IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
November 1, 2001 Session

# JODY COLLINS v. LEAR SEATING CORPORATION, ET AL.

**Direct Appeal from the Circuit Court for Grainger County**
**No. 6371 Ben W. Hooper, II, Judge**

**Filed March 7, 2002**

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**No. E2001-00223-WC-R3-CV**

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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 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 trial court found the plaintiff had suffered a work-related injury and awarded 70 percent permanent partial disability to the right arm. We reverse the judgment of the trial court and dismiss this case.

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

JOHN K. BYERS, SR. J., delivered the opinion of the court, in which WILLIAM M. BARKER, J. and W. NEIL THOMAS, III, SP. J., joined.

Steven H. Trent and Jennifer P. Keller, Johnson City, Tennessee, for the appellants, Lear Seating Corporation, et al.

Creed A. Daniel and Dirk A. Daniel, Rutledge, Tennessee, for the appellee, Jody Collins.

## MEMORANDUM OPINION

Review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the findings, 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 court in workers' compensation cases. *See Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988).

## Facts

On Monday, September 7, 1993, the plaintiff came to his place of employment to commence work at 4:00 p.m. Approximately 10 to 20 minutes after reporting to work, he went to the company nurse and reported that he had hurt his wrist.

The plaintiff was taken to the hospital and seen by Dr. Crampton Helms who determined the plaintiff had a broken right wrist.

The plaintiff was 26 at the time of this event; he was married and had no children. The plaintiff worked previously in factories. He worked as a welder for the defendant. The plaintiff described his job as welding seats for vehicles.

During the welding process the seats were held by clamps. The plaintiff testified he was attempting to remove a clamp from a seat. The clamp stuck and as he pulled on it he heard a pop and his wrist buckled.

In a pre-trial deposition, the plaintiff described the action that he took as a pulling action. At trial, he described it as a pulling downward motion.

On Saturday and Sunday prior to the injury the plaintiff testified he had worked around his father's farm. He testified he had picked tomatoes on Sunday. He testified he had not hurt his wrist prior to Monday. Several of his relatives testified the plaintiff had not hurt his wrist prior to going to work Monday.

## Medical Evidence

The plaintiff was treated initially by Dr. Crampton Helms on September 7, 1993, at the Morristown/Hamblen hospital. Dr. Helms placed the plaintiff in a cast for six weeks after an x-ray suggested a fractured wrist. Dr. Helms stated that the type of broken bone suffered by the plaintiff is normally produced by a fall or trauma–by "a blow to the hand, to the hand open and the thumb extended and the elbow out." When asked if it was likely the injury could have occurred by pulling, Dr. Helms testified he "[could]n't imagine it happening that way."

The plaintiff was also treated by Dr. E. Brantley Burns, an orthopedic surgeon, who first saw the plaintiff on November 1, 1993. Dr. Burns initially continued the conservative treatment began by Dr. Helms; however, when the plaintiff's wrist failed to heal properly, Dr. Burns performed wrist fusion surgery. He opined that the plaintiff retained a permanent medical impairment of 15 percent to the right upper extremity. He testified that the injury suffered by the plaintiff generally results from a "very forceful blow," or the most common scenario occurs with a fall on the wrist, which is "basically your body weight putting a force on your wrist." Dr. Burns was of the opinion the injury

could not have occurred as the plaintiff described.

Dr. George Williams, an orthopedic surgeon, examined the medical records of the plaintiff concerning the injury. He also read the plaintiff's deposition in which the plaintiff described pulling a clamp and experiencing the injury. Dr. Williams was of the opinion that pulling the clamp did not cause the injury. He was further of the opinion there might have been a old injury to the plaintiff's wrist.

The trial court found the plaintiff had suffered a work-related injury and awarded 70 percent permanent partial disability to the right arm. The trial court further found the lay testimony sufficient to establish causation and found causation obvious. We reverse the judgment of the trial court and dismiss this case.

## Discussion

The defendant contends there is no evidence of a causal connection between the plaintiff's injury and his employment.

In all but the most obvious cases, such as the loss of a member, expert testimony is required to establish causation. *Thomas v. Aetna Life & Casualty Co.*, 812 S.W.2d 278 (Tenn. 1991). The obvious injury is one that is apparent to any person without the need for expert testimony to establish an occurrence.

An award may properly be based on medical evidence that a given incident "could be" the cause of an employee's injury, when there is also lay testimony from which it may reasonably be inferred that the incident in fact caused the injury. *Reeser v. Yellow Freight Sys., Inc.*, 938 S.W.2d 690, 692 (Tenn. 1997). In this case there is no "could be" medical testimony to remove the case from the *Thomas* rule.

At the trial, the plaintiff demonstrated the manner in which he pulled the clamp, which was a pulling and downward motion.[1] This moved the trial judge to enter the following finding:

> The record in this case makes it clear that there was a downward movement or leverage type movement made by the plaintiff even though he used the word pulling in describing the injury.

The trial judge further remarked:

> [t]he plaintiff injured himself by fracturing his wrist on the job and the court holds

[1] Apparently there was a video tape made of the demonstration; however, it was not included in the record.

> that all the testimony and opinions given stating that this injury could not have occurred by pulling are of no relevance or consequence because the injury did not occur as they described. Counsel for the defendant employer cleverly seized upon this obvious misunderstanding of what the plaintiff was actually doing at the time of the injury to his wrist and developed his medical testimony on the basis of this misunderstanding. The court therefore disregards all the testimony that attempts to show that you cannot sustain such a fracture as sustained by the plaintiff by pulling.

The record does not support the trial judge's indictment of defense counsel. The questions posed to the physicians by defense counsel were based upon the plaintiff's description in his pre-trial deposition of how the injury occurred. Counsel for the plaintiff was present at all depositions taken in this case. If deception was being employed by defense counsel, surely the plaintiff's attorney would have reacted accordingly.

The trial court next held:

> this case is a case where lay testimony is sufficient to establish causation. Had the employer not misguided the doctors concerning "pulling," there would have been no question at all about causation. This case is distinguishable from something like a back injury case. This plaintiff went to work with no problems at all with his right wrist and in a short while he went to the emergency room with a fractured wrist and an explanation of how it was fractured which satisfies the court that this is clearly a compensable claim. As stated in *Masters v. Industrial Garments*, 595 S.W.2d 811, this is an "obvious case." This plaintiff's injury arose out of and in the course of employment.

This is, of course, not a case where causation is obvious. Dr. Helms, who saw the plaintiff at the hospital, suspected the plaintiff had a fractured wrist. He could not, however, make that determination without an x-ray.

We find there is no evidence of causation in this case. We, therefore, reverse the judgment of the trial judge and dismiss the case.

The costs of this appeal are taxed to the plaintiff.

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JOHN K. BYERS, SENIOR 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 facts and conclusions of law are adopted and affirmed and the decision of the Panel is made the Judgment of the Court.

The costs on appeal are taxed to the plaintiff, Jody Collins, for which execution may issue if necessary.