IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
March 27, 2002 Session

ALCOA FUJIKURA, LTD. v. KENNETH ANDERSON

Direct Appeal from the Chancery Court for Davidson County
No. 99-3151-II Carol McCoy, Chancellor

No. M2001-01949-WC-R3-CV - Mailed - May 22, 2002
Filed - September 5, 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. The plaintiff appeals the trial judge's decision that the defendant suffered the work-related injury of bilateral carpal tunnel syndrome which resulted in a 12 percent permanent partial disability to each arm. We affirm the judgment of the trial court.

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

BYERS, SR.J., delivered the opinion of the court, in which DROWOTA, C.J., and LOSER, SP.J., joined.

David T. Hooper, of Brentwood, Tennessee, for Appellant, Alcoa Fujikura, Ltd.

N. Evan Harris, of Nashville, Tennessee, for Appellee, Kenneth Anderson.

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 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. *See Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988).

FACTS

The defendant was fifty years of age at the time of this trial. He is a high school graduate and he attended two years of college studying automotive technology. He testified at trial that he began working for the plaintiff's company, Dixie Wire, as a utility operator in 1993. As a utility operator, the defendant testified that his duties included some repetitious work with his hands and arms.

In 1997, the defendant began working as a PVC extruder operator for Dixie Wire. He testified that his duties in this position involved quite a bit more use of his hands, wrists, and arms.

Outside of his employment at Dixie Wire, the defendant also laid carpet for supplemental income. He testified that from 1993 to when he performed his last carpet job in 1999, he performed a total of 38 carpet jobs, averaging about six hours of carpet work per month. He testified that he never had any problems with his wrists or hands while performing carpet work.

In 1997, while working as a PVC extrude operator, the defendant began to notice numbness and tingling in his hands and wrists. He went to see Dr. Darrell G. Arnett but was not treated for the numbness and tingling at that time. The defendant testified that his hand and wrist problems abated for some time after that.

In 1998, while still working as a PVC extruder operator for Dixie Wire, the defendant's problems with his hands going numb reappeared and worsened. He saw Dr. Arnett again on January 22, 1999, and Dr. Arnett diagnosed the defendant with bilateral carpal tunnel syndrome. The defendant then saw Dr. Thomas E. Tompkins on June 29, 1999. Dr. Tompkins concurred with the diagnosis of bilateral carpal tunnel syndrome and recommended the defendant have surgery.

The defendant was at first reluctant to have surgery, but after more problems at work with his hands going numb he decided to have the surgery, after which he returned to work.

MEDICAL EVIDENCE

The medical evidence for the purposes of the issues raised in this trial was presented by the depositions of Dr. Darrell E. Arnett and Dr. Thomas E. Tompkins.

Dr. Arnett, an internal medicine specialist in Nashville, testified that he first saw the defendant on August 14, 1997. At that time, the defendant complained of weakness and paresthesias.[1] Dr. Arnett testified that the defendant next visited him on January 22, 1999, at which time the defendant complained of his hands going numb 15 to 20 times daily. At that time, Dr. Arnett testified, he diagnosed the defendant with bilateral carpal tunnel syndrome. Dr. Arnett did not form any opinion as to causation at that time, but later at deposition, when given the defendant's full history, Dr. Arnett testified that it was his opinion that the defendant's work at Dixie Wire was

[1]Paresthesias is numbness and tingling of the arms and legs.

the cause of his carpal tunnel syndrome. He further testified that it would be "hard [for him] to believe" that the carpet laying was the causation for the defendant's condition. Dr. Arnett testified that he saw the defendant again on May 25, 2001, and at that time he assigned a medical impairment rating of 10 percent to each wrist.

Dr. Tompkins, an orthopedist in Nashville, testified that he first saw the defendant on June 29, 1999. He testified that he concurred with Dr. Arnett's opinion that the defendant had bilateral carpal tunnel syndrome. Dr. Tompkins suggested surgery to the defendant at that time, but the defendant did not want to have surgery. The defendant returned to Dr. Tompkins office on September 26, 2000, with numbness in both hands and decided to have surgery. Surgery was performed on the right wrist on October 10, 2000, and on the left wrist on November 9, 2000. Dr. Tompkins testified that he did not have enough information to form an opinion as to causation for the defendant's injuries.

DISCUSSION

Although we are required to weigh the evidence in a case in depth to determine where the preponderance of the evidence lies, we are required to make such evaluation within the confines of established rules in evaluating the propriety of the trial court.

The plaintiff appeals the judgment of the trial court on the grounds that the defendant did not meet his burden of proof that he suffered bilateral carpal tunnel syndrome by virtue of his work as a PVC extruder operator for Dixie Wire.

In order to be eligible for workers' compensation benefits, an employee must suffer "an injury by accident arising out of and in the course of employment which causes either disablement or death." Tenn. Code Ann. § 50-6-102(a)(5). The phrase "arising out of" refers to causation. The causation requirement is satisfied if the injury has a rational, causal connection to the work. *Reeser v. Yellow Freight Sys., Inc.*, 938 S.W.2d 690, 692 (Tenn. 1997) (citations omitted); *Fink v. Caudle*, 856 S.W.2d 952 (Tenn. 1993).

Although causation cannot be based upon merely speculative or conjectural proof, absolute certainty is not required. Any reasonable doubt in this regard is to be construed in favor of the employee. We have thus consistently held that an award may properly be based upon medical testimony to the effect that a given incident "could be" the cause of the employee's injury, when there is also lay testimony from which it reasonably may be inferred that the incident was in fact the cause of the injury. *Reeser v. Yellow Freight Sys., Inc.*, 938 S.W.2d 690, 692 (Tenn. 1997) (citations omitted). Only medical expert may testify as to whether a given disability is permanent. *Bolton v. CNA Ins. Co.*, 821 S.W.2d 932 (Tenn. 1991). *GAF Bld. Material v. George*, 42 S.W.3d 430 (Tenn. 2001). 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).

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. INA*, 884 S.W.2d 446, 451 (Tenn. 1994); *Landers v. Fireman's Fund Ins. Co.*, 775 S.W.2d 355, 356 (Tenn. 1989).

In support of the plaintiff's contention that the defendant has not met his burden of proof, the plaintiff argues: that the defendant's work duties were not frequent enough or stressful enough to cause his bilateral carpal syndrome; that he had not had the job as PVC extruder operator for long enough when he was diagnosed for his duties to have caused his condition; that his work as a carpet layer, outside of his work for the plaintiff's company, caused or at least contributed to his condition; and that the medical proof offered at trial in the form of depositions of Drs. Arnett and Tompkins did not support the contention that the defendant's bilateral carpal tunnel syndrome was caused by his employment for the plaintiff's company.

The trial court has the discretion to accept the opinion of one medical expert over another medical expert. *Kellerman v. Food Lion, Inc*., 929 S.W.2d 333 (Tenn. 1996*); Johnson v. Midwesco, Inc.*, 801 S.W.2d 804, 806 (Tenn. 1990). In this case, the trial judge received testimony from medical experts by deposition and used that testimony in rendering her decision. This testimony included Dr. Arnett's opinion that the defendant's work as a machine operator in excess of 40 hours per week caused his carpal tunnel syndrome and that the condition was *not* caused by his work as a carpet layer. This testimony also included Dr. Tompkins' opinion that he did not have enough information about the defendant's work duties to definitively say that these duties caused his carpal tunnel syndrome, but that he thought it was work-related.

In rendering her verdict, the trial judge expressed some uncertainty over this case, but she nonetheless properly used her discretion in assessing the credibility of the expert witnesses on the issue of causation. Nothing in the record indicates that this discretion was abused. Accordingly, we cannot say that the evidence preponderates against the findings of the trial judge on the issue of causation brought by the appellant and we affirm the judgment. The cost of this appeal is taxed to the appellant.

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JOHN K. BYERS, SENIOR JUDGE

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JUDGMENT ORDER

This case is before the Court upon the motion for review filed by Alcoa Fujikura, Ltd., 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 the appellant, Alcoa Fujikura, Ltd., and its surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

Drowota, C.J., not participating