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

FREDERICK J. JACKSON v. PACCAR, INC. d/b/a PETERBILT MOTORS COMPANY

Direct Appeal from the Circuit Court for Davidson County
No. 01C2230 Carol Soloman, Circuit Judge

No. M2003-00406-WC-R3-CV - Mailed - December 19, 2003
Filed - January 27, 2004

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 defendant/appellant argues that the trial court erred in finding that the plaintiff/appellee sustained his carpal tunnel injuries while he was employed with the defendant/appellant, and the defendant/appellant also argues that the trial court's assignment of a 12.5 percent vocational disability is excessive. We affirm the judgment of the trial court.

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

JOHN K. BYERS, SR. J., delivered the opinion of the court, in which ADOLPHO A. BIRCH, J., and ALLEN W. WALLACE, SR. J., joined.

Terry L. Hill, Nashville, Tennessee, for the appellant, Paccar, Inc. d/b/a Peterbilt Motors Company

Jay R. Slobey and Michael Hornback, Nashville, Tennessee, for the appellee, Frederick Jackson

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.

1998).

The trial court in this case found that the plaintiff, Frederick Jackson, sustained a work related carpal tunnel injury in each arm while employed by the defendant, Paccar, Inc., d/b/a Peterbilt Motors Company, and that the plaintiff had sustained a 12.5 percent vocational disability to each arm as a result of his work related injury. We do not find that the evidence preponderates against this finding, and therefore affirm the ruling of the trial court.

Facts

The plaintiff/appellee began working at Peterbilt in July 1995, where he was first assigned to work as a painter's helper, but moved on to building air piping assemblies, and working in the cab assembly department. In January 2000, Jackson reported to Peterbilt that he was having pain and numbness in his hands, but initially his workers' compensation claim was denied. However, under order of the Tennessee Department of Labor, the defendant/appellant provided Jackson with a panel of doctors from which Jackson chose Dr. Schmidt. Jackson was never put under any work restrictions by Dr. Schmidt. Jackson was laid off from Peterbilt July 28, 2000.

Jackson then took a job with Penske as a mechanic, which also required the use of his hands. Jackson was treated by a number of doctors, but was not diagnosed as having carpal tunnel until May 17, 2001 when he was seen by a Dr. Milek, who performed surgery on Jackson. Jackson now works for J.B. Hunt as a lead/foreman. He still has problems griping small objects and still experiences numbness sometimes. Jackson also experiences cramping after prolonged writing.

Medical Evidence

Jackson consulted a number of doctors regarding his pain and swelling in his hands. Dr. David Martin, a plastic surgeon, was the first to treat Jackson. Dr. Martin diagnosed Jackson as having hand pain of unknown etiology, and released Jackson with no impairments and no restrictions. Jackson also saw Dr. David Schmidt, an orthopedist, Dr. Daniel McHugh, a physiatrist, Dr. Lagron and Dr. Lawrence, none of whom diagnosed Jackson with carpal tunnel syndrome.

Jackson was diagnosed with carpal tunnel syndrome on May 17, 2001, by Dr. Milek, a hand and wrist doctor. Dr. Milek performed a synovectomy on Jackson's right arm and a carpal tunnel release on the left arm. The surgeries on both arms improved Jackson's condition, especially the synovectomy on the right arm.

The only medical record before the trial court was the deposition of Dr. David Gaw, a physician specializing in orthopedics. Dr. Gaw reviewed numerous notes and records from Drs. Milek, Lawrence, Martin, and Schmidt, and also examined Jackson in making his evaluation of

Jackson's condition. Dr. Gaw found Jackson to be an honest individual, and based on the history that Jackson gave concerning his activities at work, Dr. Gaw testified that the most likely cause of Jackson's condition was the type of work that Jackson did at Peterbilt. Dr. Gaw also gave Jackson a 5 percent impairment to each upper extremity.

Discussion

The defendant/appellant in this case first argues that the trial court erred in determining that the plaintiff, Jackson, sustained his carpal tunnel injuries while employed by the defendant and that the plaintiff's condition was neither caused by nor exacerbated by his work for a subsequent employer. The defendant argues that because the plaintiff was never diagnosed as having carpal tunnel and was never put on any restrictions while employed by the defendant that the plaintiff's subsequent employer, Penske, should be liable under the "last injurious injury" rule. The "last injurious injury" rule states as follows:

> "...an employer takes an employee as he finds him. He is liable for disability resulting from injuries sustained by an employee arising out of and in the course of his employment even though it aggravates a previous condition with resulting disability far greater than otherwise would have been the case.
>
> ...It is the rule in Tennessee that there must be a causal connection between the employment and the resulting injury or that the most recent injury causally related to the employment renders the employer at that time reliable for full compensation for all the resulting disability even though increased by aggravation of a previous condition of disease or injury of such employees."

McCormick v. Snappy Car Rentals, Inc., 806 S.W.2d 527, 529 (Tenn. 1991). Although the defendant is correct in arguing that the "last injurious injury" rule is applied in cases concerning gradual injuries such as carpal tunnel, this rule is for the benefit of plaintiff/employees who, without the doctrine, may not be able to recover from any employer because of the inability to pinpoint the exact time and place of injury. This doctrine is not a tool for defendant/employers to escape liability when there is a causal connection between the employee's injury and the type of work they did for the defendant, even if not diagnosed until later when the employee is now employed by a subsequent employer.

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). In this case, the only expert medical testimony available is the deposition of Dr. Gaw. Dr. Gaw testified that based on the history he was given by the plaintiff, the most likely cause for the plaintiff's carpal tunnel was the type of work that the plaintiff did at Peterbilt. The trial judge had only the plaintiff's testimony and that of Dr. Gaw before her to base her opinion and concluded that the injury "occurred, initiated in, and topped out at Peterbilt." There is no evidence that preponderates against this finding, therefore we agree.

The defendant/appellant argues secondly that the trial court's assignment of 12.5 percent disability to each arm was excessive. Dr. Gaw assigned the plaintiff an impairment rating of 5 percent to each upper extremity. The plaintiff testified that he continues to have numbness in his hands, and has difficulty using his hands. The plaintiff also testified that he still has cramping in his hands when he tries to write. Dr. Gaw's assessment and the plaintiff's testimony was the only proof before the trial court, and the evidence does not preponderate the finding of 12.5 percent impairment to each arm, therefore we agree with the trial court's findings.

Costs are taxed to the appellant.

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JOHN K. BYERS, SENIOR JUDGE

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JUDGMENT

This case is before the Court upon 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 Memorandum Opinion of the Panel should be accepted and approved; 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 will be paid by the appellant, Paccar, Inc. d/b/a Peterbilt Motors Company, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM