IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
March 25, 2003 Session

WILLIE JASON CHRISTOPHER v. PLUMLEY MARUGO LIMITED

Direct Appeal from the Circuit Court for Henry County
No. 1965 Julian P. Guinn, Judge

No. W2002-02007-SC-WCM-CV - Mailed July 2, 2003; Filed September 30, 2003

This workers' compensation appeal has been referred to the Special Workers' Compensation Panel of the Supreme Court in accordance with Tennessee Code Annotated § 50-6-225(e) (3) for a hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The appellant presents the following issue for review: Whether the trial court erred in finding that the expert medical testimony established that the plaintiff's injury and/or medical impairment arose out of and in the course of his employment with the defendant.

Tenn. Code Ann. § 50-6-225(e) (2002) Appeal as of Right; Judgment of the Circuit Court is Affirmed

ROBERT L. CHILDERS, SP.J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and ALLEN W. WALLACE, SR.J., joined.

Mark C. Travis and Wimberly Lawson Seale, Cookeville, Tennessee, for appellant, Plumley Marugo Limited.

Tom Ventimiglia, Hilton Head, South Carolina, for appellee, Willie Jason Christopher.

MEMORANDUM OPINION

Plaintiff, Willie Jason Christopher, filed a Complaint for workers' compensation benefits on December 13, 2001. The trial was heard on June 27, 2002. At the conclusion of the proof, the trial court awarded plaintiff fifteen percent (15%) permanent partial disability to both arms, future medical treatment, and discretionary costs. Defendant, Plumley Marugo Limited, appeals the decision of the trial court that plaintiff's injuries arose out of and in the course of his employment with defendant. For the reasons discussed below, we affirm.

FACTS

Plaintiff, a twenty-four year old man, had been employed by defendant since December, 1999. Mr. Christopher first worked as an extrusion machine operator and his job duties consisted of setting up dies and adjusting thicknesses on rubber hoses. About 90 to 100% of the work in that job involved the use of his hands, although there was not much gripping involved.

In April 2000, plaintiff was moved to the THV vulcanizing job that required 100% use of his hands, as well as gripping, pushing and pulling. That job was much more physically demanding than the previous job. Plaintiff remained in that job until August or September 2000, when he was moved to the regular process vulcanizing job. That job involved handling bigger hoses, harder gripping and harder pushing, and was much harder than the THV vulcanizing job. Plaintiff remained in that job until approximately December 2000, when he was transferred back to THV vulcanizing.

Plaintiff first began noticing problems with his hands and arms while in THV vulcanizing in April 2000. A couple of months later he started waking up during the night with numbness, and his condition became much worse when he was placed in the regular process vulcanizing job. He testified at trial that his nighttime numbness was intermittent prior to working in regular process vulcanizing, but he was awakened by the numbness every night after he was transferred to the regular process vulcanizing job. He also experienced numbness, cramping, soreness and swelling in his hands, at home and at work, after the transfer.

Mr. Christopher was transferred back to THV vulcanizing because his hands were hurting too much in regular process vulcanizing, however, the transfer did not alleviate his symptoms. In April 2001, plaintiff notified defendant's safety manager of the problems with his hands and arms and requested to see a doctor. The safety manager refused plaintiff's request and told plaintiff that if he wished to have medical treatment he would have to pursue that on his own.

Thereafter plaintiff sought treatment from a family nurse practitioner, through his regular doctor, Dr. Harrison. Dr. Harrison diagnosed bilateral carpal tunnel syndrome. Defendant then provided plaintiff with the required list of physicians and plaintiff saw Dr. Vince C. Tusa, who confirmed the diagnosis and referred plaintiff to an orthopedic surgeon, Dr. Claiborne Christian. Dr. Christian treated plaintiff on two occasions and released him on August 14, 2001, finding that plaintiff had no permanent impairment resulting from the bilateral carpal tunnel syndrome. Plaintiff then saw Dr. Joseph C. Boals, III on October 22, 2001, for evaluation. Dr. Boals performed a physical evaluation and reviewed the results of a previously conducted nerve conduction study and confirmed the diagnosis of bilateral carpal tunnel syndrome. Dr. Boals concluded that plaintiff had sustained a ten percent (10%) permanent impairment of each upper extremity and advised plaintiff that surgery would be necessary if his symptoms became constant. Dr. Boals also advised plaintiff to avoid repetitive work and heavy gripping, and to use a night splint should plaintiff choose not to have surgery.

Plaintiff had worked for Taco Bell before working for defendant. His job duties for Taco Bell included unloading trucks and opening and closing the restaurant. In January 2001, he again starting working at Taco Bell as a shift manager. Plaintiff worked 25 to 30 hours per week for Taco Bell in addition to working for defendant. Plaintiff testified that his work at Taco Bell was much less demanding than his work for defendant. He testified that he experienced some difficulty with his hands and wrists while working at Taco Bell, but that this only occurred after he had worked his shift for defendant. He always worked the Taco Bell job after working his shift for the defendant. Plaintiff was fired by defendant on May 21, 2001, but continued to work for Taco Bell.

