IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
December 18, 2001 Session

RUTHANN MARIE RHOADY v. INSURANCE COMPANY OF PENNSYLVANIA, ET AL.

Direct Appeal from the General Sessions Court for Warren County
No. 6877-GSWC Larry Ross, Judge

No. M2001-00614-WC-R3-CV - Mailed - March 11, 2002
Filed - May 17, 2002

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. In this appeal, the appellant insists the evidence preponderates against the trial court's findings (1) that the employee gave timely written notice of her injury and (2) that the injury occurred in the course and scope of employment. As discussed below, the panel has concluded the judgment should be affirmed.

Tenn. Code Ann. § 50-6-225(e) (2001) Appeal as of Right; Judgment of the General Sessions Court Affirmed

JOE C. LOSER, JR., SP. J., delivered the opinion of the court, in which ADOLPHO A. BIRCH, JR., J., and JAMES WEATHERFORD, SR. J., joined.

Mary Melinda Little, McMinnville, Tennessee, for the appellants, Insurance Company of the State of Pennsylvania and Bridgestone/Firestone, Inc.

Barry H. Medley, McMinnville, Tennessee, for the appellee, Ruthann Marie Rhoady.

MEMORANDUM OPINION

The employee or claimant, Rhoady, is thirty-three years old with a tenth grade education, a general education diploma and experience as a laborer. She works for Bridgestone/Firestone, Inc. in tire production. She testified that on December 14, 1998, she began her shift at 7:00 p.m. During the early hours of the next day, she felt a sharp, low back pain while bending down to tape a heavy tire. She testified further that she first thought she had a kidney injury, but that the doctor ruled that

out in January 1999. She continued working until January 13, 1999, when she filed a written report of the injury to the employer.

Two board certified orthopedic surgeons examined the claimant. Dr. Robert P. Landsberg diagnosed her injury as a "broad based central disc herniation with intermittent L-5 nerve root irritation" causally related to her injury at work. Dr C. R. Dyer agreed. Both doctors found the claimant to be truthful. Dr. Arthur Cushman, a neurosurgeon, agreed as to causation, but did not comment one way or the other on the claimant's truthfulness. The claimant gave all of the doctors the above history. Our examination of the record reveals no medical evidence and no direct evidence that the injury occurred other than as the claimant and the doctors have said it occurred.

The trial court, upon considering all the evidence and arguments of counsel, awarded workers' compensation benefits as provided by law. Appellate review of findings 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).

This tribunal is not bound by the trial court's findings but instead conducts an independent examination of the record to determine where the preponderance lies. Galloway v. Memphis Drum Serv., 822 S.W.2d 584, 586 (Tenn. 1991). Where the trial judge has seen and heard the witnesses, especially if issues of credibility and weight to be given oral testimony are involved, considerable deference must be accorded those circumstances on review, because it is the trial court that had the opportunity to observe the witnesses' demeanor and to hear the in-court testimony. Long v. Tri-Con Ind., Ltd., 996 S.W.2d 173, 178 (Tenn. 1999). The appellate tribunal, however, is as well situated to gauge the weight, worth and significance of deposition testimony as the trial judge. Walker v. Saturn Corp., 986 S.W.2d 204, 207 (Tenn. 1998).

The appellant first contends the claimant failed to give timely written notice of her injury. Immediately upon the occurrence of an injury, or as soon thereafter as is reasonable and practicable, an injured employee must, unless the employer has actual knowledge of the accident, give written notice of the injury to his employer. Benefits are not recoverable from the date of the accident to the giving of such notice, and no benefits are recoverable unless such written notice is given within 30 days after the injurious occurrence, unless the injured worker has a reasonable excuse for the failure to give the required notice. The notice may be given by the employee or his representative. Tenn. Code Ann. § 50-6-201.

Whether or not the excuse offered by an injured worker for failure to give timely written notice is sufficient depends on the particular facts and circumstances of each case. A. C. Lawrence Leather Co. v. Britt, 220 Tenn. 444, 454, 414 S.W.2d 830, 834 (1967). The presence or absence of prejudice to the employer is a proper consideration. McCaleb v. Saturn Corp., 910 S.W.2d 412, 415 (Tenn. 1995).

Generally, the beginning date for computing notice is the date on which the effects of the

injury manifest themselves to the employee or could have been discovered by the employee in the exercise of reasonable care and diligence. Hawkins v. Consolidated Aluminum Corp., 742 S.W.2d 253, 255 (Tenn. 1987). The undisputed evidence in this case is that effects of the injury began to manifest themselves during a seasonal shutdown in late December 1998 or early January 1999. The written notice given on January 13, 1999 was timely and we are not persuaded the appellants were prejudiced by the claimant's failure to make an earlier written report. The first issue is resolved in favor of the claimant.

The appellant next contends the claimant's testimony is unworthy of belief because she misstated the date of her injury as December 14, 1998, instead of December 15, 1998, because the circumstances of her visit to an emergency room in another state raise "suspicion," and because the preponderance of the evidence is that the injury occurred during a seasonal closure of the employer's plant. The record contains evidence that the claimant's pain became so severe during a trip to Chicago during the seasonal closure period that the claimant visited an emergency room.

Under the Tennessee Workers' Compensation Law, injuries by accident arising out of and in the course of employment which cause either disablement or death of the employee are compensable. Tenn. Code Ann. § 50-6-103(a). Generally, an injury arises out of and in the course of employment if it has a rational causal connection to the work and occurs while the employee is engaged in the duties of his employment; and any reasonable doubt as to whether an injury arose out of the employment or not is to be resolved in favor of the employee. Hall v. Auburntown Industries, Inc., 684 S.W.2d 614, 617 (Tenn. 1985). Special Workers' Compensation Appeals Panels are not at liberty to reverse awards merely because the employer or its insurer is suspicious concerning the circumstances of the claim.

The trial court, after seeing and hearing the claimant and other lay witnesses, believed her testimony as to how, when and where the injury occurred. From our independent examination of the record, we cannot say the injury was not causally related to the employment or that it occurred at some other time and place. The judgment of the trial court is accordingly affirmed. Costs are taxed to the appellants.

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JOE C. LOSER, JR.

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JUDGMENT

This case is before the Court upon the motion for review filed by Insurance Company of Pennsylvania pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), 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.

It appears to the Court that the motion for review is not well-taken and is therefore denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to Insurance Company of Pennsylvania, for which execution may issue if necessary.