

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT NASHVILLE

February 26, 2004 Session

**MELLY L. LEE v. SATURN CORPORATION**

**Appeal from the Chancery Court for Marshall County  
No. 12002 J. B. Cox, Judge**

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**No. M2003-00390-WC-R3-CV - Mailed - August 10, 2004  
Filed - September 27, 2004**

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This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with the Tennessee Code Annotated section 50-6-225(2)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. In this case the trial court found that the employee gave actual notice of her neck injury and that the injury was work related. The employee's award was based on a permanent partial impairment rating of 18%. The employer raises the following issues: 1) Whether the trial court erred in concluding that the union representative had apparent authority to receive notice of employee's work-related injury; 2) Whether the trial court erred in concluding that the employee gave the employer actual notice of her injury; and 3) Whether the trial court erred in concluding that employee's injury was work related. We find no error and affirm the judgment of the trial court.

**Tenn. Code Ann. § 50-6-225(e) (2003 Supp.) Appeal as of Right; Judgment of the  
Chancery Court Affirmed**

RITA L. STOTTS, SP. J., delivered the opinion of the court, in which ROGER A. PAGE, SP. J., and ADOLPHO A. BIRCH, JR., J., joined.

Thomas H. Peebles, IV and Stephen Zralek, Columbia, Tennessee, for the appellant, Saturn Corporation.

Larry R. McElhaney, II, Nashville, Tennessee, for the appellee, Melly L. Lee.

## **MEMORANDUM OPINION**

### **STANDARD OF REVIEW**

In Tennessee, appellate review 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). The reviewing Court is required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. *Wingert v. Government of Sumner County*, 908 S.W.2d 921, 922 (Tenn. 1995).

### **FACTUAL BACKGROUND**

On September 5, 2000, the employee, Melly Lee, heard a pop in her neck as she reached to pull longitudinal rails over her head while working at the Saturn plant. Although she did not believe her injury to be serious at the time, she did notify Frank Wilson, her Operations Module Advisor (hereinafter "OMA"). Saturn Corporation requires that employees complete a Team Member Incident Assessment Form in order for a work-related claim to be investigated. Lee completed this on October 9, 2000. She had surgery in that year and had reached maximum medical impairment as of April 19, 2002, with no permanent restrictions.

The trial court found that Lee gave actual notice to her employer because Mr. Wilson had apparent authority. Further, the trial court found that Lee's injury was work related.

### **NOTICE**

As an OMA, Frank Wilson was involved in the worker's compensation process and Saturn Corporation had trained him on what to do when employees reported injuries. In October 2000, after being notified by the employee that her problems were worsening, Wilson accompanied her to the medical office where a written notice of injury was completed. At trial, Wilson did not dispute that he had been advised that the actual date of the injury was 34 days earlier.

Moreover, the employer, at trial, did not allege any prejudice due to the actual Team Member Incident Assessment form not having been completed until October 2000. Tennessee Code Annotated § 50-6-202(a)(2) recognizes that there may be deficiencies in the notice provided to an employee and places the burden on the employer to prove prejudice. This Court agrees with the trial court's determination.

### **CAUSATION**

The employer argues that the trial court should have given more weight to the deposition of the employer's treating physician, Dr. Scott Standard, than to the results of the independent medical examination conducted by Dr. David Gaw. It is well settled that a trial court has discretion to accept the opinion of one expert over that of another. *Johnson v. Mid Wesco, Inc.*, 801 S.W.2d 804, 807

(Tenn. 1990). Although Dr. Standard, one of the employee's treating physicians had no opinion as to whether or not Lee's injury was work related, the physician who conducted an independent medical examination concluded that Lee's injury had occurred on September 5, 2000. That physician, Dr. David Gaw, also concluded that Lee had cervical disease prior to the injury which was aggravated. This Court has conducted its own *de novo* review of the record. We note that Dr. Standard testified that the work activity described by the employee was consistent with the injury she suffered and Dr. Standard also testified that activity could cause a herniated disk. In this regard, the testimony of the doctors does not conflict. The record reflects that the employer was referred to Dr. Standard by another physician, Dr. Jeffrey Adams, and that he first saw Lee in November 2000. Dr. Standard admitted to deficiencies in his records during the following exchange:

Q. [Mr. McElhaney:]  
Did you know, Doctor, that Jeff Adams was an authorized treating physician under worker's compensation?

A. [Dr. Standard:]  
I did not, and if I had known that I would have been more explicit in my documentation regarding the work-related issues in this case.

While Dr. Standard performed surgery which gave the employee relief, he could not state what caused her ruptured disk. In addition, although he could not testify as to the cause of the employee's injury, he did admit that her history was consistent with the injury suffered. Consequently, the deposition testimony of both physicians supports a finding of causation and establishes that Lee's herniated disk was caused by the work-related injury which occurred on September 5, 2000.

### **CONCLUSION**

The judgment of the trial court is affirmed in all respects. Costs are taxed to the appellant.

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RITA L. STOTTS, SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

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**Chancery Court for Marshall County  
No. 12002**

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**No. M2003-00390-SC-WCM-CV - Filed - September 27, 2004**

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**JUDGMENT ORDER**

This case is before the Court upon the motion for review filed by Saturn Corporation 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 Saturn Corporation and its surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

Birch, J., not participating