ANALYSIS

Review of the trial court's decision requires a determination of whether the preponderance of the evidence favors the trial court's judgment. The decision of the trial court will be upheld unless upon review it is determined that the evidence preponderates against the trial court's judgment. *Wingert v. Government of Sumner County,* 908 S.W.2d 921, 922 (Tenn. 1995).

The trial court, after hearing the testimony, reviewing the trial exhibits, and weighing the evidence, determined that plaintiff was injured while in the course and scope of his employment with defendant. Appellate review is *de novo* upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, 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). Considerable deference must be given to the trial court's findings of fact, especially where issues of credibility are involved. *Collins v. Howmet,* 970 S.W.2d 941, 943 (Tenn. 1998). Issues involving questions of law are reviewed *de novo* without a presumption of correctness. *Ridings v. Ralph M. Parsons Co.,* 914 S.W.2d 79, 80 (Tenn. 1996).

Appellant insists that plaintiff failed to prove that his injury was caused by his work with defendant primarily because the expert medical testimony was based on incorrect assumptions as to material facts, and that plaintiff's impairment and resulting disability were actually the result of plaintiff's work at Taco Bell. Defendant asserts that because plaintiff failed to tell Dr. Tusa and Dr. Christian the correct number of hours that he was working at Taco Bell while he was also working for defendant, and because he failed to tell Dr. Boals that he was working at Taco Bell at the same time he was working for defendant, that the opinions of these physicians regarding causation of plaintiff's injuries should be disregarded.

Appellant admits in its brief that Dr. Tusa's medical records indicate that plaintiff told Dr. Tusa that he was working 25-30 hours per week at Taco Bell. Appellant also admits in its brief that Dr. Christian's medical records indicate that during his second visit to Dr. Christian on May 29, 2001, plaintiff told Dr. Christian he was no longer working for defendant and that plaintiff's work for Taco Bell was much easier on his hands and wrists than the work for defendant. It is clear from the record that both Dr. Tusa and Dr. Christian knew about plaintiff's employment at Taco Bell. The

record also reveals that Dr. Boals' opinion that plaintiff's injuries were caused by his work for defendant was based on information provided by both plaintiff and his counsel regarding plaintiff's work at Taco Bell.

Appellant also insists that the trial court erred because the employment records from Taco Bell indicate that plaintiff was working more hours for Taco Bell than for defendant, or that plaintiff was working more hours for Taco Bell than he indicated to his doctors. The record reveals that plaintiff averaged working for Taco Bell 31.19 hours per week which is 1.19 hours more per week than plaintiff told his doctors. This argument is disingenuous.

Appellant also insists that the trial court erred by failing to find that plaintiff's injuries were an aggravation of a pre-existing injury that occurred while he was working for Taco Bell before he started working for defendant, or that it was caused by his work at Taco Bell while he was working for defendant, or that it was aggravated by his work at Taco Bell after he stopped working for defendant. Appellant asserts that on August 14, 2001, the last time he saw Dr. Christian, plaintiff was having no numbness or tingling and his clinical symptoms on the Tinel's and Phalen's tests were both negative. Plaintiff was fired by defendant on May 21, 2001, and then only worked for Taco Bell. Although he was released by Dr. Christian on August 14, 2001, with no restrictions and no permanent medical impairment, plaintiff testified that while his symptoms improved greatly after he stopped working for defendant, the symptoms never completely went away.

Appellant also asserts that plaintiff was not evaluated by Dr. Boals until after being released by Dr. Christian. On October 22, 2001, Dr. Boals found a positive Phalen's test that served as the basis for Dr. Boals' permanent impairment rating. Appellant insists that because Dr. Christian released plaintiff with no permanent impairment rating, and because Dr. Boals opined thereafter that plaintiff had a permanent impairment, that these two facts prove that plaintiff's injury was caused or aggravated by his work at Taco Bell. However, this argument is not consistent with the evidence presented. Plaintiff first experienced pain in April 2000, several months before plaintiff began working at Taco Bell. Further, plaintiff testified that although his symptoms improved after he stopped working for defendant, they did not completely subside. There is evidence in the record from which the trial court could conclude that plaintiff continued to have symptoms after being released by Dr. Christian.

CONCLUSION

After reviewing the trial court's findings, the briefs and oral argument submitted by the parties, and the entire record, we find that there is ample evidence to support the trial judge's finding that plaintiff's injuries arose out of and in the course of his employment for defendant. We also find the evidence preponderates in favor of the trial court's judgment and we affirm it. Costs are taxed to the appellant.

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ROBERT L. CHILDERS, SPECIAL JUDGE

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ORDER

This case is before the Court upon the motion for review filed by Plumley Marugo Limited 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 Plumley Marugo Limited, for which execution may issue if necessary.

PER CURIAM

Holder, J - Not Participating