IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
May 17, 2006 Session

CARL D. PIRTLE v. HUMBOLDT UTILITIES, ET AL.

Direct Appeal from the Chancery Court for Gibson County
No. H-4779 George R. Ellis, Chancellor

No. W2005-02075-SC-WCM-CV - Mailed June 13, 2006; Filed August 21, 2006

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Tennessee 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 employer insists the evidence preponderates against the trial court's findings that the employee's back and arm injuries were causally related to his work The employer also insists the trial court erred in making a single award for separate accidental injuries occurring at different times. As discussed below, the Panel has concluded the judgment should be affirmed in part and remanded to the trial court for separate awards for the back and hand injuries.

Tenn. Code Ann. § 50-6-225(e) (Supp. 2002) Appeal as of Right; Judgment of the Chancery Court Affirmed in part; Reversed in part; Remanded

JOE C. LOSER, JR., SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and J. S. DANIEL, SR. J., joined.

Gregory D. Jordan and W. Paul Whitt, Rainey, Kizer, Reviere & Bell, Jackson, Tennessee, for the appellants, Humboldt Utilities and The Tennessee Municipal League Risk Management Pool

Stephen C. Brooks, Jackson, Tennessee, for the appellee, Carl D. Pirtle

MEMORANDUM OPINION

The employee or claimant, Carl D. Pirtle, initiated this civil action to recover workers' compensation benefits for injuries to his back and both arms allegedly arising out of and in the course of his employment with the employer, Humboldt Utilities. The employer denied liability. A benefit review conference failed to resolve the issues. After considering all the evidence, the trial court resolved the issues in favor of the employee and awarded, among other things, permanent partial disability benefits based on 42.5 % to the body as a whole. The employer has appealed.

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 the 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. Workers' Comp. Panel 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. Workers' Comp. Panel 2002). Issues of statutory construction are solely questions of law. Id. Where the trial judge has seen and heard the witnesses, especially if issues of credibility and weight to be given oral testimony are involved, considerable deference must be accorded those circumstances on review, McCaleb v. Saturn Corp., 910 S.W.2d 412, 415 (Tenn. Workers' Comp. Panel 1995), because it is the trial court which had the opportunity to observe the witnesses' demeanor and to hear the in-court testimony. Long v. Tri-Con Indus., Ltd., 996 S.W.2d 173, 178 (Tenn. 1999). The trial court's findings with respect to credibility and weight of the evidence may generally be inferred from the manner in which the court resolves conflicts in the testimony and decides the case. Tobitt v. Bridgestone/Firestone, Inc., 59 S.W.3d 57 (Tenn. 2001). The appellate tribunal, however, is as well situated to gauge the weight, worth, and significance of deposition testimony as the trial judge. Id at 61. Extent of vocational disability is a question of fact. Story v. Legion Ins. Co., 3 S.W.3d 450, 456 (Tenn. Workers' Comp. Panel 1999). Where the medical testimony in a workers' compensation case is presented by deposition, the reviewing court may make an independent assessment of the medical proof to determine where the preponderance of the proof lies. Bridges v. Liberty Ins. Co. of Hartford, 101 S.W.3d 64 (Tenn. Workers Comp. Panel 2000). Our independent examination of the record, giving due deference to the findings of the trial court, is as follows.

The employee or claimant, Carl D. Pirtle, is a forty-two-year-old native of Bolivar, Tennessee, who has lived in Humboldt for the last six years. He and his wife, Antonio, have four children, Kevon, Kasa, Kasey, and Carl, Jr. He entered the United States Army shortly after graduating from Bolivar Central High School, rose to the rank of E-5, and served as a squad leader. He served for eleven and one-half years before receiving an honorable discharge. After his discharge, he returned to Bolivar and began working as a lead carpenter for first one then other construction companies. As a lead carpenter, he stood at saw horses, occasionally lifting approximately twenty to twenty-five pounds of material and setting it onto saws. When he determined that he had enough experience, he became a framing contractor for Jim Walter in Jackson, Tennessee. After about a year, he left Jim Walter and went into business as Pirtle's Home Improvement, contracting out jobs to a subcontractor who installed vinyl siding and roofs and constructed building additions. He began working for the employer, Humboldt Utilities, in September of 2000, having been recruited by the employer's operating superintendent, Ken Travis. He worked there as a lineman helper, or groundsman, and received on-the-job training under the supervision of Jim Anderson. Approximately a year later, he was promoted to first-year apprentice lineman and began climbing utility poles.

Mr. Pirtle began seeing Dr. R. Louis Murphy and a nurse practitioner in 1999 with flu-like symptoms, a urinary tract infection, hematoma of the right thumb, facial pain, backache, itching,

sinusitis and, on February 9, 2002, low back pain, which Dr. Murphy diagnosed as prostatitis. He reported no muscular or skeletal back problems. Until May 28, 2002, Dr. Murphy believed the back problem was caused by a urinary tract infection. On that date, however, the claimant told the doctor he had a herniated disc which was being treated with injections by another doctor. Dr. Murphy never treated the claimant for the injuries complained of in this case.

In March or April 2002, the claimant climbed a utility pole using appropriate safety equipment, replaced a light bulb, then fell or slid twenty-five or thirty feet down the pole, landing on concrete. His back struck a concrete sidewalk. Although shaken up, he told his supervisor, Mr. Anderson, he was okay. The pain and tingling in his legs began when he got home after finishing the day's work. The next morning he could not get out of bed because of the pain. No written report was made of the injury, so he called the office and reported to Ken Travis the operations superintendent that he was taking a sick or vacation day. That day he visited Dr. Murphy's office and saw Keata, the nurse practitioner. The claimant testified that he told Keata about his falling from a utility pole. Keata took x-rays and referred him to a urologist. He returned to work the following day, but continued to have back pain and numbness or, as he described it, "electrical shocks" in his left leg and foot.

On April 29, 2002, Mr. Pirtle again fell from or slid down a pole, bear hugging it as he fell. When he landed, both arms were bleeding, and he had several splinters. A co-worker, Mark Church, helped him remove splinters and finished the job of replacing a light bulb. Following this fall, the claimant testified that he was "hurting all over." The crew returned to the shop, and Mr. Anderson provided first aid. Again, no written report was made, and the claimant continued working. That night the pain was more severe than after the first fall, so he called the office of Dr. James Michael Glover, an orthopedic surgeon for an appointment. When asked how his injury occurred, the claimant testified that he told Dr. Glover that he had fallen from a pole, although he checked origin unknown on the doctor's intake sheet.

Dr. Glover, testifying by deposition, stated that when he first saw the claimant, "I believe it was on the 25th of April of 2002." Dr. Glover examined the claimant and prescribed an epidural block injection to relieve pain. The claimant received a number of such injections, and they did relieve his back pain. On Dr. Glover's advice, the claimant was off work for two weeks before returning to duty. Additional injections were performed from time to time. An MRI ordered by Dr. Glover showed the claimant had a herniated disc on the lower left side of the claimant's back. The employer contends the evidence preponderates against the trial court's finding of a causal connection between the injury and the claimant's falling or sliding twenty-five to thirty feet from a utility pole to the ground.

Injuries by accident arising out of and in the course of employment which cause either disablement or death of the employee are compensable. Tenn. Code Ann. § 50-6-102(13). An accidental injury arises out of one's employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. GAF Bldg. Materials v. George, 47

S.W.3d 430, 432 (Tenn. Workers' Comp. Panel 2001). "Arising out of" refers to the origin of the injury in terms of causation. McCurry v. Container Corp. of Am., 982 S.W.2d 841, 843 (Tenn. 1998). Any reasonable doubt as to whether an injury arose out of the employment or not is to be resolved in favor of the employee. White v. Werthan Indus., 824 S.W.2d 158 (Tenn. 1992). In all but the most obvious cases, causation may only be established through expert medical testimony, Thomas v. Aetna Life & Cas. Co., 812 S.W.2d 278, 283 (Tenn. 1991), but an injured employee is competent to testify as to his own assessment of his physical condition and such testimony should not be disregarded. McIlvain v. Russell Stover Candies, Inc., 996 S.W.2d 179, 183 (Tenn. 1999).

The employer argues the back injury could not be causally related because the claimant complained to Dr. Murphy about back pain before the first fall and saw Dr. Glover two days before the second fall, complaining of back pain for several weeks. The first part of the argument is without merit because, according to Dr. Murphy, the pain about which the claimant complained to him was brought on by a urinary tract infection, not a herniated disc. The second part of the argument fails because it overlooks the fact that Mr. Pirtle's first fall, when he landed on concrete, occurred several weeks before he visited Dr. Glover. Thus the real question is whether the expert medical proof of causation is sufficient. The treating physician, Dr. Glover, testified the first fall could have caused the herniated disc. Dr. John W. Neblett, a neurosurgeon, examined the claimant, apparently at the request of the employer, in January of 2004 and diagnosed chronic cervical and lumbosacral strain. Dr. Neblett was not asked for an opinion as to the cause of the back injury. Dr. Fereidoon Parsioon, who treated the claimant for carpal tunnel syndrome, testified that any kind of trauma can cause back pain. Dr. Joseph Boals, who examined the claimant, testified unequivocally that the claimant's back injury was consistent with falling from a utility pole.

In a workers' compensation case, a trial judge may properly predicate an award on medical testimony to the effect that a given incident "could be" the cause of a claimant's injury, when, from other evidence, it may reasonably be inferred that the incident was in fact the cause of the injury. Tobitt, 59 S.W.3d at 61. Where equivocal medical evidence combined with other evidence supports a finding of causation, such an inference may nevertheless be drawn under the case law. See White, 824 S.W.2d at 160. Absolute certainty on the part of a medical expert is not necessary to support a workers' compensation award, for expert opinion must always be more or less uncertain and speculative. Kellerman v. Food Lion, Inc., 929 S.W.2d 333, 335 (Tenn. Workers' Comp. Panel 1996).

In light of the claimant's own testimony that he had difficulty getting out of bed on the day following his first fall, Dr. Glover's testimony that the injury could have been caused by falling from a utility pole, Dr. Parsioon's testimony that it can be caused by any kind of trauma and the absence of proof of other trauma, and Dr. Boals's testimony that the injury is consistent with falling from a utility pole, the Panel is not persuaded the evidence preponderates against the trial court's finding of causation with respect to the back injury. The issue is resolved in favor of the employee.

The employer next contends there is insufficient proof of causation between the claimant's bilateral carpal tunnel syndrome and an injury at work. The claimant testified that on one occasion,

his hands froze when he started to descend a pole and that Mr. Anderson had to climb the pole and help him down. Mr. Anderson's testimony corroborates the claimant's testimony. Additionally, there is evidence that the claimant's duties as both a groundsman and as an apprentice linesman required repetitive, if not continuous, use of the hands and that the condition developed gradually. Dr. Parsioon, who surgically treated the claimant for his carpal tunnel syndrome, testified the claimant's duties, such as climbing poles and repetitively using hand tools, could have caused the condition. Dr. Boals testified unequivocally, assuming the claimant truthfully related his work history, that the carpal tunnel syndrome was consistent with his work. The trial court accredited the claimant's credibility by accepting the opinion of Dr. Boals. Where a condition develops gradually over a period of time resulting in a definite, work-connected, unexpected, fortuitous injury, it is compensable as an injury by accident. Brown Shoe Co. v. Reed, 350 S.W.2d 65 (Tenn. 1961). On that authority and those cited with reference to the back injury, as well as the testimony of Drs. Parsioon and Boals, we cannot say the evidence preponderates against the trial court's finding that the claimant's carpal tunnel syndrome is causally related to the work he performed for the employer. The issue is resolved in favor of the employee. Mr. Pirtle continued working until May 19, 2004, when carpal tunnel release surgery was performed by Dr. Parsioon.

Finally, the employer contends the trial court erred in combining the award for the back and the hands where the instances upon which the claims are based occurred at different times. It appears from the record that the back injury occurred in March 2002. The last day the claimant worked before his carpal tunnel surgery was May 19, 2004, more than two years after the back injury. In such a case the awards should be separate. See e.g., Scales v. City of Oak Ridge, 53 S.W.3d 649 (Tenn. 2001). The trial court awarded permanent partial disability benefits based on 42.5 % to the body as a whole, or two and one-half times Dr. Boals's estimate of the claimant's anatomical impairment (17 %) for the combined effect of both injuries, as compensation for both injuries, rather than making separate awards. The award is therefore reversed, and the case remanded to the trial court for the purpose of making a separate award for each injury.

The judgment is affirmed as to the issues of causation and reversed and remanded for a new award consistent herewith. Costs of appeal are taxed equally to the parties and their sureties, for which execution may issue if necessary.

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JOE C. LOSER, JR., SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

CARL PIRTLE v. HUMBOLDT UTILITIES, ET AL

Chancery Court for Gibson County
No. H-4779

No. W2005-02075-SC-WCM-CV - Filed August 21, 2006

JUDGMENT ORDER

This case is before the Court upon the motion for review filed by Tennessee Municipal League Risk Management Pool, Humboldt Utilities, a Dept.of City of Humboldt, Tennessee, 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 equally among the parties and their sureties, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

Holder, Janice M, J., not participating