

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
(JULY 20, 2000 SESSION)

BRIDGESTONE/FIRESTONE, INC. v. FERNANDO GONZALES

**Direct Appeal from the Chancery Court for Warren County
No. 6514 Charles D. Haston, Chancellor**

**No. M1999-02037-WC-R3-CV - Mailed - February 9, 2001
Filed - April 17, 2001**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with *Tennessee Code Annotated* §50-6-225 (e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The defendant/counter-plaintiff, Fernando Gonzales appeals the judgment of the Chancery Court of Warren County, where the trial court found that Mr. Gonzales retained a five percent (5%) permanent vocational disability to his right and left upper extremities for his work-related bilateral carpal tunnel syndrome. For the reasons stated in this opinion, we modify the judgment of the trial court and award Mr. Gonzales a twenty percent (20%) permanent vocational disability.

Tennessee Code Annotated §50-6-225 (e)(2000) Appeal as of Right; Judgment of the Chancery Court; Affirmed as Modified.

WEATHERFORD, SR. J., delivered the opinion of the court, in which BIRCH, J., and RUSSELL, J. joined.

J. Mitchell Grissim, Jr., Nashville, Tennessee for the appellant, Fernando Gonzales

B. Timothy Pirtle, McMinnville, Tennessee for the appellee, Bridgestone/Firestone, Inc.

MEMORANDUM OPINION

Fernando Gonzales was born on April 6, 1967, and is married with two children. He weighs approximately 300 pounds. He has a high school education and is a graduate of COTA Police Academy. He has worked as a bouncer, tire changer, security guard, truck driver, waiter, police officer, ranch hand, copy maker, and janitor. He is currently employed by Bridgestone/Firestone as a factory worker.

On September 23, 1996, Mr. Gonzales began working for Bridgestone/Firestone. During

the first four months of his employment, Mr. Gonzales worked on an apparatus called a D.S.B. machine. The work was hand-intensive and repetitious, and as a trainee he worked twelve hour shifts.

Mr. Gonzales described the hand activity involved with working on this machine as follows:

I have to take a product – a bead the size of a diesel tire– I would take it and put it onto a machine– well, first off, I would take it off a rack that it was presented on. I would take it once, put it on the – a staging rack in between where my machine work area is.

I would then again take it again, set it onto the machine. The machine would spin around, place a rubber compound and smash it, if you will, onto a polished metal plate.

I would then again take it with my– you know, I would curl it down with my fingertips because it is on there. It's not pushed off manually by any means. I have to take it [the rubber] off manually with my fingertips, and then pull it off.

Mr. Gonzales stated that a bead with rubber on it added five to twelve pounds of weight and that after he peeled the rubber off the bead he would place another bead in the machine.

Each cycle lasted approximately fifteen (15)seconds. Mr. Gonzales handled each bead three times during the cycle and performed this function on approximately three hundred to three hundred and fifty beads per hour.

Bridgestone/Firestone provided hand splints to put around your wrists and cotton gloves to protect the worker from heat. Mr. Gonzales stated that at the end of his twelve hour shift, he would have worn through the fingers of his gloves.

On October 27, 1996, Mr. Gonzales received a verbal reprimand for missing two consecutive days of work on October 16 and 17. Mr. Gonzales was placed in Level One written consultation for absenteeism when he missed three scheduled shifts during the first week of November. He continued to miss some scheduled shifts through the end of 1996.

In January of 1997, he worked approximately sixty percent (60%) of his scheduled work shifts and worked only one day during the last two weeks of January 1997. Mr. Gonzales acknowledged that these absences were not related to the work place. His second child was born on January 29, 1997.

Mr. Gonzales testified that he first began experiencing pain in his hand during the last week

of January or first week of February 1997. He had not had any problems with his hands before coming to work for Bridgestone/Firestone. On February 13, 1997, Mr. Gonzales reported to Health Services at the plant that he was experiencing some pain in his left hand. He was referred to Dr. Bryan D. Chastain, M.D. According to Mr. Gonzales, Dr. Chastain normally treated all plant employees and was familiar with the different jobs and stations at the plant. Dr. Chastain first examined Mr. Gonzales at the Bridgestone/Firestone plant and found that Mr. Gonzales' wrists were non-tender and that he had no other signs or symptoms of carpal tunnel syndrome. Dr. Chastain prescribed exercises and pain medication. He also removed Mr. Gonzales from the D.S.B. machine and assigned him to the nylon machine which required less intensive use of the upper extremities.

On March 21, 1997, Mr. Gonzales returned to Dr. Chastain complaining of left hand pain. The second examination showed full strength and full range of motion, but Dr. Chastain did note some tenderness. Dr. Chastain prescribed physical therapy which did alleviate the pain to some extent.

Dr. Chastain examined him for a third time on April 3, 1997, and reported full range of motion, good strength and no tenderness. However, Mr. Gonzales reported tingling in his hands for the first time. Dr. Chastain treated Mr. Gonzales through October 1997 by prescribing medications, splints, home exercises and referrals for physical therapy.

Dr. Chastain subsequently referred Mr. Gonzales to Dr. Steven Graham, M. D., for EMG studies. Dr. Graham's report indicated that the abnormalities found in Mr. Gonzales' EMG were those "seen in a mild grade bilateral carpal tunnel syndrome." Dr. Chastain then recommended a neurosurgery evaluation and restricted his work activities to material handling only.

From the list of three physicians provided by Bridgestone/Firestone, Mr. Gonzales chose Dr. Gregory Landford, M.D. who recommended surgery. Bridgestone/Firestone then sent Mr. Gonzales to Dr. David Martin, M.D. who also recommended surgery. Bridgestone/Firestone then sent Mr. Gonzales to Dr. Frank Jones, M.D. and Dr. Myron Mills, M..D. who recommended against surgery. Dr. Chastain recommended referring Mr. Gonzales back to Dr. Martin or Dr. Landford.

On July 28, 1997, Bridgestone/Firestone filed a Complaint in the Chancery Court for Warren County asserting that Mr. Gonzales' symptoms were not work-related and requesting that the Court discharge them from responsibility and award them a judgment for benefits and medical payments previously paid to Mr. Gonzales. In its complaint Bridgestone/Firestone stated that (1) a "dispute has arisen between treating and evaluating physicians whether surgical intervention is indicated"; and (2) Dr. Frank E. Jones, M.D., the last physician to evaluate Mr. Gonzales had released him to return to work with no restrictions and found no impairment.

Mr. Gonzales filed a counter-complaint seeking workers' compensation benefits alleging that he suffered gradual injuries to both his arms during his employment with Bridgestone/Firestone.

On November 5, 1997, a Workers' Compensation Specialist in the State of Tennessee,

Department of Labor, Workers' Compensation Division issued an Order for Medical Benefits pursuant to *Tennessee Code Annotated* § 50-6-238 ordering that "Medical treatment and care for the work related injury shall be paid as directed by the designated treating physician, Bryan Chastain, M.D." On November 14, 1997, Dr. Chastain saw Mr. Gonzales and agreed "with re-evaluation by Dr. Martin and consideration for surgery if so indicated."

On November 14, 1997, Bridgestone/Firestone filed a motion in the Chancery Court for Warren County to suspend the Order for Medical Benefits issued by the Workers' Compensation Specialist. On November 24, 1997, the trial court issued an order finding that the Order for Medical Benefits "should be suspended with regard to any surgical intervention that might be anticipated by defendant [Gonzales] pending a de novo hearing."

On January 20, 1998, the trial court held a hearing and by order filed May 15, 1998, ruled "on the issues decided by the Tennessee Department of Labor, Workers' Compensation Division, in their order issued November 5, 1997. Based upon the testimony, exhibits and record as a whole, the Court finds that it should adopt the Workers' Compensation Division's order as its own."

Dr. Martin subsequently performed a surgical open decompression of the right median nerve and left median nerve on May 13, 1998, and June 3, 1998, respectively. Dr. Martin testified that Mr. Gonzales reported some numbness and tingling after surgery but that no sensory or motor deficits were detected on clinical examination. Dr. Martin later assigned a five percent (5%) permanent impairment to each upper extremity according to the AMA Guidelines. He also testified that he considered himself to be conservative in his rating.

Dr. Chastain, the treating physician, also performed an independent medical evaluation and assigned a twenty percent (20%) permanent impairment rating to each upper extremity for moderate residual Carpal Tunnel Syndrome.

Dr. David Gaw, M.D., an orthopedic surgeon, examined Mr. Gonzales on June 29, 1999. Dr. Gaw's physical examination of Mr. Gonzales revealed a positive Tinel's on both sides to the index finger only and "definite decreased sensation both to touch and pin prick involving the median nerve as compared to the ulnar nerve." He further testified, "The surgery had helped the tingling somewhat, but it has not done much for the numbness and sensation of not being able to tell things by touch or texture with the tips of his fingers." Dr. Gaw stated that Mr. Gonzales would be more likely to experience pain symptoms through over use of his hands.

Dr. Gaw assigned permanent restrictions of avoiding continuous gripping, lifting and squeezing, and opined that Mr. Gonzales retained a permanent impairment of ten percent (10%) to both upper extremities based on the AMA Guidelines for mild residual carpal tunnel syndrome after surgery. Dr. Gaw admitted that Mr. Gonzales' two point discrimination sensory and grip strength tests were within normal range under the AMA Guidelines.

Dr. James Talmage, M.D. testified as an expert for Bridgestone/Firestone at the second hearing in this case held on August 10, 1999. Dr. Talmage serves as Associate Editor of the *A.M.A. Guides Newsletter* and has contributed to the *A.M.A. Guides Casebook*. In July 1999 Dr. Talmage performed an independent medical examination of Mr. Gonzales.

Dr. Talmage testified that while Mr. Gonzales did indeed have carpal tunnel syndrome, it was not caused by the work Mr. Gonzales performed at Bridgestone/Firestone. In his opinion, Mr. Gonzales had an eighty percent (80%) probability of developing carpal tunnel syndrome regardless of his activity at work or otherwise due to personal risk factors such as obesity. According to Dr. Talmage, these risk factors include age, degree of obesity, wrist anatomy or wrist depth and aerobic activity or exercise. He also stated that the State of Virginia and the vast majority of Europe do not recognize carpal tunnel syndrome as being work-related.

He further noted that the OSHA records from Bridgestone/Firestone demonstrated that Mr. Gonzales' job had not constituted an ergonomic hazard for carpal tunnel syndrome. Dr. Talmage stated that Mr. Gonzales' job duties were not "highly repetitive" or "highly forceful" enough to be a contributing factor to the development of carpal tunnel syndrome. He also thought that it was very significant that Mr. Gonzales attributed the onset of his symptoms to a time when he had a lot of absences from work.

Dr. Talmage found that Mr. Gonzales had "normal sensation and normal strength" after surgery: "After surgery his prognosis is excellent. His symptoms are minimal. His physical examination is normal. His nerve conductions are normal. And he's working without difficulty." He concluded that Mr. Gonzales did not have observable deficits in sensation or muscle strength—the two components used in doing an impairment evaluation for peripheral nerve entrapment.

Mr. Gonzales testified that he continues to experience symptoms and "if I try to grab onto something and pull on it, I feel a stinging, if you would, in my forearms, in my wrists, and my hands." He avoids using his first two fingers for activities such as opening car doors. His hands still ache when he uses them for long periods of time.

He now works at Bridgestone/Firestone as "more or less a relief person" for other employees. He testified that despite his job modifications, he continues to experience pain symptoms:

If I have to cut something for long periods of time, then that hurts. There's things that are noticeable right off the bat, that hurts; and I try to change the way I do things. But there are some jobs where I have to cut all day, and that....I just get the job done, and it hurts later on by the time I go home.

Mr. Gonzales testified that has trouble putting keys in a car, opening up jars, and buttoning shirts. His wife, Linda Gonzales, testified that he has trouble putting barrettes in their daughter's

hair and putting up blinds because he can't maneuver the screws. She also testified he has a hard time using flat silverware; holding onto smaller drinking glasses; and tying his daughter's shoes.

The trial court stated in its order entered September 1, 1999, that the issues of causation and compensability had been tried in the first hearing in this case and the causal relationship between Mr. Gonzales' bilateral carpal tunnel injuries and his work had been established. On the issue of vocational disability the trial court found that Mr. Gonzales had suffered gradual injuries to his right and left upper extremities while acting in the course and scope of his employment with Bridgestone/Firestone and assigned a five percent (5%) permanent vocational disability to his right and left upper extremities.

Bridgestone/Firestone filed a Motion to Alter or Amend the Judgment or in the Alternative for a New Trial on the grounds that the first hearing was not determinative of causation and that the evidence preponderated against a finding of causation. The trial court overruled the motion.

ANALYSIS

The scope of review of issues of fact is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings, unless the preponderance of the evidence is otherwise. *Tenn. Code Ann.* §50-6-225(e)(2); *Lollar v. Wal-Mart Stores, Inc.*, 767 S.W. 2d. 143, 149 (Tenn. 1989).

Where the trial court has seen and heard witnesses, especially where issues of credibility and weight of oral testimony are involved, considerable deference must be accorded the trial court's factual findings. *Humphrey v. David Witherspoon, Inc.*, 734 S.W.2d 315 (Tenn. 1987).

The reviewing court is to examine in depth the trial court's factual findings and conclusions; and is not bound by the trial court's factual findings, but is instead to conduct an independent examination to determine where the preponderance of the evidence lies. *Galloway v. Memphis Drum Service*, 822 S.W.2d 584, 586 (Tenn. 1991).

Mr. Gonzales has presented one issue in this appeal.

I. Whether the evidence preponderates against the trial court's finding that Mr. Gonzales retains a five percent (5%) vocational disability to both upper extremities.

Bridgestone/Firestone has presented an additional issue.

II. If the trial court erred, the evidence preponderated against a finding that the carpal tunnel syndrome experienced by Mr. Gonzales was causally related to his employment.

I. Whether the evidence preponderates against the trial court's finding that Mr.

Gonzales retains a five percent (5%) vocational disability to both upper extremities.

In *Bradford v. Travelers Indemnity Co.*, 762 S.W.2d 572 (Tenn. 1988), our Supreme Court stated as follows:

To determine the extent of vocational disability, the trial court considers “many pertinent factors, including job skills, education, training, duration of disability, and job opportunities for the disabled, in addition to the anatomical disability, testified to by medical experts.”

Bradford, 762 S.W.2d at 573 (quoting *Employers Insurance Co. of Alabama v. Heath*, 536 S.W.2d 341, 343 (Tenn. 1976).

In this case the medical proof provided the following anatomical impairment ratings to both upper extremities: Dr. Chastain assigned twenty percent (20%); Dr. Gaw assigned ten percent (10%); and Dr. Martin assigned an admittedly conservative impairment of five percent (5%). Dr. Talmage testified that Mr. Gonzales did not have observable deficits in sensation or muscle strength—the two components used in doing an impairment evaluation.

After reviewing the record in this case, it is our opinion that the trial court focused too narrowly upon the anatomical disability rating as a factor in determining vocational disability. It is well-settled that a claimant’s anatomical disability rating is but one factor in considering the extent of vocational disability. *Roark v. Liberty Mutual Insurance Co.*, 793 S.W.2d 932, 934 (Tenn. 1990).

Mr. Gonzales’ own assessment of his physical condition is competent testimony and cannot be disregarded. *Tom Still Transfer Co. v. Way*, 482 S.W.2d 775, 777 (Tenn. 1972); *Walker v. Saturn Corp.* 986 S.W.2d 204, 208 (Tenn. 1998).

Mr. Gonzales testified that he continues to experience pain symptoms despite his job modifications. He has trouble buttoning shirts and opening jars and his hands ache when he uses them for long periods of time.. His wife also testified about his difficulty in maneuvering small objects such as screws, barrettes, shoelaces, etc. He testified that prior to working for Bridgestone/ Firestone he had no problems with his hands. He has little formal education beyond high school and a work history of non-skilled or semi-skilled jobs.

From our independent examination on appeal, we find that the evidence preponderates against the judgment of the trial court and in favor of a finding of twenty percent (20%) permanent partial disability.

II. If the trial court erred, the evidence preponderated against a finding that the carpal tunnel syndrome experienced by Mr. Gonzales was causally related to his employment.

In its order entered after the second hearing in this matter the court stated:

Having previously on the 20th day of January, 1998 tried the issues of causation and compensability, the Court by Order entered on May 21st, 1998 adopted the Tennessee Department of Labor-Workers' Compensation Division's Order awarding medical benefits to the defendant, and establishing the causal relationship between Mr. Gonzales' bilateral carpal tunnel injuries and his work

Bridgestone/Firestone's post-trial motion on this issue was overruled by the trial court.

In order to examine this issue we would need to review the evidence on causation presented in the first hearing held January 20, 1998. The record presented to us on appeal contains only an "excerpt" of this proceeding and is limited to Mr. Gonzales' testimony. The record does not contain the depositions of Dr. Chastain, Dr. Martin (first deposition taken 12/11/97), Dr. Mills and Dr. Jones which were filed with the trial court.

In *Sherrod v. Wix*, 849 S.W.2d 780 (Tenn. Ct. App. 1992) the court stated:

When a trial court decides a case without a jury, it's findings of fact are presumed to be correct unless the evidence in the record preponderates against them. Tenn. R. App. P. 13(d). This court cannot review the facts de novo without an appellate record containing the facts, and therefore, we must assume that the record, had it been preserved, would have contained sufficient evidence to support the trial court's factual findings. *McDonald v. Onoh*, 772 S.W.2d 913, 914 (Tenn. Ct. App. 1989); *Irvin v. City of Clarksville*, 767 S.W.2d 649, 653 (Tenn. Ct. App. 1987); *Gotten v. Gotten*, 748 S.W.2d 430, 432 (Tenn. Ct. App. 1988).

Sherrod v. Wix, 849 S.W.2d at 783.

Bridgestone/Firestone refers us to Dr. Talmage's testimony regarding causation, but this evidence was not presented until the second hearing to determine vocational disability. The issue of causation had already been decided.

This issue is without merit.

CONCLUSION

We modify the judgment of the trial court and award Mr. Gonzales a twenty percent (20%) vocational disability to his right and left upper extremities. The case is remanded to the trial court for entry of a judgment consistent with this memorandum opinion and any other proceedings, if any, as may be necessary. Costs on appeal are taxed to the appellee.

James L. Weatherford, Senior Judge

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

BRIDGESTONE/FIRESTONE, INC. v. FERNANDO GONZALES

**Chancery Court for Warren County
No. 6514**

No. M1999-02037-WC-R3-CV - Filed - April 17, 2001

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 appellee, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM