

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
May 23, 2002 Session

**DANIEL M. JOHNSON v. SCHLEGEL TENNESSEE, INC. a/k/a/ BTR
SEALING SYSTEMS NORTH AMERICA OPERATIONS d/b/a BTR, INC.
and CIGNA PROPERTY & CASUALTY**

**Direct Appeal from the Chancery Court for Loudon County
No. 9705 Frank V. Williams, Chancellor**

Filed October 18, 2002

No. E2001-01570-WC-R3-CV

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 defendant appeals the trial judge's decision that the plaintiff has a permanent disability to the mental faculties which was caused by exposure to chemicals in the workplace. 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 ANDERSON, J., and THAYER, SP.J., joined.

F. R. Evans, Chattanooga, Tennessee, for the appellants, Schlegel Tennessee, Inc. a/k/a BTR Sealing Systems, North America Operations d/b/a BTR, Inc. and Cigna Property & Casualty.

Rex A. Dale, Lenoir City, Tennessee, for the appellee, Daniel M. Johnson.

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 plaintiff was thirty years of age at the time of this trial. He had a twelfth grade education with no college, but was trained vocationally in the Army as a heavy weld mechanic. He began working for the defendants in May, 1991, as a mold operator producing automotive seals. In 1997 he began working as a coater operator, the position he held at the time of the chemical exposures alleged in this cause of action.

The plaintiff's duties as coater operator required him to mix and pour toxic chemical coatings, prime, coat, and bake parts for automotive seals. During this process, the various chemicals that he mixed were fed into a reciprocating disk that spun the chemicals at high speed into an aerosol to coat the automotive seals which moved through the coater on a production line.

The plaintiff alleges that fumes from this process were supposed to be vented out by an exhaust fan that did not work. When he told his supervisor that the fan did not work, the supervisor told him that it had not worked in quite a while. As a result, the plaintiff alleges, over spray from the spinning reciprocating disk landed outside the area of the coating operation and all around the floor in the area where he worked.

The plaintiff alleges that on March 1, 1998, he started having allergic reactions to the chemicals to which he was being exposed at work. The effects of these reactions included rashes, chemical burns on his face, welts all over his body, discolored skin, and loss of motivation. He reported these problems to his supervisor and went to the emergency room for treatment of the symptoms. Over approximately the next eighteen months, as the plaintiff continued working, the symptoms appeared repeatedly and he continued to be treated for them. During this time the defendants paid some temporary total disability benefits when the plaintiff needed treatment and was unable to work.

In addition to his physical symptoms, the plaintiff alleges that mental symptoms began to appear from his exposure to the chemicals at work. Several witnesses testified at trial that the plaintiff was emotionally upset, had lost weight, and was nervous and depressed following his exposure to the chemicals. Witnesses also described the plaintiff as panicky, anxious, and paranoid. The plaintiff testified that he now has memory and motivation problems as well as trouble sleeping due to anxiety.

The plaintiff saw several different psychiatrists and psychologists for diagnosis and treatment of his mental problems that he alleges were caused by his chemical exposure in the workplace. The reports of these physicians led to the trial court's finding that the plaintiff suffers a psychological problem that was triggered by an initial allergic or toxic reaction that led to subsequent psychological events which resulted in a major depressive episode.

Medical Evidence

The medical evidence for the purpose of the issue raised in this appeal was presented at trial by the deposition of Dr. David Snow, M.D., the plaintiff's treating psychiatrist in Maryville, Tennessee. The trial court also received into evidence the reports of several other medical and psychiatric doctors who had examined and treated the plaintiff.

Dr. Snow testified that he began seeing the plaintiff on October 15, 1998. His final diagnosis was that the plaintiff suffered from major depressive syndrome. He testified that it was his opinion that the plaintiff's mental condition was caused by his work-related allergic or toxic reactions. Dr. Snow testified that the plaintiff had a steady work history up until the allergic reactions which forced him out of work and caused the onset of his depression and anxiety, which in turn caused him to lose his part-time jobs, creating significant problems in his family and social life. Dr. Snow assigned the plaintiff with a work-related, class IV, marked mental impairment under the Fourth Edition of the American Medical Association Guides, which he equated to a fifty-five to seventy-five percent impairment to the body as a whole under the Second Edition of the AMA Guides.

The reports of other physicians treating the plaintiff that were received into evidence by the trial court varied in their degree of agreement with the testimony of Dr. Snow as to causation and impairment. However, the testimony of Dr. Snow was the only expert testimony offered by either side in this case.

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.

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).

A mental injury by accident or occupational disease arises out of employment if caused by an identifiable, stressful work-related event producing sudden mental stimulus such as fright, shock, or excessive unexpected anxiety, and not by gradual employment stress building over a period of time. *Anderson v. Save-A-Lot Ltd.*, 989 S.W.2d 277 (Tenn. 1999); *Batson v. Cigna Property and Cas. Co.*, 874 S.W.2d 566 (Tenn. 1994); *Gatlin v. City of Knoxville*, 822 S.W.2d 587 (Tenn. 1991); *Henley v. Roadway Express*, 699 S.W.2d 150 (Tenn. 1985); *Clevenger v. Plexco, et al*, 614 S.W.2d 356 (Tenn. 1981); *Jose v. Equifax, Inc.*, 556 S.W.2d 82 (Tenn. 1977). If mental illness naturally

flows from an otherwise compensable physical injury, then disability resulting therefrom has been held compensable even though the physical injury itself may not have been disabling. *Hill v. Eagle Bend Mfg., Inc.*, 942 S.W.2d 483 (Tenn. 1997); *Gluck Brothers, Inc. v. Pollard*, 221 Tenn. 383, 426 S.W.2d 763 (1968); *Buck & Simmons Auto & Electric Supply Co. v. Kesterson*, 194 Tenn. 115, 250 S.W.2d 39 (1952).

The defendants argue that the plaintiff has not met his burden of proof that the permanent disability to the mental faculties was caused by the exposure to chemicals in the workplace. In support of this contention, the defendants argue that there is no evidence that the chemicals in the plaintiff's workplace in fact caused the injuries that led to his mental problems. The defendants also question the plaintiff's credibility and argue that he was not entirely truthful with Dr. Snow, skewing Dr. Snow's diagnosis so that it was inaccurate.

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). Here, the trial court in its discretion accepted the testimony of Dr. Snow. The trial court also heard the live testimony of the plaintiff. Where the trial judge has made a determination based upon the testimony of witnesses whom he has seen and heard, great deference must be given to that finding in determining whether the evidence preponderates against the trial judge's determination. *See Humphrey v. David Witherspoon, Inc.*, 734 S.W.2d 315 (Tenn. 1987).

After hearing the parties' evidence in this case, the trial court found that the plaintiff had met his burden of proof. This decision took into account the testimony of the one medical expert in this case, as well as the live witnesses at trial. The trial court made this determination properly within its discretion and we do not disturb that decision as the evidence in the record does not preponderate against the trial court's decision. The cost of this appeal is taxed to the defendant.

JOHN K. BYERS, SENIOR JUDGE

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ORDER

This case is before the Court upon the motion for review filed by BTR Sealing Systems North America - Tennessee Operations and ACE USA f/k/a CIGNA Property & Casualty 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 defendants/appellants, Schlegel Tennessee, Inc., et al., for which execution may issue if necessary.

PER CURIAM