IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
May 24, 2001 Session

# CHRISTOPHER ALAN McNEW v. KNOX COUNTY, ex rel: SHERIFF'S DEPARTMENT

**Direct Appeal from the Chancery Court for Knox County**
**No. 141759-2 Daryl R. Fansler, Chancellor**

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**No. E2000-01319-WC-R3-CV - Mailed**
**FILED: AUGUST 7, 2001**

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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. The complaint alleged that the plaintiff sustained job-related injuries on or about July 4, 1998 within the scope of his employment. The answer denied occurrence or notice of an accidental injury. The plaintiff had an unusual history of injuries to his right knee. The trial judge ruled that the medical evidence was lacking as to the July 1998 injury and dismissed the case.

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

WILLIAM H. INMAN, SR. J., delivered the opinion of the court, in which WILLIAM M. BARKER, J and JOHN K. BYERS, SR. J., joined.

C. Edward Daniel, Knoxville, Tennessee, for the appellant, Christopher Alan McNew.

Wendell K. Hall, Knoxville, Tennessee, for the appellee, Knox County Sheriff's Department.

## OPINION

The plaintiff was employed by the Knox County Sheriff in various capacities, but, as material here, on July 4, 1998 he was employed as a jailer. He alleged that on July 4, 1998 "and for a time prior thereto and on or about that date he sustained injuries as a result of an on the job accident."

Before his employment by the Sheriff's Department in 1990 he injured his right knee for which surgery was required in 1982. In 1992 he again injured his right knee during training drills. Surgery was required. In 1996 he again injured his right knee in a job-related incident. Corrective

surgery was required in December 1997.

The 1996 injury resulted in a workers' compensation claim which was settled in December 1997.[1]

The plaintiff testified to a confusing history of incidents or accidents involving his right knee, with five (5) surgical procedures. During the course of his testimony concerning incidents or accidents involving his right knee, the trial judge made it known that accidents in addition to the July 4, 1998 accident should have been alleged.

This colloquy occurred:

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|---|---|
| Mr. Daniel: | Your honor, what I'm doing is showing repetitive trauma to his knee that ultimately culminates on July 4th when an incident occurs on the job. |
| The Court: | I see. So your claim, then, is to whatever happened on July 4? |
| Mr. Daniel: | Ultimately the straw that broke the camel's back. |
| The Court: | You're not making a claim for an injury that occurred in early 1998 or one in March or April? |
| Mr. Daniel: | It's just showing the repetitive trauma that culminated on July 4. |

Counsel for the defendant thereupon stated that the defendant had no notice of any other injuries; the trial judge reiterated that the complaint alleged an accident on July 4, 1998; plaintiff's counsel responded that the complaint alleged "on or about July 4"; the trial judge observed that March or April or May would not be on or about July 4. Then followed this question by the trial judge to counsel for the plaintiff:

| | |
|---|---|
| The Court: | Are you claiming that the injuries or accidents or whatever there was in early 98, March or April, or May of 98 are involved with this injury? |
| Mr. David: | I'm claiming that this is the injury that is the straw that broke the camel's back. He had these two other injuries and ultimately on July 4 he had another incident and after that he had to have surgery. |

The Court then observed that "I have clarified with Mr. Hall that his claim is related to the incident of July 4, 1998. That's the incident that they're claiming."

The Court found that "there was nothing to indicate there was notice to the employer as to the incidents in 1998" but concluded that the plaintiff reported to his superior officer that he had injured his knee during July 4, 1998 altercation with a prisoner, although he delayed five months in seeking medical treatment.

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[1] Future medical expenses remained open.

The Court then observed that Dr. Brown testified that he could not attribute any impairment to the July 4, 1998 incident, but could conclude that the other altercations [March, April, May, 1998] caused an aggravation.

Significantly, the trial judge observed that Dr. Brown testified that he was seeing the plaintiff for his *1996 injury* for which he recommended surgery on June 30, 1998, which was five days before the claimed triggering event.

**Medical Proof**

Dr. Howard R. Brown, an orthopedic surgeon, testified that he first saw the plaintiff in July 1997 complaining with his right knee which he injured at the Police Training Academy in October 1996. At that time, Dr. Beeler preformed surgery on the plaintiff's knee. Before he saw Dr. Brown, the plaintiff had two surgical procedures on his right knee.

In August 1997, Dr. Brown performed surgery to repair plaintiff's knee, and he was released in January 1998.

The plaintiff was seen again by Dr. Brown on June 29, 1998, complaining of pain in his right knee. Surgery was again recommended which was performed on December 14, 1998. Because of the lack of therapy, further surgery was performed on February 1, 1999 to "break up the scar tissue."

In response to a hypothetical question which recited the 1992 injury, the 1996 injury, a 1997 injury, the various surgical procedures, a number of incidents at the jail, the last of which occurred on July 4, 1998, Dr. Brown was asked if "the incidents in the twisting of his knee while wrestling prisoners in the jail aggravated a pre-existing condition resulting in those subsequent surgeries that you've performed?" Dr. Brown answered, yes. He also opined that the plaintiff sustained a permanent impairment as a result of *the knee injuries* for which he was treated.

Somewhat more specifically, Dr. Brown testified:

> Q. . . . Is there any reference in any or your medical records any of the histories that you've taken from Mr. McNew, of a July 4, 1998 injury to the right knee?
> R. No.
>
> . . . . . .
>
> Q. So there is no way in this case to attribute causation to an alleged injury of July 1998?
> R. The alleged injury? No. I'm dealing *with other injuries that caused the problems.* I don't know - - - you know, I'm sure it matters to you all, but I was *seeing him for previous injuries* and recommended surgery on those previous injuries. . . . This new one, or alleged injury, however you want to

state it, I don't have any information on that. And even if I had seen him right afterward, and it did not change my opinion, I would -- you know, that would be just an exacerbation of a previous injury to me. . .

. . . . . .

Q. So there's really no way to attribute any impairment rating to an alleged July 1998 injury?
R. Not from me.

In sum, Dr. Brown was treating the plaintiff in 1998 for the 1996 injury. He knew nothing of the alleged July 4, 1998 injury; he could not attribute causation to it. Neither would he attribute any impairment to the July 4, 1998 alleged injury. He could not state when or from what incident the plaintiff's knee condition was aggravated, and significantly, he was not aware of the cause of any aggravation of the plaintiff's knee between January and May 1998, other than usual activities. He testified that he could not attribute the aggravation to any specific incident.

**The Notice Issue**

It requires no citation of authority that Tennessee case law interprets Tennessee Code Annotated § 50-6-201 strictly favorably to an injured worker. The written notice of injury is dispensed with if the employer has actual notice or if the required written notice within 30 days of the accident could not reasonably have been given.

The plaintiff testified that he informed a supervisor, Chief Bivens, that he injured his knee on July 4, 1998. He told Chief Bivens that he twisted his knee while wrestling a prisoner and "I'm going to try to see if it's OK. I'm used to stretching it out myself a lot of times."

The plaintiff prepared an Incident Report, which he signed, describing the events of the July 4, 1998 altercation. It is a 3-page detailed description of the episode, but nowhere did the plaintiff refer to any injury to himself, although, at trial, he acknowledged that the inclusion of any injuries is a necessary element of the Report.

The plaintiff was under the care of Dr. Brown for the 1996 injury. He did not report to Dr. Brown for five (5) months - December 10, 1998 - and even then did not mention the July 4, 1998 episode.

The trial judge did not decide this case on the notice issue. He implied that causation might more readily have been shown had proper notice been given, referencing the testimony of the defendant's workers' compensation coordinator that the defendant had no notice of the July 4, 1998 episode, or any incident in 1998.

The complaint does not allege that the July 4, 1998 episode aggravated a pre-existing

condition. Nonetheless, the case was essentially tried on the theory of aggravation. The trial judge concluded that "there's nothing in the record to support either that this aggravating incident necessitated the surgery or that the aggravation resulted in any permanent impairment."

We are unable to find that the evidence preponderates against the findings and conclusions of the Chancellor and the judgment is therefore affirmed at the costs of the appellant, Christopher Alan McNew.

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WILLIAM H. INMAN, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE, TENNESSEE

**CHRISTOPHER ALAN McNEW V. KNOW COUNTY. ex rel: SHERIFF' DEPARTMENT**
**Knox County Chancery Court**
**No. 141759-2**

**No. E2000-001359-WC-R3-CV - Filed: August 7, 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 facts 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 appellant, Christopher Alan McNew and surety, C. Edward Daniel, for which execution may issue if necessary.

08/07/01