

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
(December 17, 2003 Session)

**STELLA B. TODD v. BOULEVARD TERRACE REHABILITATION AND
NURSING CENTER, LLC.**

**Direct Appeal from the Circuit Court for Rutherford County
No. 44677 Robert E. Corlew, III, Circuit Judge**

**No. M2003-01357-WC-R3-CV - Mailed - February 24, 2004
Filed - April 30, 2004**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated § 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. The trial court found the claimant failed to give the statutory notice of injury and dismissed the suit. We affirm.

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

HOWELL N. PEOPLES, SP. J., delivered the opinion of the court in which FRANK F. DROWOTA, III, CHIEF JUSTICE., and JOHN A. TURNBULL, SP. J. joined.

D. Russell Thomas, Herbert M. Schaltegger, Murfreesboro, Tennessee, for the Appellant Stella B. Todd.

James H. Tucker, Manier & Herod, Nashville, Tennessee, for the Appellee, Boulevard Terrace Rehabilitation and Nursing Center, LLC .

MEMORANDUM OPINION

Facts

At the times relevant to this appeal, Stella Todd was employed by Boulevard Terrace Rehabilitation and Nursing Home, LLC (“Boulevard”). On April 2, 2001, Ms. Todd filed this suit claiming that she was injured in the course and scope of her employment. She testified: that she felt pain in her back while lifting a patient on April 3, 2000, but did not report it that day; that she knew how to report the injury but did not report it because she did not think she was seriously injured; and that she spoke with Amanda Pullias, the administrator of Boulevard, about filing a workers’ compensation claim about twenty days after the injury occurred but Ms. Pullias declined to file a claim because it was more than 24 hours after the injury.

Ms. Pullias testified that no such report was made and that she first became aware of the claim when she received a letter dated March 2, 2001 from Ms. Todd’s attorney. Julie Murray, Ms. Todd’s supervisor, testified that she first learned of the claim after the letter from the attorney. Dorschelle Carney, a co-worker, testified that Ms. Todd complained of back pain after the lifting incident. Shannon Barrett, a co-worker, testified that Ms. Todd complained of back pain at the time of the lifting incident and told her it gradually got worse after that time.

Ms. Todd saw several physicians who testified by deposition. She first sought treatment from Dr. Warren Langworthy on April 12, 2000, and complained that her back pain began on Sunday, April 9, 2000. She never indicated to him that she had a work-related injury. On May 8, 2000, she saw Dr. Michael Moran, a neurosurgeon, on referral from Dr. Langworthy. Dr. Moran testified that Ms. Todd stated her symptoms began a month earlier while trying to get out of bed. Again, she never mentioned a work-related injury. Dr. Sanford L. Geiser, a chiropractor, testified that Ms. Todd was first seen on July 12, 2000 by another doctor at United Chiropractic and that the records reflected she woke up one Sunday morning and could not get out of bed. Dr. Geiser said that in January or February 2001, toward the end of his treatment, Ms. Todd told him she injured herself lifting a patient but did not say when the injury occurred. Ms. Todd first saw Dr. Paul R. McCombs and Dr. David W. Gaw after her attorney had written his letter of March 2, 2001 giving notice of an injury to Boulevard.

The trial judge found that Ms. Todd failed to give her employer notice of the injury as required by law, and that the employer was prejudiced by the eleven month delay in giving notice.

Standard of Review

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 findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann§ 50-6-225(e)(2); *Tucker v. Foamex, L.P.*, 31 S.W.3d 241, 242 (Tenn. 2000). 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 to determine where the preponderance of the evidence lies. *Vinson v. United Parcel Service*, 92 S.W.3d 380, 383-4 (2002).

Issues

1. Did the trial court err in finding that the employee had not provided actual notice of her work injury to the employer?
2. Did the trial court err in finding that the employer was prejudiced by the employee's defective notice and that such prejudice was sufficient to defeat compensability of the claim?

Discussion

I

The trial court heard conflicting evidence on the issue of whether the employer had actual notice or was provided oral notice of the work injury. "When the trial court has seen the witnesses and heard the testimony, especially where issues of credibility and the weight of the testimony are involved, the appellate court must extend considerable deference to the trial court's factual findings." *Richards v. Liberty Mut. Ins. Co.*, 70 S.W.3d 729, 732 (Tenn. 2002). We do not find the evidence to preponderate against the findings of the trial court on the issue of notice.

II

Ms. Todd maintains that even if the notice of injury was untimely, the employer was not prejudiced. The trial court found prejudice to the employer and stated:

In this case, we believe there was prejudice to the employer. Notice is generally appropriate so that the employer can investigate the circumstances relating to the injury, provide remedial measures, where appropriate, so that other employees are not similarly injured, and so that the employer can accommodate the Plaintiff's problems so that her injury will not be further exacerbated. Additionally, and very significantly, the statute provides to the employer the right to control the treatment provided to the employee. In the present case, the delay of some eleven (11) months is substantial. By the time the Plaintiff provided written notice to the employer, a substantial portion of the initial medical treatment was provided to the Plaintiff. The opportunity of the employer to investigate the injury was substantially hindered due to the passage of time.

The record supports the findings of the trial court.

Conclusion

The judgment of the trial court is affirmed. Costs of this appeal are taxed against the appellant, Stella B. Todd and her surety.

Howell N. Peoples, Special Judge

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

**STELLA B. TODD v. BOULEVARD TERRACE REHABILITATION AND
NURSING CENTER, L.L.C.**

No. M2003-01357-SC-WCM-CV - Filed - April 30, 2004

JUDGMENT

This case is before the Court upon a motion for review filed by Stella B. Todd 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 Stella B. Todd for which execution may issue if necessary.

PER CURIAM

Drowota, C.J., not participating.