IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
February 7, 2003 Session

SHIRLEY K. HENSLEY v. ENGLAND/CORSAIR UPHOLSTERY MANUFACTURING COMPANY, INC., ET AL.

Direct Appeal from the Chancery Court for Claiborne County
No. 12364 Hon. Billy Joe White, Chancellor

Filed June 24, 2003

No. E2002-01763-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 trial court awarded 50 percent permanent partial disability to the body as a whole. The employer has appealed insisting the expert medical testimony is not sufficient to support the award. The judgment is affirmed.

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

THAYER, SP. J., delivered the opinion of the court, in which ANDERSON, J., and, BYERS, SR., J., joined.

J. Steven Collins, of Knoxville, Tennessee, for Appellants, England/Corsair Upholstery Manufacturing Company, Inc., and Lumbermen's Underwriting Alliance.

Edwin A. Anderson, of Knoxville, Tennessee, for Appellee, Shirley K. Hensley.

MEMORANDUM OPINION

The trial court awarded the employee, Shirley K. Hensley, 50 percent permanent partial disability as a result of sustaining an occupational disease. The employer and insurance carrier have appealed insisting the evidence is not sufficient to support the award.

Facts

The employee had been working as a seamstress or sewing operator for about thirty years.

At the time of the trial, she was fifty-five years of age and had completed the ninth grade in school. In August 1993 she started working for the defendant furniture manufacturing company. She testified she worked with fabric material most of the time and that in handling fabric, her hands became very dry. She and other sewing operators kept lotion for use on their dry hands. She said that about one year prior to stopping work in November 1998, she began to work with leather. Her hands started swelling and cracking. It got so bad that they would bleed. She stated the green dye would actually rub off on her hands and she tried wrapping her hands with gauze and masking tape. Sometime later, she testified her "feet broke open." She worked with leather for about a year before going to the doctor. She eventually saw Dr. Ellis who treated her for several years. He recommended she see Dr. Alexander, a dermatologist. She stated she went to see him and his treatment was the same as Dr. Ellis and more expensive so she quit going to Dr. Alexander and returned for treatment with Dr. Ellis. After being off from work for about six months, she was terminated.

The employee testified she had tried to find work with Wal-Mart as a greeter but when they saw the condition of her hands and asked what had caused the problem, Wal-Mart officials advised her they did not have a job available. She said her hands and feet have healed to some extent but she has not found any employment.

Dr. Roy C. Ellis, a family physician, testified by deposition, and said he first saw Ms. Hensley on August 22, 1998 and she had severe hand dermatitis; that he prescribed several medications; she returned to work on September 8; she came back to see him on September 28 showing signs of severe rash and allergic dermatitis which he felt was definitely due to the fabric, either leather or vinyl, or both. He stated that over a period of time when she was off work, she would get better and when she returned to work, she got worse. He opined her "work conditions led up to and caused the allergic dermatitis." The doctor stated the medical impairment would fall into class three in the range of 25 to 54 percent and he gave her a 50 percent impairment.

Dr. Jay Hammett, a family practice physician testifying by deposition, performed an independent medical examination on October 8, 1999 and examined the records of several other doctors. He learned she was also being treated for a thyroid condition and hypertension and thought her problems could be related to her medications for these problems. He said he thought the opinion of Dr. Ellis on causation was speculation since a skin biopsy or patch test had not been conducted. He was of the opinion she could resume her sewing work. Also, if her work conditions did cause her problems, he felt her impairment would be in the class two range of 10 to 24 percent and he fixed her impairment rating at 20 percent.

Defendant's plant manager and company nurse both testified Ms. Hensley told them during July 1998 her problem was not work-related. However, these conversations were prior to the August 1998 visit to Dr. Ellis. The plant nurse admitted that during November 1998 she advised her doctor had said her condition was work-related. The nurse also testified no other employee had complained of the same problem.

Standard of Review

The case must be reviewed on appeal *de novo* with a presumption that the findings of the trial court are correct unless we find the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2).

Issue on Appeal

On appeal the defendants contend the evidence is not sufficient to establish the employee sustained an occupational disease arising out of her employment. In this connection, it is argued the expert medical proof was based on assumptions and was speculative.

Analysis

We find the medical testimony of Dr. Ellis was in direct conflict with the testimony of Dr. Hammett on the question of causation of injury. Dr. Ellis said he was definitely of the opinion the work conditions of the employee caused the allergic dermatitis. Dr. Hammett disagreed with this conclusion and opined her medications for other health problems could likely be the cause of the employee's condition. The trial court resolved the opposing opinions by accepting the evidence of Dr. Ellis. When the expert medical testimony differs, the trial judge must obviously choose which view to believe. *Orman v. Williams Sonoma, Inc.*, 803 S.W.2d 672 (Tenn. 1991). It is not unusual for courts to accept the testimony of treating physicians over those of an expert hired solely for the purposes of litigation. *Crossno v. Publix Shirt Factory*, 814 S.W.2d 730 (Tenn. 1991); *A.C. Lawrence Co. v. Loveday*, 455 S.W.2d 141 (Tenn. 1970).

In order to recover benefits for an occupational disease, the evidence must meet each of the six conditions set out in Tenn. Code Ann. § 50-6-301. *Lambert v. Travelers Ins. Co.*, 626 S.W.2d 265 (Tenn. 1981). We find the record is sufficient to satisfy all of the statutory conditions.

Defendants challenge the testimony of Dr. Ellis because he did not obtain results from a skin biopsy or patch test before rendering an opinion. Although causation cannot be based upon speculative or conjectural proof, absolute medical certainty is not required and reasonable doubt is to be construed in favor of the employee. *Hill v. Eagle Bend Mfg., Inc.,* 942 S.W.2d 483 (Tenn. 1997).

Conclusion

The evidence does not preponderate against the findings of the trial court and the judgment is affirmed. Costs of the appeal are taxed to the defendants.

ROGER E. THAYER, SPECIAL JUDGE

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AT KNOXVILLE

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No. E2002-01763-WCM-CV

ORDER

This case is before the Court upon motion for review 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, which are incorporated herein by reference;

Whereupon, it appears to the Court that the motion for review is not well-taken and should be denied and

It is, therefore, ordered that the Panel's findings of fact 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.

IT IS SO ORDERED this 24th day of June, 2003.

PER CURIAM

Anderson, J. - Not participating.