

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
July 31, 2003 Session

DEBORAH JOHNSON v. MARSHALL MANUFACTURING CORP., ET AL.

**Direct Appeal from the Chancery Court for Marshall County
No. 12004 J. B. Cox, Chancellor**

**No. M2003-00921-WC-R3-CV - Mailed - December 1, 2003
Filed - March 2, 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 appellant, Federated Insurance Company, insists the trial court erred in determining, as a matter of law, that it was liable for the payment of workers' compensation benefits and in summarily dismissing the case as to Liberty Mutual Insurance Company. As discussed below, the panel has found no reversible error and concluded that Federated is liable under the successive injury rule.

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

JOE C. LOSER, JR, SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and JAMES L. WEATHERFORD, SR. J., joined.

Gordon C. Aulgur, Brewer, Krause & Brooks, Nashville, Tennessee, for the appellant, Federated Insurance Company

Lee Anne Murray, Feeney & Murray, Nashville, Tennessee, for the appellee, Marshall Manufacturing Corporation

Emil L. Storey, Jr. and Deborah A. Toon, Donald D. Zuccarello, Nashville, Tennessee, for the appellee, Deborah Johnson

MEMORANDUM OPINION

The employee or claimant, Deborah Johnson, has worked for the employer, Marshall Manufacturing Corporation, since 1979. She gradually developed pain and numbness in both hands and was diagnosed with mild carpal tunnel syndrome. The employer's insurer, Liberty Mutual,

accepted the claim and provided medical benefits. The claimant continued working.

On April 16, 2000, Federated Insurance succeeded Liberty Mutual as the employer's workers' compensation insurance carrier. On August 21, 2000, the claimant underwent corrective surgery for her carpal tunnel syndrome and was disabled from working. Liberty Mutual paid for the surgery but has refused to pay medical or disability benefits after that date. So has Federated. Ms. Johnson sued both carriers and the employer for the benefits provided by law.

On Liberty Mutual's motion for summary judgment, the trial court dismissed the claim against Liberty Mutual and awarded Liberty Mutual a judgment against Federated for expenditures made by Liberty Mutual on behalf of the claimant. The trial court further concluded from the undisputed facts that Federated was liable to the claimant for benefits. Federated has appealed.

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). Where the trial judge has seen and heard the witnesses, especially if issues of credibility and weight to be given oral testimony are involved, considerable deference must be accorded those circumstances on review, because it is the trial court which had the opportunity to observe the witnesses' demeanor and to hear the in-court testimony. Long v. Tri-Con Ind., Ltd., 996 S.W.2d 173, 178 (Tenn. 1999). The appellate tribunal, however, is as well situated to gauge the weight, worth and significance of deposition testimony as the trial judge. Walker v. Saturn Corp., 986 S.W.2d 204, 207 (Tenn. 1998). Conclusions of law are subject to de novo review on appeal without any presumption of correctness. Nutt v. Champion Intern. Corp., 980 S.W.2d 365, 367 (Tenn. 1998).

Where an employee is permanently disabled as a result of a combination of two or more accidents occurring at different times and while the employee was working for different employers, the employer for whom the employee was working at the time of the most recent accident is generally liable for permanent disability benefits. Baxter v. Smith, 211 Tenn. 347, 364 S.W.2d 936 (1962). The same doctrine applies where the employee's permanent disability results from successive injuries while the employee is working for the same employer, but the employer has changed insurance carriers. Bennett v. Howard Johnson's Motor Lodge, 714 S.W.2d 273 (Tenn. 1986). The carrier which provided coverage at the time of the last injury is liable for the payment of permanent disability benefits. Where a condition develops gradually over a period of time resulting in a definite, work-connected, unexpected, fortuitous injury, it is compensable as an injury by accident. Brown Shoe Co. v. Reed, 209 Tenn. 106, 350 S.W.2d 65 (1961). In such cases, the date of injury has been fixed as of the date on which the claimant was forced to quit work because of severe pain. Lawson v. Lear Seating Corp., 944 S.W.2d 340 (Tenn. 1997); Barker v. Home-Crest Corp., 805 S.W.2d 373, 374 (Tenn. 1991); Central Motor Exp. v. Burney, 214 Tenn. 118, 377 S.W.2d 947 (1964). In Barker, where the claimant also suffered a gradually occurring injury, this court held the insurer which provided coverage on the day the employee last worked was liable for

benefits, thus applying the successive injury rule to a gradual injury case.

Federated argues that the above rules are inapplicable because Ms. Johnson first reported her injury before the employer changed carriers and because Liberty Mutual accepted liability for her medical benefits. To hold otherwise, Federated contends, would encourage litigation between insurance carriers. We respectfully reject the argument. The Workers' Compensation Act must be interpreted in a manner designed to protect workers and their families from the economic devastation that can follow on-the-job injuries. Hill v. Wilson Sporting Goods Co., 104 S.W.3d 844 (Tenn. Workers' Comp Panel 2002). The interpretation suggested by Federated would discourage insurers from providing medical benefits for injured workers who have not yet become disabled and violate, in our judgment, the legislative mandate that the Act be given equitable construction. See Tenn. Code Ann. § 50-6-116.

We conclude that it is better to have insurance carriers bring suit to recover payments previously made, in the event of a switch between carriers, than to risk having an injured worker not receive immediate medical treatment because of the gradual or other complicated nature of the injury. Consequently, Federated must pay for Ms. Johnson's claim in full even though Liberty Mutual began payment on her claim.

The judgment of the trial court is therefore affirmed. Costs are taxed to the appellant.

JOE C. LOSER, JR.

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JUDGMENT

This case is before the Court upon Federated Mutual Insurance Company's 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 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 will be assessed to Federated Mutual Insurance Company for which execution may issue if necessary.

PER CURIAM

Holder, J., not participating.

