

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
March 22, 2005 Session

PAULA STALLINGS v. TACO BELL CORPORATION

**Direct Appeal from the Chancery Court for Gibson County
No. H-4633 George R. Ellis, Chancellor**

No. W2004-02183-WC-R3-CV - Mailed July 21, 2005; Filed August 30, 2005

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel 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 case, the employee slipped and fell at work injuring her right arm. The employee's medical expert testified she had developed reflex sympathetic dystrophy (RSD) in her right arm as a result of her on-the-job injury. The trial court found that she was "permanently disabled to the extent of 100% to the body as a whole." The employer contends that the trial court erred: 1) in finding that the employee developed RSD from the fall; and 2) in awarding benefits to the body as a whole instead of to the arm, a scheduled member. The employee contends that the judgment should be modified to find that she sustained permanent and total disability as a result of her injuries. For the reasons as set out herein, we modify the trial court's judgment to find that the employee is entitled to a permanent partial disability award for total loss of her right arm as a scheduled member.

**Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Chancery Court
Affirmed as Modified.**

JAMES L. WEATHERFORD, SR.J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and DONALD P. HARRIS, SR.J., joined.

Robert O. Binkley, Jr., and James V. Thompson, Jackson, Tennessee, for the appellant Taco Bell Corporation.

David Hardee, Jackson, Tennessee, for the appellee Paula Stallings.

MEMORANDUM OPINION

Mrs. Paula Stallings was forty-seven years old at the time of trial. She is a high school graduate and has taken some business correspondence classes. She began working in her parents' truck stop when she was sixteen. She has worked in a sewing factory, on an assembly line, in a deli and a convenience store. She has also been a carhop and a housekeeper in a veteran's home.

In July 2001, Mrs. Stallings began working for Taco Bell Corporation, where she was training to be an assistant manager. On October 2, 2001, she was walking behind the Taco Bell counter to check the ice bin when slipped and fell on the wet floor. She fell on her right elbow and right hand. Her right arm started hurting and soon turned black. An ambulance took her to the emergency room. The doctor prescribed medication and advised her to stay off work for two weeks.

Mrs. Stallings stated she could not afford to miss work and returned to work with her arm wrapped and in a sling. She asked her employer for additional treatment but did not get a response. She then sought treatment for pain from her family physician.

She continued to work for Taco Bell for about another month. Taco Bell terminated her employment in November, 2001, for failing to appear at work. Mrs. Stallings stated that she was scheduled to be off that day and had never missed a day of work while at Taco Bell.

Two to three days later she began working for Estes grocery in the bakery department. She had problems with her right hand and arm that got worse over time. Every job duty in the bakery department caused problems when using her right hand and arm. She had to quit in May 2002 when her hand "just locked up on me ...[and] I couldn't get it to move." She has been unable to work since leaving the bakery.

On May 2, 2002, seven months after the accident, Taco Bell sent Mrs. Stallings to see Dr. Claiborne Christian. He diagnosed chronic tendinitis in her right elbow, administered a cortisone injection, and ordered two weeks of physical therapy. On her second appointment, she reported no improvement in her pain. He ordered an MRI, and the results were normal. Dr. Christian did not remember if she complained of hand and wrist pain and pointed out that there was no mention of this in his records. Dr. Christian stated he could offer nothing on a surgical basis for treatment and released her. He found she had reached MMI on June 3, 2002.

On November 6, 2002, Mrs. Stallings saw Dr. Joseph C. Boals for an evaluation. He diagnosed carpal tunnel syndrome, chronic tendinitis, and an RSD-like syndrome (reflex sympathetic dystrophy) of the right upper extremity. According to Dr. Boals,

The exam showed findings in the right upper extremity consistent with an RSD type syndrome. There was blotchy, red, bluish discoloration of the right hand. There was a shiny appearance to the skin, as well as swelling. There was pain to touch and increased perspiration . . . [and] a positive Phalen's test on the right.

He described this condition as “an inappropriate, overwhelming pain response to a sometimes minimal injury . . . [which] can sometimes cause the body to psychologically and physically react to a point where the arm will almost wither away over a period of time, perhaps a year or two if they get the syndrome.” In diagnosing this syndrome, Dr. Boals pointed out that it was very important to touch the arm to note perspiration and the skin surface and to compare one side with the other.

