IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
December 8, 2005 Session

STACEY BOLD v. SONOCO PRODUCTS COMPANY, ET AL.

Appeal from the Circuit Court for Madison County, Tennessee
No. CO2-222 Hon. Roger A. Page, Judge

No. W2004-02956-WC-R3-CV - Mailed March 30, 2006; Filed May 2, 2006

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Tennessee Supreme Court in accordance with the provisions of 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. The Employee has appealed the findings of the trial court, which determined that the Employee's claim was not compensable because she failed to establish a causal connection between her cervical injury and her employment. We conclude that the evidence is sufficient to establish causation. Therefore, we reverse the judgment of the trial court and remand the case for further proceedings consistent with this opinion.

Tenn. Code Ann. § 50-6-225(e) (2005) Appeal as of Right; Judgment of the Circuit Court is Reversed; Remanded

ROBERT E. CORLEW, SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and ALLEN W. WALLACE, SR. J., joined.

Stephen F. Libby, Memphis, Tennessee, for the Appellant, Stacey Bold.

Richard H. Allen, Jr. and Kevin W. Washburn, Memphis, Tennessee, for the Appellees, Sonoco Products Company and GAB Robins of North America, Inc.

MEMORANDUM OPINION

The issue in this cause is the question of causation of an injury. The facts surrounding this cause are somewhat unusual. It is undisputed that the Employee, Stacey Bold, was employed by the Employer, Sonoco Products Company, on a production line as a "PSO Operator" making cans to be used as containers for Pringles brand potato chips. The duties of such an employee are to insure that a quantity of "overcaps" remain in a "bowl feeder" and that other products such as "lidding," "wax," and "shells" do not run out, so that the production line will not be stopped. Further, it is undisputed that on August 24, 2001, the Employee filed a written report of an injury while working within the

course and scope of her employment for the Employer. She reported that she first experienced sharp pain in her upper shoulder on or about May 1, 2001. She reported that the pain involved her shoulder, biceps, right elbow and arm, wrist, and fingers. She reported that the injury occurred when she was "picking up trays of overcaps and tilting it over into bowl feeder."

The Employee testified about this event and stated she first experienced right shoulder pain, but, feeling the injury was not serious, she did not make an immediate report nor did she cease her duties. The pain ultimately radiated into her arm, hand, and fingers. The Employee treated her pain for several weeks with a heating pad and over-the-counter ointments and cremes without any improvement in her condition, and then on July 26, 2001, the Employee sought treatment from her family physician[1], who diagnosed her with carpal tunnel problems and tendinitis. The physician indicated to the Employee that those injuries might be work-related, and the Employee then made an oral report to her supervisor of that diagnosis. The Employee testified that she had told her physician that she had an arm injury because the arm is where she felt the pain.

Instead of providing to the Employee a panel of physicians which the law requires when a workers' compensation injury is reported, the Employer provided to her the name of a company doctor. An appointment was made with the company physician, and the Safety Coordinator for the Employer went with the Employee to see that physician. This physician, Dr. Kenneth Warren, made a referral to another doctor for nerve conduction tests, but the appointment was cancelled, apparently by the Employer. Subsequently, a panel was provided to the Employee, and the Employee selected a physician who examined her. This physician again ordered tests to be performed. An MRI conducted on February 20, 2002, showed that the Employee had suffered from a cervical problem. The Employer denied liability for the cervical problem, but accepted responsibility for the carpal tunnel injury. The Employer, however, did not provide any payments for temporary disability.

The Employee underwent four surgeries. The first occurred on April 15, 2002, at which time a two-level cervical fusion was performed at C4-5 and C5-6. Subsequently, she underwent carpal

---

[1] Many of the physicians seen by the Employee initially did not testify, and references to them are incomplete. The Employee's family physician was a Dr. Jenkins. Although the name of this physician appears more than twenty-five times during the presentation of the trial, the first name, specialty, and qualifications of this physician were never presented. In the deposition testimony of Dr. Glenn Barnett, which will be discussed later, Dr. Barnett referred to Dr. Jenkins as "an internist here in Jackson," and, in the medical records exhibited to Dr. Barnett's deposition, an insurance record is included referencing "Dr. John M. Jenkins." Subsequently, an appointment was made with Dr. Ronald C. Bingham, upon referral from Dr. Kenneth Warren, and, though the evidence shows the appointment was cancelled and the Employee did not see Dr. Bingham, an electromyography report with the name of Dr. Bingham on it, signed by Miles M. Johnson, M.D., and dated April 20, 2004, appears as an exhibit to the testimony of Dr. Robert R. Jones, who performed an independent medical evaluation and testified by deposition on behalf of the employer. Dr. Paul Schwartz, whose name is variously spelled in the testimony before the Court and in deposition and whose full name is available only in the medical records, also provided care for the Employee in the area of nerve conduction studies. She also saw a Dr. Joseph Rowland, an associate of Dr. Barnett, perhaps only a single time, and it was a referral from Dr. Rowland that brought the Employee to Dr. Barnett. She also saw a Dr. Spruill, another associate of Dr. Barnett, "off and on" from February 2001, pre-dating complaints of this injury, for chronic headaches. The Employee saw an orthopedist, Dr. Alan Pechacek, who dealt with her carpal tunnel issues. The medical records also contain a number of reports signed by radiologists.

tunnel releases during the summer of 2002. The release on her right arm was performed in June 2002, and the release on her left arm was performed in July or August of 2002. Finally, on December 30, 2002, a diskectomy was performed at the C3 level.

At trial, the trial court found that the Employee had given proper notice of both her carpal tunnel injury and her cervical injury and that the complaint was timely filed. The trial court found that the Employee suffered thirty percent permanent partial disability apportioned to each arm and determined that the Employee was entitled to temporary total disability for two time periods for the Employee's carpal tunnel injury. The trial court dismissed the complaint seeking compensation for the cervical issue, however, finding that the Employee had not established causation. The Employee has appealed the denial of benefits for her cervical injury.

ANALYSIS

Our 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 the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). Conclusions of law established by the trial court come to us without any presumption of correctness. *Watt v. Lumbermens Mut. Cas. Ins. Co.*, 62 S.W.3d 123, 127 (Tenn. 2001).

In determining the preponderance of the evidence, we must consider the evidence presented. The trial court heard the testimony of a number of witnesses including the Employee, her husband, her supervisor, two co-workers, and the human resource coordinator for the Employer. With respect to this testimony, the trial court had the opportunity to determine the credibility of the witnesses based upon their demeanor and appearance in person before the court. When the trial court has observed the witnesses and heard their testimony, especially where issues of credibility and the weight of testimony are involved, we must extend considerable deference to the trial court's findings. *Whirlpool Corp. v. Nakhoneinh*, 69 S.W.3d 164, 167 (Tenn. 2002). Three physicians also testified, all of whom presented their testimonies by deposition. When the medical proof is presented by deposition, we must determine the weight to be given to the expert testimony and draw our own conclusions with regard to the issues of credibility with respect to the expert proof. *See, e.g.*, *Bohanan v. City of Knoxville*, 136 S.W.3d 621, 624 (Tenn. 2004); *Krick v. City of Lawrenceburg*, 945 S.W.2d 709, 712 (Tenn. 1997); *Elmore v. Traveler's Ins. Co.*, 824 S.W.2d 541, 544 (Tenn. 1992).

Our decision surrounds the question of compensability of the cervical problems suffered by the Employee. In determining this question, we must consider that notice of an injury was properly given, as the trial court found. The only question before us, then, is that of causation of the cervical injury. It is a legal issue which can be determined only after the facts are fully considered. We must consider primarily the expert testimony in this regard and then consider whether the lay testimony is consistent with the findings of the experts.

The factual analysis is relatively simple. We must first determine whether the Employee suffered a cervical injury. Next, we must consider the etiology of this type of injury Finally, we must consider the lay testimony and determine when and where the type of events which lead to the injury occurred. Specifically, we must also consider the extent to which the events which lead to the injury suffered by the Employee occurred at her place of employment and the extent to which work may have caused or exacerbated her condition.

The law provides that the elements of causation are satisfied where the "injury has a rational, causal connection to the work. . . ." *Braden v. Sears, Roebuck & Co.*, 833 S.W.2d 496, 498 (Tenn. 1992). All reasonable doubts as to the causation of an injury and whether the injury arose out of the employment should be resolved in favor of the Employee. *Phillips v. A & H Constr. Co.*, 134 S.W.3d 145, 150 (Tenn. 2004); *Reeser v. Yellow Freight Sys., Inc.*, 938 S.W.2d 690, 692 (Tenn. 1997). Medical proof may not be speculative, however. *Clark v. Nashville Mach. Elevator Co., Inc.*, 129 S.W.3d 42, 47 (Tenn. 2004); *Simpson v. H. D. Lee Co.*, 793 S.W.2d 929, 931 (Tenn. 1990). Generally, the workers, compensation laws should be "liberally construed to promote and adhere to the [purposes of the Workers' Compensation] Act of securing benefits to those workers who fall within its coverage." *Martin v. Lear Corp.*, 90 S.W.3d 626, 629 (Tenn. 2002). Nonetheless, the burden of proving each element of his cause of action rests upon the worker in every workers' compensation case. *Cutler-Hammer v. Crabtree*, 54 S.W.3d 748, 755 (Tenn. 2001).

Because of the significance of the medical opinions in this case, we have examined those testimonies in some detail. All three physicians state unequivocally that the Employee suffered a significant cervical injury. Dr. Glenn Barnett, a neurological surgeon, was the only one of those who testified who saw the Employee for purpose of treatment. He testified that when he first saw the Employee on March 19, 2002, she complained of pain in her neck, head, and right arm. She described to Dr. Barnett a "pop" in her neck and pain in her neck and shoulders while at work. At the initial visit, the Employee's right hand swelled and her left arm tingled, but she felt these symptoms were improving. She also described to Dr. Barnett some numbness and pain in her right leg. Dr. Barnett reviewed an MRI which had been ordered previously and diagnosed her with "significant cord compression and myelopathy at the C4-5 and C5-6 level, secondary to centrally herniated discs, " which were the "major factors" in her condition, "at least as major indicators of injury or potential problems." Dr. Barnett recommended surgery for these issues. He also found a "laterally herniated disc at C6 on the left side," "very minimal changes of bulging at the 3-4 level and the 7-T1 level," and "evidence of bilateral carpal tunnel syndrome." Dr. Barnett testified that all of these injuries were consistent with the history of a work-related injury provided by the Employee. He stated further, in cross-examination, when asked whether these injuries would be "attributable to her work," that

> with the onset of pain [after the report of the injury] that persisted and with the findings that I saw, I would have to say, again, that it certainly is possible that [the work-related event described by the Employee] was the cause of it. I don't know for certain that it was.

Dr. Barnett acknowledged that his determination as to causation was based "entirely" on the medical history provided by the Employee. Dr. Barnett also wrote in a report to an attorney for the Employee that there was a causal relationship between these injuries and her employment.

Subsequent problems were noted in December 2002 demonstrating herniation at C3, which required a subsequent surgery. Dr. Barnett was much more equivocal in his testimony concerning the etiology of the C3 injury. When asked whether this injury "could have been" caused by the Employee's work injury, he responded: "I guess the answer would be that it obviously could have been. I'm not sure that it was, but it could have been." He did testify that the other neck problems that the Employee experienced caused "pressure on the (sic) her spinal cord at the C-3 level." Further, in cross-examination, Dr. Barnett was asked whether this opinion was "in the general sense anything is possible?" Dr. Barnett replied in the affirmative to this question, saying, "Yes, sir. Pretty much." He further testified, however, that:

> There was some abnormality to the C3 disc even before the first surgery, not to the degree that was present eight months later. She had to have interval surgery. It is possible that the fusion and stabilization of the 4-5 and 5-6 joint in and of itself caused enough translated motion to the 3-4 level to increase the wear and tear there that could have contributed to it. Now those are, I think, medical facts that could be the case. Now was that or was there some other injury that happened to her that she didn't tell me about that I don't know about? That's certainly possible.

Dr. Craig Clark, a neurological surgeon, who saw the Employee on June 14, 2004, at the request of the Employee for purposes of an independent medical evaluation, was asked whether the shoulder pain of which the Employee initially complained was consistent with a neck injury. He responded affirmatively, that the nerve supply for the shoulder originates from the C5, C6, or C7 nerve root, which are the three areas of incident diagnosed. He also discussed causation further:

> Q. And based on your examination of [the Employee], the history she presented, the medical data available to you, your own observation, is it your opinion that the condition you've just described was caused by the trauma of the work injury?
>
> A. Based on the history provided, yes.
>
> Q. And again, given your examination of Ms. Bold, the history presented, the medical data available to you and your own observation, is the injury that you just discussed consistent with one that might occur such as the patient described to you?
>
> A. There are any number of things that can result in disc rupture. It is certainly consistent.

Dr. Clark further stated that "people have ruptured discs for any variety of causes, and usually, causation is assigned based on the history. . . ." He was also asked whether he felt the Employee was honest during his clinical interview, to which Dr. Clark responded, "As far as I know, she was."

Dr. Robert Riley Jones, an orthopedic surgeon, conducted an independent medical evaluation on behalf of the Employer. He testified that he saw the Employee on April 1, 2004, and that the Employee provided a history of injury consistent with that which she provided to the other physicians who testified. The majority of his testimony dealt with the issue of carpal tunnel syndrome, which is not before us, but he also testified generally about causation of the Employee's injuries:

> Q. Based on your own evaluation, the history presented to you, the medical data available to you and your physical examination of Ms. Bold, is it your opinion that the injuries that she had were work-related?
>
> A. Well, the history she gave was that it started with work, and that's the only history I have.
>
> Q. And based on that history, do you have an opinion whether her injury would be consistent with a work-related injury?
>
> A. It is consistent with it.
>
> Q. I mean, is it consistent with the history that she presented to you, that she felt a pop in her neck while, I believe, lifting some boxes?
>
> A. Yes, that's consistent.
>
> Q. Have you been presented with any indication that she was injured any place else besides her work?
>
> A. No. That's the history she gave me.
>
> Q. You haven't been presented any other history or any other information from Sonoco, for instance?
>
> A. No. All I have is what you've read here.

Dr. Jones also testified that the Employee was asked by different doctors as to how her injury occurred, and that "every time that she was interviewed, she gave the same answer to the question, that she felt a pop in her neck and that's when it started. . . ." Dr. Jones was also asked:

> Q. As best you recall, all of her complaints as to causation were consistent?

A. Yes. She complained. She said it was done at work."

Thus, in our evaluation of the preponderance of the evidence, we find that the medical proof preponderates in favor of a finding that the Employee's neck injuries were work-related. All three physicians testified that the injuries at C4-5 and C5-6 which were treated were consistent with the Employee's complaints and consistent with the history of a work-related injury. With respect to the subsequent C3 injury, while the proof is less convincing, it further preponderates in favor of a causal connection between that injury and the prior work-related injuries. Dr. Clark did not discuss the injuries at C3. Dr. Barnett was somewhat equivocal, but testified that the injury occurred due to pressure from the injury and treatment of the C4-5 and C5-6 injuries.

Of course, absolute medical certainty is not required in order to establish causation. *Hill v. Eagle Bend Mfg., Inc.*, 942 S.W.2d 483, 487; *Tindall v. Waring Park Ass'n*, 275 S.W.2d 935, 937 (Tenn. 1987). Our courts have

> consistently held that an award may properly be based upon 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 incident was in fact the cause of the injury.

Reeser, 938 S.W.2d at 692; *accord, Long v. Tri-Con Indus., Ltd.*, 996 S.W.2d 173, 177 (Tenn. 1999); *P & L Constr. Co. v. Lankford*, 559 S.W.2d 793, 794 (Tenn. 1978); *GAF Bldg. Materials v. George*, 47 S.W.3d 430, 433 (Tenn. Workers' Comp. Panel 2001).

The lay testimony further supports the Employee's contention that her injury is work-related. There was no evidence that the Employee suffered any injury outside of the workplace. All of the evidence showed that she engaged in the activities of lifting and repetitive use of the shoulders, arms, and hands at her place of employment. There was no indication, other than what we consider to be minor discrepancies, from any witness that the injury did not occur as the Employee described it.

Thus, we find that the Employee has proven the causal relationship between the injury she suffered and her employment. The Employer argues to us that proper notice was not given to the Employer of the cervical injury. An employee, however, is not required to recognize the precise mechanism which results in her injury. Here, the true cause of the Employee's pain was not properly diagnosed until after she had seen several physicians and undergone diagnostic testing. Though it is apparent, in light of the diagnostic testing showing the cervical problems at the C4-5 and C5-6 level, and with the medical knowledge that one of the causes of shoulder and arm pain is a neck injury at these levels, this is not information which a layman should be expected to recognize. The notice which the Employee gave of her arm injury, which included pain which resulted from her cervical problem, is sufficient to put the Employer on notice of the cervical injury suffered by the Employee.

The Employee further seeks review of the failure of the Employer to pay temporary benefits and its failure to consider the physician's opinions with regard to compensability of the cervical injury. Specifically, the Employee raises the issue of a bad faith penalty. The Employer made payments to the Employee in nature of temporary benefits, although paid under other programs or benefits, and the Employer paid the Employee all that she would have been entitled to receive under the workers' compensation law. Thus, the name under which the Employer categorizes these benefits is not significant so long as the Employee receives the same benefits which the workers' compensation law provides. Thus, we agree with the trial court that the evidence does not demonstrate the exercise of bad faith on the part of the Employer for the failure to pay temporary benefits under the workers' compensation law. Similarly, we do not find bad faith on the part of the Employer for its failure to recognize the opinions of the physicians concerning the causal connection between the Employee's employment and her the neck injury. Although we agree with the Employee that all three physicians who testified have opined that her work caused or exacerbated her neck injury, we recognize that the Employee was not able to persuade her Employer or the trial court of these issues. Thus, we cannot find that the proof is so clear as to merit the payment of a bad faith penalty.

Upon our consideration of all of the evidence, we find that the evidence preponderates in favor of a finding of causation of the Employee's condition. We therefore find the injury to be compensable. We conclude that the decision of the Trial Court should be reversed, that the Employee is entitled to an order holding her harmless from medical expenses incurred, and that she is entitled to an award of temporary total disability for her neck injury and an award of permanent medical benefits.

We must remand the cause for determination of the proper percentage of vocational disability to which the Employee is entitled.[2] Further issues relating to payment of accrued benefits, commutation, and setoff also address themselves to the sound discretion of the trial court in accordance with the terms of our findings.

The costs on appeal will be taxed against the Appellees, Sonoco Products Company and GAB Robins of North America, Inc., or their sureties, for which execution may issue if necessary.

ROBERT E. CORLEW, SPECIAL JUDGE

[2] When the trial court finds that an injury is not compensable, but makes alternative findings in a Worker's Compensation action, and we subsequently determine on appeal that the injury is compensable despite a contrary finding by the trial court, we can then affirm, reverse, or modify the finding of the percentage of vocational disability without the necessity of lengthy hearings on remand, often removing the issue of subsequent appeals after remand. Here, the trial court made no alternative findings.

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
December 8, 2005 Session

STACY BOLD v. SONOCO PRODUCTS COMPANY, et al.

Circuit Court for Madison County
No. C02-222

No. W2004-02956-WC-R3-CV - Filed May 2, 2006

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 Appellees, Sonoco Products Company and GAB Robins of North America, Inc., for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM