IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
December 9, 2004 Session

CHARLENE BENNETT v. MAGNA SEATING SYSTEMS, ET AL.

Direct Appeal from the Circuit Court for Carroll County
No. 02-CV-4544 C. Creed McGinley, Judge

No. W2004-01177-WC-R3-CV - Mailed March 29, 2005; Filed May 4, 2005

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 findings of fact and conclusions of law. In this appeal, the Employee, Charlene Bennett, insists that the trial court erred in dismissing her complaint, finding that she had failed to prove that her injuries arose out of and in the course of her employment. For the reasons set out below, the Panel has concluded that the evidence fails to preponderate against the findings of the trial court. Judgment of the trial court is affirmed with costs assessed against the employee.

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

MARTHA B. BRASFIELD, SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and W. FRANK BROWN, III, SP. J., joined.

Mitchell G. Tollison, Jackson, Tennessee, for the Appellant, Charlene Bennett.

P. Allen Phillips, Jackson, Tennessee, and Michael J. Cash, Lexington, Tennessee, for the Appellees, Magna Seating Systems d/b/a Milan Seating Systems (USA) and Continental Casualty Company.

MEMORANDUM OPINION

Background

Between 10 p.m. and midnight on October 25, 2001, Charlene Bennett, an employee of Magna Seating Systems ("Magna"), returned to her home after completing her shift with her employer. As she was ascending the two steps in her carport to enter her home, she lost her balance, fell, and broke her left shoulder.

Ms. Bennett insists that she lost her balance because her ankle gave way due to a previous workers' compensation injury to her right leg and ankle. The injury to Ms. Bennett's right leg and ankle had occurred two years earlier (in 1999), while she was working for Magna. The trial court, who heard the prior lawsuit, found that Ms. Bennett sustained a 25% impairment to her leg because of the 1999 work injury.

According to Ms. Bennett, she continues to have problems with her right ankle, in that it "pops out" on her and causes her to lose her balance; she has no control of her ankle and wears a brace at all times. Ms. Bennett asserts that the fall at her residence occurred because her ankle gave way, and that her ankle gave way because of her 1999 work injury.

The trial court ruled that Ms. Bennett's claim was not compensable because she failed to prove that it arose out of and in the course of her employment. The injury occurred at her residence, not at her place of employment. Further, there was a two year period of time between the injury to her leg and ankle and the injury to her shoulder.

Standard of Review

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 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. Gov't of Sumner County, 908 S.W.2d 921, 922 (Tenn. 1995). "Conclusions of law are subject to de novo review on appeal without any presumption of correctness." Hill v. Wilson Sporting Goods Co., 104 S.W.3d 844, 846 (Tenn. 2002).

Analysis

The Supreme Court has consistently held that:

> [C]ausation and permanency of a work-related injury must be shown in most cases by expert medical evidence. Furthermore, "by 'causal connection' is meant not proximate cause as used in the law of negligence, but cause in the sense that the accident had its origin in the hazards to

> which the employment exposed the employee while doing his work." Although absolute certainty is not required for proof of causation, medical proof that the injury was caused in the course of the employee's work must not be speculative or so uncertain regarding the cause of the injury that attributing it to the plaintiff's employment would be an arbitrary determination or a mere possibility. "If, upon undisputed proof, it is conjectural whether disability resulted from a cause operating within petitioner's employment, or a cause operating without employment, there can be no award." If, however, equivocal medical evidence combined with other evidence supports a finding of causation, such an inference may nevertheless be drawn by the trial court under the case law.

Tindall v. Waring Park Ass'n., 725 S.W.2d 935, 937 (Tenn. 1987) (citations omitted).

Ms. Bennett raises the sole issue of whether the injury to her left shoulder is compensable under Tennessee workers' compensation law when this injury occurred when she fell on the steps at her home, which fall was caused by the weakness of her ankle due to the prior work-related injury.

As in Tindall, Ms. Bennett also relies on Jones v. Huey, 357 S.W.2d 47, 48 (Tenn. 1962):

> The law unquestionably is that, "When the primary injury is shown to have arisen out of and in the course of the employment every natural consequence that flows from this injury likewise arises out of the employment, unless the subsequent injury is the result of an independent intervening cause attributable to the claimant's own negligence or misconduct." Larson, Workmen's Compensation [Law], Vol. 1, page 183, sec. 13.00.
>
> In sec. 13.11, following the above quotation, the author discusses the question of the direct and natural consequence rule, and in the course of this discussion he aptly and correctly says that "a subsequent injury" must be "related in some way to the primary injury, the rules that come into play are essentially based upon the common-law concepts of 'direct and natural results,' and of claimant's own negligence as an independent intervening cause."
>
> This subsequent injury "is compensable if it is the direct and natural result of a compensable primary injury. But if the subsequent injury is attributable to claimant's own

> negligence or fault, the chain of causation is broken, even if the primary injury may have contributed in part to the occurrence of the subsequent injury." Sec. 13.11, Larson, supra.

At trial, Ms. Bennett described her fall of October 26, 2001 as follows:

> A. I had gotten off of work and the lady I was riding with had dropped me off and I have two short steps to go up and when I started to go up it was like there was nothing there.
>
> Q. Dropped you off where?
>
> A. At the house were I live. And it was like I had no control. I just lost my balance and fell.
>
> Q. Did you slip on anything?
>
> A. No, sir.
>
> Q. Was there any bad weather?
>
> A. No, sir.
>
> Q. It just gave out on you?
>
> A. Yes, sir.
>
> Q. And do you have any forewarning when this - do you know ahead of time when this is going to happen?
>
> A. No, sir.
>
> . . .
>
> A. I know when I started to go down, there was nothing to grab or support me.

The only medical proof as to causation between Ms. Bennett's fall at her residence and the prior injury to her leg and ankle is found in the Form C-32 signed by Dr. Robert Barnett. Dr. Barnett checked "yes" to the question, "Considering the nature of Claimant's occupation and medical history along with diagnosis and treatment, does this injury more probably than not arise out of the Claimant's employment?" There is no

expert medical proof which describes the medical condition of Ms. Bennett's leg and ankle and confirms that this condition would cause her ankle to give way, which would result in a fall.

The trial judge declined to find a causal relationship between Ms. Bennett's fall at her residence in October 2001 and the injury to her leg and ankle in 1999. The trial court was justified in finding that Ms. Bennett failed to carry her burden of proof in this case.

Conclusion

Based on the length of time between the injury to Ms. Bennett's leg and ankle and the injury to her shoulder, and the dearth of medical proof of a causal relationship between the injury of 1999 and the new injury of October 2001, the Panel finds that the evidence fails to preponderate against the trial court's findings. Thus, the dismissal of this case by the trial court is affirmed. Costs are assessed against the employee, Charlene Bennett and her surety, for which execution may issue if necessary.

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MARTHA B. BRASFIELD, SPECIAL JUDGE

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JUDGMENT ORDER

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 on appeal are taxed to the Appellant, Charlene Bennett, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM