IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS= COMPENSATION APPEALS PANEL
AT NASHVILLE
February 26, 2004 Session

CHARLES RODGER WILSON v. NATIONAL HEALTHCARE CORPORATION

Direct Appeal from the Chancery Court for Sumner County
No. 2001C-239 Tom E. Gray, Chancellor

No. M2003-01195-WC-R3-CV - Mailed - May 13, 2004
Filed - September 7, 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 section 50-6-225(e)(3) for hearing and reporting to the Supreme Court of the findings of fact and conclusions of law. In this appeal, the employer contends that the trial court erred in holding that the employee proved by a preponderance of the evidence that his complaints of mid-back pain were caused by a November 5, 2000 work-related accident. The employer also contends that the trial court erred by not holding that the instant case is barred as a result of release language in a December 13, 2000 court-approved workers' compensation settlement agreement that concluded a previous claim by this same employee. 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

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

M. Bradley Gilmore and Kathleen W. Smith, Nashville, Tennessee for appellant, National Healthcare Corporation.

Thomas Jay Martin, Jr., Gallatin, Tennessee, for appellee, Charles Rodger Wilson.

MEMORANDUM OPINION

STANDARD OF REVIEW

The review of the findings of 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). This Court is not bound by the trial court's findings, but instead conducts its own independent examination of the record to determine where the preponderance lies. Galloway v. Memphis Drum Serv., 822 S.W. 2d 584, 586 (Tenn. 1981).

FACTUAL BACKGROUND

Charles Rodger Wilson was forty-seven years old at the time of trial. He had worked primarily as a cook, kitchen manager, and executive chef since graduating from high school. Wilson had two previous workers' compensation claims prior to the November 5, 2000 injury. Each of those claims resulted in a court-approved settlement.

Wilson was injured on November 5, 2000 when a box of frozen food fell on his back while he was inside the employer's walk-in freezer. Wilson was treated at the Middle Tennessee Family Wellness Center by Dr. Michael R. Bernui on several occasions in November, December and January 2001. The first office visit with Dr. Bernui was on November 6, 2000. The treatment by Dr. Bernui continued until January 10, 2001. Wilson was then referred to Dr. Arthur R. Cushman. Wilson saw Dr. Cushman for the first time on February 16, 2001. Dr. Cushman treated Wilson approximately six times with the last office visit occurring on March 29, 2002. Dr. Cushman and Dr. Bernui did not relate Wilson's mid-back injury to the November 5, 2000 accident. However, Dr. Cushman stated in a letter, "We know he had a previous thoracic disc herniation, again that was almost certainly caused by the trauma he described."

An independent medical evaluation was performed by Dr. David W. Gaw on November 20, 2002. Dr. Gaw has specialized in orthopedics since 1973. He examined all of the medical records concerning the employee's mid-back injury before examining him. Dr. Gaw also read the depositions of Dr. Cushman and Dr. Bernui before examining Wilson. After interviewing and examining Wilson, Dr. Gaw specifically related the mid-back injury to the November 5, 2000 accident and gave Wilson a rating of 5% permanent partial impairment to the body as a whole.

CAUSATION

The trial court determined that the permanent injury to Wilson's mid-back was causally related to the November 5, 2000 accident. The trial court stated, "in reading the depositions of the physicians, the court finds Dr. Cushman and Dr. Gaw to be credible." The trial court further stated that "the deposition of Dr. Cushman is a little equivocal on that area of causation, so the court finds that the plaintiff has by a preponderance of the evidence proven that causation of his back problem is a result of the accident that he suffered on November 5, 2000." The trial court concluded that Wilson had suffered a 10% permanent vocational disability to the body as a whole.

After a careful review of the medical depositions and the entire record, we find no error by the trial court in determining that Wilson's mid-back problem was causally related to the November 5, 2000 accident. Any reasonable doubt as to causation must be resolved in favor of the employee. Reeser v. Yellow Freight Sys., Inc., 938 S.W. 2d 690, 692 (Tenn. 1997).

In the instant case, the learned chancellor was compelled to consider differing medical testimony as to causation. The trial court had to decide which of the competing medical opinions to accept. It is certainly within the discretion of the trial court to conclude that the opinion of one expert should be accepted over that of another. Hughes v. MTD Products, Inc., No. 02501-9602-CH-00019, 1996 WL 554473 at *2 (Tenn. Sept. 27, 1996) (citing Hinson v. Wal-Mart Stores, Inc., 654 S.W. 2d 675, 676 (Tenn. 1983)); Kellerman v. Food Lion, Inc., 929 S.W. 2d 333 (Tenn. 1996); Thomas v. Aetna Life & Casualty Co., 812 S.W. 2d 278, 283 (Tenn. 1991); Johnson v. Midwesco, Inc., 801 S.W. 2d 804, 806 (Tenn. 1990). The opinions of the medical experts were based at least in part upon their assessment of the credibility of the employee. The trial court assessed the Claimant and found him credible. Moreover, this court has independently reviewed the medical testimony and agrees with the trial court's determination. In this case, the medical proof is sufficient to establish that Wilson's mid-back area was injured by the accident of November 5, 2000.

RELEASE

It is undisputed that the work-related injury that is the subject of the instant case occurred on November 5, 2000. In addition, it is undisputed that Wilson settled a previous workers' compensation claim in the Chancery Court of Sumner County on December 13, 2000. It is further undisputed that the Order Approving the Worker's Compensation Settlement on December 13,2000 contained the following language:

> Furthermore, this settlement is intended to compensate the Employee for any other work-related injuries, aggravations of injuries, or disabilities resulting or to result from the employee's work-related injury on or about April 20, 2000, or in any way connected with or growing out of the Employee's employment with the Employer . . . Upon the payment of the sum of $21,000, as set forth above, the Employee releases National Healthcare of

> Hendersonville…. from ….any prior or subsequent work-related injuries, aggravations, or occupational diseases incurred up to the date of the settlement, or any disabilities resulting or to result therefrom, or in any way connected with or growing out of the Employee's employment with the Employer.

However, paragraph 3 of the December 13, 2000 Order Approving Workers' Compensation Settlement sets forth that "on or about April 20, 2000, [Employee] sustained an injury to his left shoulder." Paragraph 4 of the same Order states that "Employee was treated for a partial rotator cuff tear . . . and underwent arthroscopic surgery to repair his left rotator cuff." The Order repeatedly refers to the April 20, 2000 shoulder injury.

Appellant cites the unpublished opinion of Carabia v. The Travelers Insurance Co., No. 234, 1987 WL 11825 (Tenn. June 8, 1987) to support its argument that Wilson's claim should be barred by the language in the December 13, 2000 settlement agreement. In Carabia, there was only one accident and one injury that did not fully manifest itself for fourteen years. Carabia can be distinguished from the instant case because Wilson suffered two separate accidents and two separate injuries.

The settlement of workers' compensation claims in this state is governed by Tennessee Code Annotated section 50-6-206 which provides in pertinent part as follows:

> The interested parties shall have the right to settle all matters of compensation between themselves, but all settlements, before the same are binding on either party, shall be reduced to writing and shall be approved by the judge of the circuit court, chancery court or criminal court of the county where the claim for compensation is entitled to be made. It shall be the duty of the judge of the circuit court, chancery court or criminal court to whom any proposed settlement shall be presented for approval under this chapter, to examine the same to determine whether the employee is receiving, substantially, the benefits provided by the Workers' Compensation Law.

The December 13, 2000 Order Approving Workers' Compensation Settlement clearly sets forth that the employee is being compensated for an injury to his left shoulder that occurred on April 20, 2000 as a result of lifting and putting up a box of chicken in the dietary department. The November 5, 2000 injury was caused by a heavy object falling on the employee's back.

The settlement of a worker's compensation claim must be clear and unequivocal. It should not be a trap for the unwary. This Court has reviewed the December 13, 2000 settlement order. It did not mention the injury to the employee's back on November 5, 2000. Like the court in Cottrell v. Tokheim Corp. and Hartford Accident and Indemnity Co., No. 02501-9408-CH-00051, 1995 WL 319199 (Tenn. May 24, 1995), we think the Order Approving the Settlement should reasonably describe the accident and injury. Cottrell provides that "mere recitals in the petition and order as in this case will not terminate a claim for an accident and

injury that was not presented to the court and examined by the court." For a settlement to be binding, the parties must comply with Tennessee Code Annotated section 50-6-206.

We have concluded that the Chancellor was not made aware that the November 5, 2000 injury to the employee's back was being settled by the order he signed on December 13, 2000. The only specific injury mentioned in that order of settlement was the injury to the employee's left shoulder. Accordingly, the appellant's claim that the employee should be barred from pursuing compensation for the November 5, 2000 back injury is lacking in merit.

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

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ROGER A. PAGE, SPECIAL JUDGE

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No. M2003-01195-SC-WCM-CV - September 7, 2004

JUDGMENT

This case is before the Court upon the motion for review filed by National Healthcare 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 National Healthcare Corporation, for which execution may issue if necessary.

BIRCH, J., NOT PARTICIPATING