

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

**RICHARD SCOTT STAINFORTH v. CHEMETALS, INC., ET AL.**

**Direct Appeal from the Circuit Court for Humphreys County  
No. 8779 C. Creed McGinley, Judge**

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**No. M1999-00459-WC-R3-CV - Mailed - July 11, 2000  
Filed - January 12, 2001**

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This civil action was commenced by the employee or claimant, Stainforth, on July 17, 1998, for the recovery of medical and disability benefits under the Workers' Compensation Act, Tenn. Code Ann. § 50-6-101 *et seq.* The Second Injury Fund was originally sued, but is not a party to this appeal. The employer, Chemetals, and its workers' compensation insurer or administrator denied any liability. After a trial on the merits on June 3, 1999, the trial court awarded medical and disability benefits. The employer has appealed, asserting that (1) the trial court erred in finding that the claimant's injury arose out of the employment relationship between the parties, (2) the trial court erred in finding that the claimant suffered an injury by accident, (3) the trial court erred in accepting the anatomical impairment rating of Dr. Joseph Boals, and (4) the award of permanent partial disability benefits is excessive.

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

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

William B. Walk, Memphis, Tennessee, for the appellants, Chemetals, Inc., et al.

Charles L. Hicks, Camden, Tennessee, for the appellee, Richard Scott Stainforth.

**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. As discussed below, the panel has concluded the judgment should be affirmed.

The claimant gradually developed pain in his hands and arms at work, which he reported to the employer on March 9, 1998. He was referred to Dr. Wade Reynolds, who diagnosed tendinitis of the thumbs, restricted him from repetitive use of the thumbs and prescribed non-narcotic medication.

The claimant continued working with pain and was later referred to Dr. John McInnis, who treated him for swollen thumbs, but did nothing to alleviate the pain in his hands and arms. Dr. McInnis prescribed pain medication, which was helpful, but the claimant continued to suffer from pain in his hands and arms and swelling in his thumbs. In his deposition, Dr. McInnis said the claimant had arthritis in both thumbs and opined the injury would not cause any permanent medical impairment.

The claimant was evaluated by Dr. Joseph Boals, who made a report on a form prescribed by the director of the workers' compensation division and a narrative report, both of which are included in the record. Dr. Boals diagnosed overuse syndrome in both upper extremities, manifested by mild carpal tunnel syndrome, severe arthritis of the thumbs and decreased grip strength, causally related to the work the claimant was doing. He estimated the claimant's permanent impairment at twenty percent to each arm.

The trial judge found that the claimant suffered an injury by accident arising out of and in the course of employment and awarded, inter alia, permanent partial disability benefits based on sixty-two and one-half percent to both arms. 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. § 50-6-225(e)(2). The reviewing tribunal is not bound by a trial court's factual findings but instead conducts an independent examination to determine where the preponderance of the evidence lies. Galloway v. Memphis Drum Serv., 822 S.W.2d 584 (Tenn. 1991).

We address first the contention that the trial court erred in accepting the opinions of Dr. Boals over those of Dr. McInnis. When the medical testimony differs, the trial judge must choose which view to believe. In doing so, he is allowed, among other things, to consider the qualifications of the experts, the circumstances of their examination, the information available to them, and the evaluation of the importance of that information by other experts. Orman v. Williams Sonoma, Inc., 803 S.W.2d 672 (Tenn. 1991). Moreover, it is within the discretion of the trial judge to conclude that the opinion of certain experts should be accepted over that of other experts and that it contains the more probable explanation. Story v. Legion Ins. Co., 3 S.W.3d 450 (Tenn. 1999); Hinson v. Wal-Mart Stores, Inc., 654 S.W.2d 675 (Tenn. 1983).

Dr. Boals has been certified by the American Board of Orthopedic Surgery since 1972 and licensed in Tennessee since 1962. His testimony is consistent with the lay testimony and he appears to have conducted a careful examination and prepared a thoughtful report. We cannot say the trial judge abused his discretion by accepting his opinion or that the preponderance of the evidence is

otherwise.

An injury arises out of the 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. Fink v. Caudle, 856 S.W.2d 952 (Tenn. 1993). The claimant's own testimony that the injury occurred at work and the report of Dr. Boals provide the necessary causal connection. Moreover, where an injury occurs in the course of employment, any reasonable doubt as to whether such injury also arises out of the employment should be resolved in favor of the employee. Reeser v. Yellow Freight Systems, Inc., 938 S.W.2d 690 (Tenn. 1997). For those reasons, the evidence fails to preponderate against the trial court's finding that the claimant's injury arose out of the employment.

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). Moreover, an injury is compensable even though the claimant may have been suffering from a serious pre-existing condition or disability, if a work connected accident can be fairly said to be a contributing cause of said injury. See Fink v. Caudle, *supra*, and cases cited therein. On those authorities, the panel has concluded the trial court did not err in finding an accidental injury, even though it occurred gradually and the claimant's pre-existing condition may have contributed to his disability.

Once the causation and permanency of any injury have been established by expert testimony, the trial judge may consider many factors, including age, job skills, education, training, duration of disability and job opportunities for the disabled, in addition to anatomical impairment, for the purpose of evaluating the extent of a claimant's permanent disability. McCaleb v. Saturn Corp., 910 S.W.2d 412 (Tenn. 1995). This claimant is 35 years old and has a twelfth grade education. He has little in the way of formal training and is only experienced at jobs which require the use of his hands and arms. He is unable to return to the job on which he suffered his injury. At the time of the trial, he was working as a bagger, making less than he was able to earn before the injury. We cannot say the evidence preponderates against the trial court's finding with respect to the extent of the employee's permanent partial disability.

All issues having been resolved in favor of the appellee, the judgment of the trial court is affirmed. Cost on appeal are taxed to the appellant.

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No. M1999-00459-WC-WCM-CV - Filed - January 12, 2001

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**JUDGMENT**

This case is before the Court upon Chemetals, Inc.'s 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 will be paid by Chemetals, Inc., for which execution may issue if necessary.

IT IS SO ORDERED.

BIRCH, J., NOT PARTICIPATING