Dr. Boals found her injuries to be permanent and caused by the fall at Taco Bell. He assigned her a 10% anatomical impairment to the body as a whole based on causalgia/RSD Class II according to the AMA Guides 5th Edition. He recommended specialized treatment for RSD, including occupational therapy, pain medication, and psychological support. He advised against carpal tunnel surgery due to the RSD-like syndrome. He advised that she “should not use her right upper extremity for anything more than a paper weight or to assist the opposite arm in very mild sedentary work.” He recommended absolutely no repetitive work and no heavy gripping with the right hand.

In the fall of 2002, her symptoms continued to worsen. She was having difficulty doing her chores at home and could no longer dress herself. Then in December 2002, she developed a tremor in her right arm. On March 3, 2004, Mrs. Stallings returned to Dr. Boals for another evaluation. He noted that she had not received the medical treatment he had recommended during his last exam. After observing the same symptoms he had found during her earlier exam, Dr. Boals found that her condition had worsened in that she now had a tremor and could not use her hand for self-care activities. She had complaints of numbness and very little strength in her right hand. She had a thirty-nine-pound grip strength on the left hand with no grip strength on the right. Dr. Boals found that her impairment had progressed from a Class II to a Class IV since his last exam and assigned her a 40% anatomical impairment to the body as a whole.

In Dr. Boals’ opinion,

she is getting into the terminal stages of RSD and I don’t think anybody is going to be able to break this syndrome. I don’t think it can be treated, but if she needs pain medication or psychological counseling to adjust to this, she probably needs to at least see someone, and that is basically it.

He stated that she could not use the right arm for anything now.

During his second exam, Dr. Boals noted tenderness over the left elbow. Dr. Boals stated: The left arm is beginning to show signs of overuse. She has been to the hospital to be treated for tendinitis in the other elbow. That is something that you would expect. Every time she does something, she does it with that arm.”

She returned to Dr. Christian on April 1, 2004. He ordered a bone scan to see if there were

indications of RSD. In his opinion, the bone scan neither confirmed or denied that she had RSD¹: “But I think looking at her clinically there wasn’t evidence of RSD. There was just this tremor. . . . I really couldn’t find anything wrong with her from a musculoskeletal direction. And I felt that she needed to be seen by a neurologist mainly for the tremor.” He also stated that a patient who had developed RSD over the course of two and a half years and had not had any treatment at all for the condition, “ought to have a rip-roaring case of RSD by that time.” He did not think the tremor was related to her work injury. He was not convinced the tremor was a true pathological condition because the tremor would stop when she was distracted during his exam. Dr. Christian characterized Mrs. Stallings as a “symptom magnifier.” He found no anatomical impairment: “I think she can do anything that—that she can tolerate. I mean, I’m not saying she doesn’t have pain. But I know of no anatomic or orthopedic reason why she couldn’t do anything that is out there.”

Mrs. Stallings has the tremor all the time and wears a splint to help keep her right arm still. She holds her right arm against her body with her left arm, and it bothers her when people notice it. She sleeps with her right arm between two pillows to hold it still so that it does not keep her awake. The swelling, shiny skin and discoloration in her right arm have all gotten worse over time. She has no use of her right hand and arm now. Mrs. Stallings is right-handed and now tries to write with her left hand. She has received treatment for overuse of her left arm. She cannot shampoo or fix her hair. She cannot tie or buckle her shoes and has to wear shoes with velcro straps. She has to wear clothes that are easy to put on and no longer carries a purse. She cannot hold her new granddaughter.

Mr. Curtis Lowery married Mrs. Stallings in February 2003. He stated his wife has had problems with her right arm ever since he has known her. At first, both of them thought her arm would get well with time, but it has turned into “something devastating to both of us.” Her arm draws, swells and discolors everyday. She cannot do anything with her right arm. Her arm is so sensitive to touch, they cannot hold hands. She has no social life and no hobbies. She has sought counseling.

The trial court noted the arm tremor for the record prior to Mrs. Stallings’ testimony. When she could not raise her right hand, he permitted her to use her left hand to be sworn in prior to giving testimony. The trial court found that Mrs. Stallings developed reflex sympathetic dystrophy from her on the job injury of October 2, 2001, and that she was 100% permanently disabled to the body as a whole. The trial court found that Taco Bell shall remain liable for future medical treatment for the RSD in her right arm.

ANALYSIS

Review of findings of fact by the trial court shall be *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the

¹Dr. Boals testified that bone scans are not reliable for diagnosing RSD and that the AMA Guides prohibit their use as a “required criterion for diagnosis.” Dr. Boals has treated over one thousand patients with RSD over his career. Dr. Christian diagnoses three or four cases a year and refers those patients elsewhere for treatment.

evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2); *Stone v. City of McMinnville*, 896 S.W.2d 548, 550 (Tenn. 1995). 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. *Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988). Where the trial judge has seen and heard witnesses, especially where issues of credibility and weight of oral testimony are involved, on review considerable deference must still be accorded to those circumstances. *Humphrey v. David Witherspoon, Inc.*, 734 S.W.2d 315 (Tenn. 1987). When the medical testimony is presented by deposition, as it was in this case, this Court is able to make its own independent assessment of the medical proof to determine where the preponderance of the evidence lies. *Cooper v. Ins. Co. of N. Am.*, 884 S.W.2d 446, 451 (Tenn. 1994).

I. CAUSATION

Taco Bell first raises the issue of whether the trial court erred in finding that Mrs. Stallings was entitled to permanent disability benefits. The employee has the burden of proving every essential element of his claim. *White v. Werthan Ind.*, 824 S.W.2d 158, 159 (Tenn. 1992). In order to be eligible for workers' compensation benefits, an employee must suffer an "injury by accident arising out of and in the course of employment which causes either disablement or death. . . ." Tenn. Code Ann. § 50-6-102(13).

As stated in *Tobitt v. Bridgestone/Firestone, Inc.*, 59 S.W.3d 57 (Tenn. 2001):

The phrase "arising out of" refers to the cause or origin of the injury. An injury arises out of employment "when there is apparent to the rational mind, upon a consideration of all the circumstances, a causal connection" between the work and the injury for which benefits are sought. In most cases, causation must be established by expert medical evidence, which may consist of medical testimony to the effect that a given incident "could be" the cause of the employee's injury when there is also lay testimony from which it reasonably may be inferred that the accident caused the injury. However, an employee may not base his or her claim on speculative or conjectural proof.

Tobitt, 59 S.W.3d at 61(citations omitted).

Dr. Boals found that Mrs. Stallings had RSD that had progressed from Class II to Class IV during the fifteen months between his two examinations. He noted blotchy skin discoloration, increased perspiration, and swelling during both exams. On her last exam she had numbness, no grip strength, and the arm tremor. Dr. Boals found her injury to be permanent and caused by the fall at Taco Bell. He stated that she was in the "terminal stages" of RSD, that he did not think that treatment could "break" the syndrome, and that pain medication and psychological counseling were the only treatments that could be offered at this point.

Dr. Christian found no impairment and did not think Mrs. Stallings had RSD. He

characterized her as a symptom magnifier and was not convinced that her arm tremor was a true pathological condition. He thought she should see a neurologist for the arm tremor but did not think it was related to the fall.

The trial court accepted the testimony of Dr. Boals over that of Dr. Christian. When the medical testimony differs, it is within the discretion of the trial court to determine which expert testimony to accept. *Story v. Legion*, 3 S.W.3d 450, 455 (Tenn. 1999). In doing so, the Court is allowed, among other things, to consider the qualifications of the experts, the circumstances of their examinations, the information available to them, and the evaluation of the importance of that information by other experts. *Orman v. Williams Sonoma, Inc.*, 803 S.W.2d 672, 676 (Tenn. 1991).

Mrs. Stallings testified she has no use of her right hand now. She has to write with her left hand. She has sought counseling. She is ashamed to go out in public. Both she and her husband testified about how her condition has worsened over time. Now her arm is so sensitive to touch they cannot hold hands. He stated that what they at first thought was something she would recover from has turned into something devastating for both of them.

The trial court found Mrs. Stallings to be a credible witness. The trial court observed her condition and noted the tremor. The trial court was in the best position to judge the credibility of the witnesses. The trial court considered both the medical and lay testimony and found that Mrs. Stallings' RSD condition was caused by her on-the-job injury. After reviewing the entire record of this case, we find that the evidence does not preponderate against the finding of the trial court that Mrs. Stallings had developed RSD resulting from the fall while working for Taco Bell.

II. SCHEDULED INJURY VERSUS TO THE BODY AS A WHOLE

We next address the issue of whether the trial court erred in awarding permanent disability benefits to the body as a whole rather than to the arm.

Workers' compensation claims come under four statutory classifications: 1) temporary total disability; 2) temporary partial disability; 3) permanent partial disability; and permanent total disability. Tenn. Code Ann. § 50-6-207(1)-(4) (1999). Permanent partial disability has three subdivisions of compensation: 1) loss of a scheduled member; 2) serious disfigurement; and 3) disability apportioned to the body as a whole. Tenn. Code Ann. 50-6-207(3) (1999); *Dotson v. Rice-Chrysler-Plymouth-Dodge, Inc.*, 160 S.W.3d 495, 500 (Tenn. 2005).

In evaluating work-related permanent disabilities, the initial inquiry is whether the disability is to a scheduled member. *Davis v. Reagan*, 951 S.W.2d 766, 769 (Tenn. 1997). In *Dotson*, our Supreme Court recently addressed the adjudication of benefits for RSD under this statutory scheme:

. . . [W]e hold that where reflex sympathetic dystrophy affects a scheduled member alone, an award of permanent disability benefits is limited exclusively to what the schedule for that member provides. For reflex sympathetic dystrophy to be properly

apportioned to the body as a whole, the claimant's injury must affect a portion of the body not statutorily scheduled, affect a particular combination of members not statutorily provided for, or cause a permanent injury to an unscheduled portion of the body.

Dotson, 160 S.W.3d at 501.

Dr. Boals provides the only medical testimony regarding another part of the body besides the right arm. During his second exam, Dr. Boals noted tenderness over the left elbow.² He stated that the left arm was beginning to show signs of overuse and that she had been treated for tendinitis in the left elbow. He concluded that this was "something that you would expect. Every time she does something, she does it with that arm." Both Mrs. Stallings and her husband testified that she is overusing her left arm. However, there is no medical or lay testimony that RSD symptoms have spread beyond her right arm. In *Dotson*, our Supreme Court reversed an award to the body as a whole when the employee's RSD symptoms of severe pain and hypersensitivity had not spread beyond his left arm. The employee in that case had non-work related lateral epicondylitis in his right elbow. *Id.* at 502-04.

We find that the evidence does not preponderate against a finding that Mrs. Stallings has sustained a total loss of use of her right arm. Accordingly, we modify the court's award and find that Mrs. Stallings is entitled to a permanent partial disability award for total loss of her right arm as a scheduled member. *See* Tenn. Code Ann. § 50-6-207(3)(A)(ii)(m) (1999) ("For the loss of an arm, sixty-six and two-third percent (66 2/3%) of the average weekly wages during two hundred (200) weeks").

III. PERMANENT TOTAL DISABILITY

Mrs. Stallings argues that the trial court's award should be modified to reflect that her RSD has rendered her permanently and totally disabled pursuant to Tennessee Code Annotated section 50-6-207(4)(B) which provides: "When an injury not otherwise specifically provided for in this chapter, as amended, totally incapacitates the employee from working at an occupation which brings the employee an income, such employee shall be considered 'totally disabled,' and for such disability compensation shall be paid as provided in subdivision (4)(A)" Benefits for permanent total disabilities are to be paid by the employer until the employee is eligible for full benefits in the Old Age Insurance Benefit Program under the Social Security Act. Tenn. Code Ann. § 50-6-207(4)(A)(i).

In *Ivey v. Trans Global Gas & Oil*, 3 S.W.3d 441, 448 (Tenn. 1999), our Supreme Court held that when an employee's only injury is to a scheduled member, vocational disability cannot be

² The written reports of Dr. Boals' examinations (Exhibits 2 and 3 to his deposition) are not in the record. The briefs do not cite these reports and only refer to his oral testimony.

adjudged as permanent and total under our workers' compensation laws. The employee may receive only the amount of compensation provided in the statutory schedule for that scheduled member. *Id.* Since we have determined that the injury is limited to the right arm, a scheduled member, Mrs. Stallings is not entitled to permanent total disability benefits under our workers' compensation laws.

CONCLUSION

The judgment of the trial court is affirmed as modified, and this case is remanded for any further necessary proceedings consistent with this opinion. Costs are taxed to the appellant.

JAMES L. WEATHERFORD, SR.J.

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SPECIAL WORKERS' COMPENSATION APPEALS PANEL
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**Chancery Court for Gibson County
No. H-4633**

No. W2004-02183-WC-R3-CV - Filed August 30, 2005

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, Taco Bell Corporation, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM