

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
April 28, 2000 Session

JENNIFER McGARITY v. TECUMSEH PRODUCTS COMPANY, et al.

**Direct Appeal from the Henry County Circuit Court
No. 1102 Honorable C. Creed McGinley, Judge**

No. W1999-01704-WC-R3-CV - Mailed February 21, 2001; Filed April 2, 2001

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. Defendant Tecumseh Products Company appeals the judgment of the Circuit Court of Henry County awarding plaintiff permanent partial disability asserting error as to issues of notice, statute of limitations, and causation. For the reasons stated in the opinion we affirm the judgment of the trial court.

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

HENRY D. BELL, SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and W. MICHAEL MALOAN, SP. J., joined.

David F. Hessing, Paris, Tennessee, for the appellant, Tecumseh Products Company,

Ricky L. Boren, Jackson, Tennessee, for the appellee, Jennifer McGarity.

MEMORANDUM OPINION

The appeal in this case involves three issues:

- (1) Whether the trial court erred in finding that plaintiff complied with the notice provisions of T.C.A. § 50-6-201;
- (2) Whether the trial court erred in finding that plaintiff commenced her action for workers' compensation benefits within the one-year period required by T.C.A. § 50-6-203 and T.C.A. § 50-6-224 (1); and

- (3) Whether the trial court erred in finding that plaintiff's condition of avascular necrosis of the lunate bone in her left wrist, known as Kienbock's Disease, was caused by work activities performed by plaintiff in the course of her employment.

Review of findings of fact by the trial court shall be de novo upon the record of the trial court, accompanied by a presumption of correctness unless the preponderance of the evidence is otherwise.

FACTS

At the time of trial in July 1999, plaintiff was 26 years old. She had dropped out of school upon completion of eleventh grade at the end of the 1991 school year and went to work for defendant/appellant in August 1991. Her job was drift operator for about seven months. Thereafter, she worked as an inspector for "around two years," i.e. until the spring of 1994. Thereafter, she worked as bore-matic operator until May 2, 1997. Plaintiff had severe asthma from infancy into her early teenage years when the asthma symptoms spontaneously disappeared. Plaintiff was still symptom free with respect to asthma when she began experiencing popping, swelling and pain in her left wrist while performing her work as inspector at some time in 1994. She reported this verbally to her supervisor, Gary Harper, at that time and told him that she thought her work was contributing to the wrist problem. Mr. Harper talked to plaintiff about exercises for the wrist problem and gave her braces to wear. There is no evidence that plaintiff was ever off work because of the wrist problem or that she ever failed to adequately perform the work until after May 9, 1995 when plaintiff gave birth to a daughter. Soon thereafter, plaintiff's asthma returned and, over time, became totally disabling. After the daughter's birth plaintiff missed substantial time at work and several times took medical leave. On May 2, 1999 she took medical leave and at the time of trial had not returned to work for defendant/appellant nor had she worked for any other employer.

The drift operator job required plaintiff to pick up motors with both hands, turn them upside down and place them in a hole. Her next job was inspector on the line which required her to pick up the motors and turn them upside down to inspect them. She was required to inspect 11,000 motors in an eight-hour shift. She was performing the inspecting job when she first developed wrist pain and discussed it with her supervisor, Gary Harper. According to plaintiff's uncontroverted testimony the bore-matic task required the lifting of each motor causing the machine to pull her hands such that the wrist would fold over toward the inside and that task was stressful on her wrist and hand. This was the work plaintiff was doing in October 1995 when she was first hospitalized because of her asthma. During this hospitalization she started taking prednisone, for her asthma.

The first time plaintiff reported pain, popping and swelling in her wrist to any physician was in April 1998 on a visit to her family doctor, Dr. Richardson who attended plaintiff in connection with her pregnancies and was, together with a specialist, treating her for her asthma. Dr. Richardson had x-rays made and referred plaintiff to Dr. Gulish, an orthopaedic surgeon, for diagnosis and treatment. Dr. Gulish saw plaintiff on May 1, 1998. His diagnosis was avascular necrosis of the lunate bone in her left wrist. The lunate bone is one of eight bones which connect the wrist to the forearm. Avascular means loss of blood supply. Necrosis means death. According to Dr. Gulish's

deposition testimony there are three stages of Kienbock's Disease. The first stage involves pain and swelling but there is no degeneration of the bone.

". . . . initially it's not degenerative. Initially it's avascular. But when it is avascular, when it loses its blood supply, then just like anything else that loses its blood supply it dies. And so its substance changes. It's no longer hard, a little bone in the wrist, it becomes soft and pliable. And so the normal use of the wrist and hand. It will change its shape and eventually will crumble. Since it occupies a specific place in those two rows of eight bones, then all the rest of them are affected by that because now it's no longer taking up the space that it belongs in, so everything else shifts. And when that happens then you start seeing the degenerative changes of the wrist because nothing fits as it should."

As to the issue of medical causation plaintiff relies upon her own testimony together with the deposition of Dr. Joseph C. Boals, III and the stipulated medical records. Defendant/Appellant relies upon the same medical records and the deposition testimony of Dr. Eugene F. Gulish.

Plaintiff has the burden of proving medical causation by a preponderance of the evidence. Where medical evidence is presented by deposition or stipulated records this court makes its own independent medical assessment of the medical proof to determine where the preponderance of the evidence lies. Landers v. Fireman's Fund Insurance Company, 775 S.W. 2d 355, 356 (Tenn. 1989).

The trial judge in his findings and conclusions found that plaintiff was a "very credible" witness. Plaintiff's testimony pertinent to the issue of medical causation was that she first experienced swelling, popping and pain in her left wrist at some time in 1994 when she was still working as line inspector, that she reported this to her supervisor and told him she thought that it was contributed to by her work. The first time that she used prednisone or any other steroid was when she was hospitalized for her asthma in October 1995.

Dr. Gulish and Dr. Boals are both board certified orthopaedic surgeons with generally comparable education, training and experience. They are in agreement as to what is known about avascular necrosis of bones in general and that this condition is rare and its cause is not fully understood. It is known to be associated with many suspected causes, among them repetitive labor stressful to a joint and most frequently occurring in a hip or a shoulder. There is even less empirical knowledge of the causes of avascular necrosis of the lunate bone in the wrist. These expert witnesses agree that either repetitive stressful use of the lunate bone or use of steroids could cause the onset of Kienbock's Disease and that no other causes are suggested by plaintiff's history. Dr. Boals credited the history of the onset of pain, popping and swelling while at work at least a year before plaintiff started using steroids and opined that plaintiff's work was the cause of her Kienbock's Disease. Dr. Gulish appeared to ignore the history given to him by plaintiff on May 1, 1998, which he testified was "of having four years of left-hand and wrist pain, with noted popping and restriction

of motion. The pain . . . had increased with time. She knew of no specific traumatic episode but stated that the pain occurred while she was working at Tecumseh in a job which required repetitive motion of the left wrist. She thought that when she would quit that job that the pain would go away, but it didn't. Her history was also significant in that she is an asthmatic and was on that visit on prednisone and had been on and off of prednisone, which is a steroid, for about three years". Dr. Gulish opined that the cause of plaintiff's Kienbock's Disease was the use of prednisone. His rationale was that her work, though repetitive, was not sufficiently stressful. The only information this conclusion was based upon was a description of the borematic job furnished by defendant/appellant shortly before his deposition. The uncontroverted proof was that the onset of pain, popping and swelling occurred while plaintiff was still working as line inspector. The panel finds that the evidence does not preponderate against the trial court's finding of medical causation.

As to the notice and statute of limitation issues, based upon the evidence herein described, the panel finds that the evidence does not preponderate against the findings and conclusions of the trial court.

The judgment of the trial court is accordingly hereby in all respects affirmed and the case is remanded to the trial court for such further proceedings as may be necessary. Costs on appeal are assessed against defendant/appellant Tecumseh Products Company.

HENRY D. BELL, 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 Defendant/Appellant, Tecumseh Products Company, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM