IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
December 15, 2005 Session

JEFF BANKSTON v. HAWKER POWERSOURCE, INC.

Direct Appeal from the Chancery Court for Bradley County
No. 04-271 Jerri S. Bryant, Chancellor

Filed March 20, 2006

No. E2005-01277-WC-R3-CV - Mailed January 30, 2006

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The trial court dismissed the complaint by sustaining a motion for summary judgment. The court held the employee's injury did not occur in the course of employment. The judgment is reversed and the case is remanded.

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

ROGER E. THAYER, SP. J., delivered the opinion of the court, in which E. RILEY ANDERSON, J., and THOMAS R. FRIERSON II, SP. J., joined.

Bert Bates, Cleveland, Tennessee, for Appellant, Jeff Bankston.

David R. Hensley, Chattanooga, Tennessee, for Appellee, Hawker Powersource, Inc.

MEMORANDUM OPINION

The employee, Jeff Bankston, has perfected this appeal from the action of the trial court in dismissing his case by sustaining a motion for summary judgment. The Chancellor held the injury did not occur in the course of plaintiff's employment. We reverse the judgment.

Limited Factual Background

Plaintiff began working for defendant, Hawker Powersource, Inc., during September 2000. He had been working on a production line that required repetitive acts and movement of his hands and lifting plates that weighed between thirty to fifty pounds. He was frequently told he needed to

speed up production and testified that sometimes this resulted in working eight to ten hours a day. After some period of time and about one year before the time in question, he began to complain about numbness problems with his left wrist and hand. In his discovery deposition, he testified his last workday was in the last week of June or the first week of July 2004. He had stopped working because his daughter had sustained an injury and could not attend day care and this time off had been granted to him under the Family Medical Leave Act.

Shortly before he was to return to work and on about August 15, 2004, he stopped at a grocery market to pick up "drinks and some chips." While lifting a two liter bottle of Coke from a shelf, he said his hand popped and he dropped the bottle as his hand became numb. He was seen by an orthopaedic surgeon a few days later and had surgery during the same month.

The summary judgment motion was also supported by the medical deposition of Dr. Brian S. Smith, an orthopaedic doctor, who treated plaintiff and performed surgery. Dr. Smith testified the tendon in plaintiff's left wrist had ruptured and that the cut or laceration of the tendon was not a fresh cut but the tendon was "shredded" or "frayed" which indicated to him that the injury had occurred over a long period of time. He said since the tendon could not be tied back, it was necessary to do a tendon graft procedure. The doctor was of the opinion the injury was a result of his work activity and he told plaintiff he would have to find a different type of work. He stated the injury caused permanent impairment and gave different ratings to the hand, arm and body as a whole. On the causation question, Dr. Smith said that picking up the Coke bottle was "the last strand of the tendon rupture. It wasn't the fact of picking up the Coke bottle that was the problem. It was the so-called straw that broke the camel's back. That wasn't the cause. It's just when the final rupture occurred."

Standard of Review

An appeal from a summary judgment order in a workers' compensation case is not controlled by the *de novo* standard of review provided by the Workers' Compensation Act but is governed by Rule 56, Tenn. R. Civ. P.; ***Downen v. Allstate Ins. Co.,*** 811 S.W.2d 523 (Tenn. 1991). No presumption of correctness attaches to decisions granting summary judgment because they involve only questions of law; thus the reviewing court must make a fresh determination concerning whether the requirements of Rule 56 have been met. ***Gonzales v. Alman Const. Co.***, 857 S.W.2d 42 (Tenn. 1993).

Analysis

The sole issue on appeal is whether the summary judgment record creates a issue of fact on the question of whether plaintiff's injury occurred in the course of employment. The trial court reasoned that since the tendon rupture did not occur while plaintiff was working at defendant's premises, the injury did not occur in the course of employment.

An employee's right to recover benefits is based upon a finding that the injury "arose out of"

and was "in the course of" employment. Tenn. Code Ann. § 50-6-103(a). "Arising out of" refers to cause or origin while "in the course of" refers to time and place. An accident is "in the course of" employment if it occurs while the employee was performing a duty the employee was employed to do. ***Travelers Ins. Co. v. Googe***, 397 S.W.2d 368 (Tenn. 1965).

In ruling on motions for summary judgment, the trial court and the Supreme Court must view the record in its most favorable light to the opponent of the motion and if after so doing a disputed issue of a material fact is made out, the motion must be denied. ***Keene v. Cracker Barrel Old Country Store, Inc.***, 853 S.W.2d 501 (Tenn. Ct. App. 1992).

In examining the medical evidence in its most favorable light to the plaintiff, we must conclude that the final rupture of plaintiff's tendon while away from the work premises was not the real cause of the injury but that his repetitive work activity over a period of time was the major cause of his injury and that the final rupture was the result of a natural progression of his original injury and not as a result of an intervening cause.

Thus, we find an issue of fact arises from the record and that summary judgment should not have been granted.

Conclusion

The order awarding summary judgment in favor of the defendant employer is reversed; the motion is hereby overruled; and the case is remanded to the Chancery Court for further proceedings. Costs of the appeal are taxed to the defendant.

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ROGER E. THAYER, SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE, TENNESSEE

JEFF BANKSTON V. HAWKER POWERSOURCE, INC.
Bradley County Chancery Court
No. 04-271

March 20, 2006

No. E2005- 01277-WC-R3-CV

JUDGMENT

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 facts and conclusions of law are adopted and affirmed and the decision of the Panel is made the Judgment of the Court.

The costs on appeal are taxed to the appellee, Hawker Powersource, Inc., for which execution may issue if necessary.