessee, for the appellee, Sara Lee Corporation d/b/a Jimmy Dean Foods.

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 employer and its insurer contend the trial court judgment should be affirmed because the employee engaged in willful misconduct or willfully failed to use a safety appliance. As discussed below, the panel has

concluded the judgment should be affirmed.

At the time of this injury, the employee or claimant was cleaning a skinning machine at work. This machine rotates, and he was cleaning meat film off of the barrel of the machinery that was rotating. Employees are required to lock off and tag out the machine before cleaning. The lock is used to disengage the power source. The employee signs a log when he puts the lock on a machine, and signs another log when removes the lock and tag. On the day he was injured, employee signed the log stating that he had locked off and tagged out his machine, when in fact he had not done this, and was injured when the rotating part of the machine caught his glove and pulled his hand into the machine.

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).

An employer may refuse to pay compensation benefits for a injury resulting from a claimant's willful or intentional misconduct or self-inflicted injury, or because of intoxication or willful failure to use a safety appliance or perform a duty required by law. Tenn. Code Ann. section 50-6-110(a). The burden of proof to establish such defense(s) is on the employer. Tenn.Code Ann. section 50-6-110-(b).

Willful misconduct has been found and recovery denied in instances where employees have full knowledge of the danger and familiarity with the safety rules and consciously disregard said rules. In Cordell v. Kentucky-Tennessee Light & Power Co., 121 S.W.2d 970 (Tenn. 1938), an experienced employee died as a result of coming into contact with a live wire. The Cordell Court stated: "...therefore, where the employee, with full knowledge of the danger and a familiarity with the safety rules, disregards same, takes a chance and is injured, his conduct within the meaning of the statute is willful and no recovery can be had."

There is evidence in the record, accepted by the chancellor, that the claimant knew the proper procedure to follow to clean the machine. He had watched a video training course on the necessity to lock off and tag out the machine before cleaning. He had been instructed on proper procedure many times, and had been working for employer four years at the time of injury,[1] doing this cleaning job for over two years. Monthly safety meetings were conducted at the plant, describing the importance of locking off and tagging out the machinery before cleaning. Memos were sent to employees indicating that any violation of the lock off and tag out rule would result in a final warning.

The Chancellor found that the proof was clear that plaintiff intentionally violated a safety rule when he was injured, and that the violation of the safety rule was the proximate cause of the injury.

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[1]He continued to work for employer at the time of trial, at a different position for a higher wage.

The trial court found that the plaintiff purposefully violated the orders of his supervisors, and had full knowledge of the danger and that he was familiar with the safety rule in question. The plaintiff hid from his employer the procedure that he was following in that he signed the log on the day of the accident which indicates that he was following the safety rule, when he, in fact, was violating the safety rule at the time the accident occurred.

The judgment of the trial court is affirmed. Costs are taxed to plaintiffs-appellants.

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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 Plaintiff/Appellant, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM