

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

September 28, 2000 Session

GEORGE ROBERT RECTOR v. BRIDGESTONE (U.S.A.), INC.

**Direct Appeal from the Chancery Court for Rutherford County
No. 97WC-779 Robert E. Corlew III, Chancellor**

**No. M1999-02284-WC-R3-CV - Mailed - May 8, 2001
Filed - June 11, 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, Bridgestone, appeals the judgment of the Chancery Court of Rutherford County where the trial court awarded Mr. Rector a 50% vocational disability for a psychological injury incurred as a result of his employment and found Bridgestone responsible for the cost of future psychiatric treatment as well as the cost of psychiatric treatment previously provided by Dr. Ravi Singh. For the reasons stated in this opinion we affirm the judgment of the trial court.

**Tenn. Code Ann. § 50-6-225(e) (2000) Appeal as of Right; Judgment of the Chancery Court
Affirmed.**

JAMES WEATHERFORD, SR. J., delivered the opinion of the court, in which BIRCH J., and CATALANO, SP.J., joined.

Kitty Boyte, Nashville, Tennessee for the appellant, Bridgestone (U.S.A.), Inc.

L. Gilbert Anglin and Robert O. Bragdon, Murfreesboro, Tennessee for the appellee George Robert Rector

MEMORANDUM OPINION

Mr. George Rector was 35 years old at the time of trial, had a 10th grade education and obtained his GED in 1984. He served in the U. S. Army for six years and three months as a tanker and obtained a hardship discharge in order to get custody of his daughter.

After his discharge from the Army, Mr. Rector obtained employment with Ogden Allied doing janitorial work earning \$6.55 per hour. Ogden Allied provided maintenance and janitorial

services to Bridgestone. In May or June of 1990, Mr. Rector got a job with Bridgestone making \$13.00 dollars per hour and was soon making \$16.00 dollars per hour. Mr. Rector described that job with Bridgestone as being the “best thing in the world” and that it changed his life dramatically because it enabled him to buy a home and get custody of his daughter.

In 1992, Bridgestone experienced a labor strike. After joining the strike for nine days, Mr. Rector crossed the picket line and returned to work. Approximately ten days later the strike ended and the union returned to work.

According to Mr. Rector, union members harassed and cursed him periodically. He reported this to management and was moved to another department but the harassment continued. He stated that his machine was tampered with and he was harassed over the intercom. Graffiti containing derogatory remarks about Mr. Rector appeared on equipment in the plant. Mr. Dan King, a Bridgestone employee who worked with Mr. Rector, testified that the harassment went on just about every night— from verbal harassment to tampering with Mr. Rector’s locker, throwing things at him or his truck being greased. He dealt with this harassment over the next four years because “I had to feed my daughter. I had to pay my mortgage. I had to pay my bills. I had to pay my car. So I had to work. So I tried to just deal with what was going on.”

By 1996, it was time for a new contract and union members began marching every morning chanting, “No contract, no peace” or “No justice, no peace, scabs out.” Mr. Rector had to walk by a congregation of union members when he exited the plant.

In September 1996, as Mr. Rector was exiting the plant, union member, Kathy Rice, came up to him, spit on him, followed him and started chanting, “scab, scab, scab”, and tried to get the approximately 30 other union members present to join in the chant. By the time he got to his car, he could not feel his hands or his face. He was numb around his mouth and lips, and his chest was hurting so bad he felt like he was having a heart attack.

Mr. King described Kathy Rice as loud, boisterous and an ardent union member. He was exiting the plant with Mr. Rector when she came at them and started screaming scab and various profanities. Mr. King stated it was obvious that this incident had upset Mr. Rector and afterwards he became “gloomy and withdrawn.” According to Mr. King, Mr. Rector went from doing his job in a professional manner to a “don’t give a darn” attitude and after that incident he “rarely showed up” for work.

Mrs. Linda F. Todd, Mr. Rector’s mother, testified that he had come to her home early one morning in September 1996 very upset and crying. He described the incident with Kathy Rice that had happened that morning and said he couldn’t take it anymore.

Mr. Rector stated that when he met with his supervisors, Malone and Todd and the union representative, Mr. Mason, and informed them he wanted to charge Ms. Rice with harassment, they laughed at him. Mr. Mason said that he should apologize to Ms. Rice because “you are a scab.” Mr.

Rector's supervisors and Mr. Mason did not recall this incident ever being reported. Ms. Rice testified that no such event ever occurred, but did acknowledge she considered Mr. Rector a "scab" because he crossed the picket line. After the meeting, Mr. Malone transferred Mr. Rector to a "fork truck" position but removed him after Mr. Rector told him, "I was going to take that fork truck and hurt somebody."

Thereafter, Mr. Rector started not going to work. From the time of the incident in September until his last day on the job, November 22, 1996, Mr. Rector worked sporadically for about two weeks. As to why he started missing work he explained, "I was just terrified. I don't really know myself. I was sick, I guess, and I didn't know it." He started urinating on himself at work and when health services tests revealed a lot of blood in his urine, his supervisor advised him to go to the emergency room. He was then referred to Dr. Knight who took him off work. He then went to Dr. Stewart who was treating him for chronic pain syndrome and who referred him to a psychiatrist. He then went to see Dr. Hudek, a psychiatrist, through the employee assistance program. She took him off work for a month and then another three weeks.

On November 22, 1996, Mr. Rector went to work for a couple of hours and "just couldn't handle it" and told them he needed to leave. His supervisor sent him to health services and wrote down "mental" on the pass slip. The health services report indicated that he was mentally upset from being ostracized by fellow employees and felt dizzy and unable to concentrate. According to Mr. Rector, the nurse at health services asked him if he wanted to kill himself or injure others and when he said no they let him go home. In December 1996, Bridgestone terminated Mr. Rector's employment because he did not make himself available for work. Mr. Rector maintains that he did not quit his job.

Thereafter, Mr. Rector lost his house but found a job with the Federal Reserve driving a contract route. In the eight months he drove this route, he put 80,000 miles on his car until it wouldn't run anymore and he had to give up the route. He filed bankruptcy and went to live with his grandmother in Kentucky. He got a job for three or four months at a truck plaza making \$6.00 dollars an hour, but began having paranoid thoughts that people were watching him and trying to get him and quit. After a visit to New York to see his son, he tried to return to the truck plaza job but only worked a month or two because there were too many people and he just couldn't handle it. He no longer has custody of his daughter because he "can't take care of her."

His grandmother paid for psychological help with a Dr. Shaw if he would try to work. He worked for a department store during the Christmas season and through February 1999 part time cleaning the bathroom. He left that job because it started to be a stressful situation when another janitor had problems with management about keeping his job when he needed surgery and got upset and started cursing. He has been placed on several medications, including welbutrin, risperdal, xanax. He has not worked since February of 1999, and feels he cannot work since he has been taking risperdal, an anti-psychotic drug. He was only able to work at the department store job on this medication because it was 3-4 hours a day and an easy job cleaning bathrooms.

On May 8, 1997, Dr. Ravi Singh, M.D, a psychiatrist, began treating Mr. Rector upon request of his attorney. Dr. Singh diagnosed Mr. Rector with depression and post-traumatic stress disorder, and concluded that the Kathy Rice incident was the precipitating event. Dr. Singh gave Mr. Rector a permanent impairment of moderate to marked, based on the current version of the AMA Guidelines, which would be twenty-five to seventy-five percent (25%-75%) to the body as a whole based on the 2nd Edition of the AMA Guidelines.

Dr. Singh encourages all his patients to return to work and do whatever they can handle. Dr. Singh's treatment plan is to monitor Mr. Rector's medication, reduce it if he improves and can handle it, encourage him to socialize more, and get a job. He stated that depression is a chronic medical illness, but that Mr. Rector could improve and his symptoms of depression and post traumatic stress disorder could go into remission.

On June 5, 1997, Mr. Rector filed a complaint for workers' compensation benefits alleging, among other things, that he suffered from crying spells and extreme emotional distress because Bridgestone had allowed other employees to harass him and that these mental injuries had left him unable to work.

The trial court awarded Mr. Rector a 50% vocational disability for a psychological injury incurred as a result of his employment and found Bridgestone responsible for the cost of psychiatric treatment provided by Dr. Singh.

ANALYSIS

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 the correctness of the finding, unless the preponderance of the evidence is otherwise. *Tenn. Code Ann.* § 50-6-225(e)(2). *Stone v. City of McMinnville*, 896 S.W.2d 548, 550 (Tenn. 1995). The application of this standard requires this Court to weigh in more depth the factual findings and conclusions of the trial courts in workers' compensation cases. *Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988).

Where the trial judge has seen and heard witnesses, especially where issues of credibility and weight of oral testimony are involved, on review considerable deference must still be accorded to those circumstances. *Humphrey v. David Witherspoon, Inc.*, 734 S.W.2d 315 (Tenn. 1987).

When the medical testimony is presented by deposition, as it was in this case, this Court is able to make its own independent assessment of the medical proof to determine where the preponderance of the evidence lies. *Cooper v. Insurance Co. of North America*, 884 S.W.2d 446, 451 (Tenn. 1994).

The defendant has presented two issues in this appeal.

- I. Whether the trial court unfairly restricted its analysis of the facts to exclude relevant factors in determining the employee’s vocational disability and hence set permanent partial disability at a level far greater than shown by a preponderance of the evidence.
 - II. Whether the trial court erred in ordering the employer to pay the previously incurred expenses of Dr. Ravi Singh when the employer had not been notified of any claim of injury nor of any medical treatment being sought by the employee.
- I. Whether the trial court unfairly restricted its analysis of the facts to exclude relevant factors in determining the employee’s vocational disability and hence set permanent partial disability at a level far greater than shown by a preponderance of the evidence**

The extent of vocational disability is a question of fact to be determined from all of the evidence, including lay and expert testimony *Tenn. Code Ann. § 50-6-241(c); Worthington v. Modine Manufacturing Co.*, 798 S.W.2d 232, 234 (Tenn. 1990). The assessment of this disability is based on all pertinent factors, including lay and expert testimony, the employee's age, education, skills and training, local job opportunities, and capacity to work at the types of employment available in his disabled condition. *Orman v. Williams Sonoma, Inc.*, 803 S.W.2d 672, 678 (Tenn. 1991). The test is whether there has been a decrease in the employee's capacity to earn wages in any line of work available to the employee. *Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 459 (Tenn. 1988).

The trial court acknowledged that determining the percentage of vocational disability was more difficult in a case involving psychological injury because 1) the current edition of the Guidelines did not provide percentages of disability for psychological injury although prior editions did so and 2) although Dr. Singh testified as to permanency the doctor does hope or expect that Mr. Rector’s condition will gradually improve.

The trial court considered the expert and lay testimony, age, education, prior job experience and job skills to determine marketability of his current skills in his disabled condition. The trial court noted that Mr. Rector had engaged in only limited employment since his termination from Bridgestone but found that he “does have the ability to be employed, and that he does have job skills which he is able to put to use. He is young, and thus does have the potential to make accommodations for the conditions which it has been testified are permanent.”

After reviewing the entire record in this case we find that the evidence does not preponderate against the finding of the trial court that Mr. Rector sustained a 50% vocational disability.

- II. Whether the trial court erred in ordering the employer to pay the previously incurred expenses of Dr. Ravi Singh when the employer had not been notified of any claim of injury nor of any medical treatment being sought by the employee.**

Tennessee Code Annotated § 50-6-201 provides:

Every injured employee or such injured employee's representative shall, immediately upon the occurrence of an injury, or as soon thereafter as is reasonable and practicable, give or cause to be given to the employer who has no actual notice, written notice of the injury, and the employee shall not be entitled to physician's fees or to any compensation which may have accrued under the provisions of the Workers' Compensation Law from the date of the accident to the giving of such notice, unless it can be shown that the employer had actual knowledge of the accident; and no compensation shall be payable under the provisions of this chapter unless such written notice is given the employer within thirty (30) days after the occurrence of the accident, unless reasonable excuse for failure to give such notice is made to the satisfaction of the tribunal to which the claim for compensation may be presented.

The trial court found Bridgestone responsible for the cost of Dr. Singh's psychiatric treatment. After reviewing the record, we are of the opinion that the evidence does not preponderate against a finding that Mr. Rector provided reasonable excuse within the meaning of the statute.

The trial court saw and heard the witnesses in this case present conflicting testimony as to whether the incident with Kathy Rice had in fact happened. After hearing all of the testimony the trial court found that the incident had occurred and therefore found Mr. Rector's testimony to be credible. He also testified that he met with Supervisors Todd and Malone and Union representative Mason and told them he wanted to charge Ms. Rice with harassment. According to Mr. Rector, they laughed at him and Mr. Mason said he should apologize to Ms. Rice since he was a scab.

When Mr. Rector left on November 22, 1996, his supervisor recommended that he go to health services and wrote down "mental" on the pass slip. The health services report indicated that he was mentally upset from being ostracized by fellow employees and felt dizzy and unable to concentrate. From September 1996 until his termination Bridgestone was aware that he was seeing Dr. Hudek at the Guidance Center and that she had taken him off work.

The trial court found that Mr. Rector had sustained a psychological injury. Mr. Rector testified that he did not understand why he started to miss work after the incident just that he was terrified, sick and didn't know it. He acknowledged that he did not understand the nature of his injury or diagnosis.

The evidence does not preponderate against the finding of the trial court.

CONCLUSION

The judgment of the trial court is affirmed. Costs of this appeal are taxed to Bridgestone.

JAMES WEATHERFORD, SR.J.

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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 will be paid by Bridgestone, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM