IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
August 27, 2007 Session

SUSAN RANDOLPH v. FLEETGUARD, INC.

Direct Appeal from the Circuit Court for Putnam County
No. 05N0291 John Maddux, Judge

No. M2006-02134-WC-R3-WC - Mailed - January 17, 2008
Filed - April 3, 2008

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. The parties stipulated that appellee Susan Randolph ("Employee") suffered bilateral carpal tunnel syndrome as a workplace injury during her employment with appellant Fleetguard, Inc. ("Employer"). The parties also stipulated as to her rate of compensation, impairment, and vocational disability. At trial, the only disputed issue was whether Employee gave Employer actual notice of her injury prior to July 1, 2004. The trial court held that Employee did and Employer has appealed. We reverse the judgment of the trial court and remand this matter for further proceedings.

Tenn. Code Ann. § 50-6-225(e) (Supp. 2007) Appeal as of Right; Judgment of the Circuit Court Reversed, Case Remanded

ALLEN W. WALLACE, SR. J., delivered the opinion of the court, in which CORNELIA A. CLARK, J., and DONALD P. HARRIS, SR. J., joined.

Frederick R. Baker, Cookeville, Tennessee, for the appellant, Fleetguard, Inc.

Edward M. Graves, III, Cookeville, Tennessee, and Edward M. Graves, Jr., Knoxville, Tennessee, for the appellee, Susan Randolph.

MEMORANDUM OPINION

Factual and Procedural Background

Employee began working for the Employer in February 2003. In March 2003, she was placed on assembly line 1310 where she worked in several positions until she was laid off in March 2004. Employee testified that she began having problems with her hands while working the "second end

plate" position in December 2003. In this position, Employee was required to insert into an "end plate" a pleated paper filter that had been baked into a tube. Employee described the job as requiring her to wrap her hands around the filter and, using her thumbs especially, force the filter to compress sufficiently to fit into the end plate. Employee testified that the job caused her hands to hurt the entire shift. Employee also stated that her difficulties with inserting the filters into the second end plates caused her pace of production to slow markedly.

Employee testified that she told Mr. Ernest Allison, the "setup operator," about the problems she was having. She stated, "I would either call him on the phone or walk up front and ask him for help, that it was killing my hands and I needed help." Employee testified that, during the period she worked the second end plate position from December 2003 until she was laid off in March 2004, she told Mr. Allison about the problems she was having "[o]nce or twice a week, at least." Employee explained that it was her understanding that she was to report to Mr. Allison "[a]nything that went wrong on that line," including pain or physical problems. Employee testified that Mr. Allison "was the one that got [them] help from the supervisors. Or if maintenance could fix it, he would call maintenance." Employee also testified that Mr. Allison would make adjustments to the pleater machine in an effort to make the filter easier to fit into the end plate. Occasionally, if the line became backed up, he would shut the pleater machine down to give the line workers an opportunity to get caught up.

Employee testified that, after she was laid off in March 2004, the pain she was experiencing in her hands "eased up some because [she] wasn't having to do any forceful motions with [her] hand, but there was still the feeling of soreness and bruising in the fingers. Tingling sensations that would come and go." Employee was called back to work in late June or early July 2004 and returned to line 1310 in the "first end plate" position. She stated that, upon her return, she noticed "it was a lot easier" to insert the filters into the end plates.

On October 1, 2004, Employee was "on center tubes" when her hands "went completely numb and they would not function." Employee reported to the company nurse, Verna McLaughlin. Employee stated that she was asked to provide a date of injury but she "couldn't give them one." She explained, "the pain had been on and off over the whole period of time [she] was on the back of 1310 on second end plate, which was the onset of [her] starting to have pain in [her] hands."

On cross-examination, Employee acknowledged that, when she first reported the numbness in her hands in October 2004, she did not tell anyone about the problems she had been suffering in late 2003 and early 2004. She also acknowledged that, prior to October 1, 2004, she had never personally notified anyone in the clinic, human resources, or management about her injuries. Finally, she also acknowledged that Mr. Allison did not have the authority to receive and investigate work-related accident reports.

Ernest Allison testified that he had been the setup operator on line 1310 "for close to 20 year[s]." His area of responsibility was the first and second end plate functions. He took care of changing the machines as necessary upon completion of an order. He also addressed problems the

workers on the line were having such as "the paper [becoming] wild" or machines breaking down. If he was unable to resolve a problem, he would contact maintenance or a supervisor.

Mr. Allison recalled working with Employee when she was in the second end plate position. He also remembered Employee coming to him with problems she was having putting the filters into the end plates and that it was "hurting her wrists." Mr. Allison testified that he told the supervisors about Employee's complaints "probably six, seven times." Specifically, Mr. Allison told the supervisors that Employee and others were "having trouble getting [the filters] in the end plate."

According to Mr. Allison, the difficulty was caused by the filter paper. In spite of his complaints to supervision, nothing was done for "some time." Eventually, Employer changed to using a thinner paper and that helped "[s]ome."

On cross-examination, Mr. Allison acknowledged that he was not a supervisor on line 1310 and that he did not have the authority to receive and investigate accident reports. He also denied that he ever told anyone at Employer that he had that authority.

Donnia Sparks testified that she worked on line 1310 with Employee. According to Ms. Sparks, there had been a period of time when the pleater machine was creating uneven pleats in the filters. She testified that the uneven pleats required the workers to use additional pressure to insert the filters into the end plates. This additional pressure caused pain in the workers' thumbs and arms. She and others complained to Mr. Allison "[t]hat [they] were having problems putting [the filters] in the end plate," and he in turn told the supervisor. Ms. Sparks stated that they went to Mr. Allison "[b]ecause that's what [they were] supposed to do because the supervisor's not always available." Ms. Sparks recalled hearing Employee telling Mr. Allison that her hands were hurting during this time.

Ms. Sparks testified that the problems with inserting the filters into the end plates "went away" after the pleater machine was repaired.

On cross-examination Ms. Sparks acknowledged that the line workers reported machine problems to Mr. Allison but were required to report work-related injuries to a supervisor. Ms. Sparks stated that Bobby Allen was the supervisor of line 1310 in 2004, and he had the authority to receive and investigate accident reports. Ms. Sparks acknowledged that Mr. Allison did not have that authority.

Polly Martin also worked on line 1310 in the first end plate, center tube, and cutoff positions. She testified that two to three years prior to the May 2006 trial, they had had "some problems with the paper and . . . some problems with the pleater." The problems with the pleater caused the filters to be "too large to fit in the end plate good" and made the filter "harder to get in there." The workers had to "take [their] hands and squeeze it together so it [would] go down." The increased difficulty caused her to get behind and need help. When she got behind, she would "holler for the setup guy," Mr. Allison. According to Ms. Martin, Mr. Allison was "in charge of the machinery on the front of

the line, and if [the workers] ha[d] a problem, that's who . . . [they'd] contact." In response, Mr. Allison "would adjust the machine or he would try to adjust the paper or he'd contact a supervisor and say, we need someone else or extra people on the line or whatever."

Ms. Martin recalled that these problems occurred prior to the pleater being sent out for repairs. She further recalled Employee having problems while Employee was working the second end plate position. Employee told her that she was experiencing tingling and numbness in her hands.

On cross-examination, Ms. Martin acknowledged that the setup operator did not have the authority to receive and investigate work-related injuries. She testified, "if someone gets injured on the line, I don't know exactly who all the people are that come out and look at the situation," but stated that it was not the setup operator.

Raymond Higgs, Employer's environmental health and safety manager, testified that Employer "did have some knowledge of some issues with inserting elements into end plates during April through June of 2004," and acknowledged that there had been a problem with the pleater machine in April 2004. According to Mr. Higgs, the pleater machine was sent out "for a complete rebuild" in March 2004 because it was "folding the filter paper to irregular pleat heights," causing "quality issues." Mr. Higgs testified that the employees began complaining after the pleater machine was rebuilt and returned to the line in April. Further repairs were therefore undertaken.

According to Mr. Higgs, Mr. Allison did not have the authority to "receive reports of injuries." If a worker reported an injury to Mr. Allison, he was expected to report it "up the chain," but the worker was also expected to "report it directly to her supervisor."

The parties stipulated that Employee suffered bilateral carpal tunnel syndrome arising out of the course and scope of her employment with Employer. The parties also stipulated as to Employee's average weekly wage and to her impairment. Additionally, the parties stipulated that, if Employee's injury is deemed to have occurred on October 1, 2004 - the date on which she gave Employer written notice - Employee's vocational disability is seven and one-half percent to each upper extremity. If Employee gave Employer actual notice of her injury prior to July 1, 2004, however, the parties stipulated that her vocational disability is thirty-four percent to each upper extremity. Thus, the only issue tried to the trial court was whether Employee provided actual notice of her injury to Employer prior to July 1, 2004.[1]

After hearing this proof, the trial court made the following findings of fact and conclusions of law:

> [T]he Court is of the opinion that [Employee] is a very truthful person. She's

[1] Effective July 1, 2004, the Workers' Compensation Act, specifically Tennessee Code Annotated §§ 50-6-241, was amended such that the maximum recovery for some permanent partial disability claims was reduced. Compare Tenn. Code Ann. section 50-6-241(a)(1) with -241(d)(1)(A) (2005).

not a professional witness, and it's obvious that she's not. And she wasn't a professional in terms of explaining the dates and time in regard to her injury. And that was obvious as well.

. . . .

In this case the Court finds that the [Employee] had pain and problems with her hands and her wrists on both sides in the late fall of 2003 to early in the year of 2004. And this was at a time when she was working on line 1310 for her employer, Fleetguard . . . .

Her pain started as a result of having to repeatedly force filters into the end plates on the line 1310. And she on numerous occasions told Ernie Allison, the setup operator over line 1310, that she was having a problem with her hands and with her wrists.

She indicated to him that she was having pain, she was having trouble and difficulty with her hands and her wrists, and she told him that it was a result of the repetition and the forceful nature of the job that she was required to do on that line.

The employees on this line 1310 looked to Mr. Ernest Allison as the person who was in charge of that line. And at anytime when employees who were located on line 1310 had any type of problems, they went directly to Ernest Allison, Ernie Allison as he is referred to. And that's what they did as a matter of course. And as a practical matter, that's what they did because the employees were not permitted to leave the line and to go to management or to other supervisors while they were working.

And it was their understanding, all of the employees' understanding on line 1310 that Ernie Allison had the authority and he also had the ability and he had the experience to address any kinds of problems that they had. And, in fact, he did address the problems that they had.

Apparently he was a very effective employee for the employer because he handled a wide range of activities. It appeared to the employees that worked on line 1310 that he was the person to whom they would give their problems and he was the answer man. He was the person that would solve their problems.

And if he wasn't the appropriate person, supervisor to report injuries to, he certainly took this information to the appropriate supervisor and acted on behalf of the employee on line 1310. And he was the agent for the - the actual agent and the apparent agent for the supervisors there with the [Employer].

Actual notice in this situation is sufficient, of course, to complete the notice requirements that are set out in Tennessee Code Annotated. And there's a case of

Riley [v.] Aetna Casualty wherein the Supreme Court in 1987 indicated that where an employee had repeatedly notified her supervisor that she was experiencing increasing pain and difficulty working and when the employer took specific action to help relieve the pain and symptoms of her condition, then the Court stated that the trial court's inference from these facts is supported by material evidence.

Well, it's this trial court's inference that that's exactly what happened in this case. She had problems. She took it to the person that she thought was the appropriate person, Ernie Allison. And the employer acted on the complaints that she had. Steps were taken to change the situation under which she was working.

And when she came back from work she found that the changes had, in fact, been made and she didn't have the problems that she'd had before and she didn't have as much stress and problem with her wrists and hands as a result of the actions that the defendant company took in this case.

The Court's of the opinion that Ernie Allison, as I indicated, was the [Employee's] [sic] agent who notified the employer of the [Employee's] pain and the problems that she had. It's obvious from the information that's before this Court here today that the defendant company was aware and had actual notice of the problems that this [Employee] had in this case.

Because the employer had actual notice of the [Employee's] work-related injury, the Court is of the opinion that that puts this case in a situation where the . . . [Employer] had that information and they acted upon it.

The [Employee] talked to and complained to Ernie Allison about the problems that she had, and she did that in February and March of 2004. And she was . . . laid off . . . by the [Employer] about March the 12th of 2004. She was returned to work from the layoff in June of 2004. And as I indicated, when she returned to line 1310, the changes had been made.

The Court is of the opinion that the workers' compensation law in effect in February through June of 2004 is the applicable law in regard to this particular case.

In light of its findings of fact with respect to the notice issue, the trial court adopted the parties' stipulation that Employee had sustained a thirty-four percent permanent partial disability to both upper extremities and awarded benefits accordingly.

Standard of Review

The standard of review of issues of fact is de novo upon the record of the trial court accompanied by a presumption of correctness of the findings, unless the preponderance of evidence

is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2005). When credibility and weight to be given testimony are involved, considerable deference is given the trial court when the trial judge had the opportunity to observe the witness' demeanor and to hear in-court testimony. Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 167 (Tenn. 2002). We review a trial court's conclusions of law de novo upon the record with no presumption of correctness. Perrin v. Gaylord Entm't Co., 120 S.W.3d 823, 826 (Tenn. 2003); Ganzevoort v. Russell, 949 S.W.2d 293, 296 (Tenn. 1997).

Analysis

Tennessee Code Annotated section 50-6-201(a) provides that employees who suffer work-related injuries "shall not be entitled to physicians' fees or to any compensation that may have accrued under the provisions of the Workers' Compensation Law . . . from the date of the accident to the giving of [written notice of the injury to the employer], unless it can be shown that the employer had actual knowledge of the accident." Tenn. Code Ann. § 50-6-201(a) (Supp. 2007). Thus, unless an employer has actual notice of a worker's injury prior to the date that the employer receives written notice of the injury, the date of written notice serves as the date of injury. There is no dispute in this case that Employee did not give Employer any written notice of her injury until October 1, 2004. Employee contends, however, that Employer had actual notice of her injury prior to her layoff in March 2004.

This dispute as to dates is significant in this case because it affects the amount of Employee's recovery. In 2004, the Tennessee legislature amended Tennessee Code Annotated section 50-6-241 to provide that, for injuries occurring after July 1, 2004, the permanent partial disability benefits for certain scheduled members, including injuries to the arm, are capped at 1.5 times the impairment rating where the employee returned to work for the pre-injury employer at the pre-injury rate of compensation. Tenn. Code Ann. § 50-6-241(d)(1)(A) (2005). For identical injuries occurring prior to July 1, 2004, there is no cap. See id. at (a)(1).

In this case, the parties stipulated that, if Employee's injury is deemed to have occurred on October 1, 2004 - the date on which she gave Employer written notice - Employee's vocational disability is seven and one-half percent to each upper extremity. If Employee gave Employer actual notice of her injury prior to July 1, 2004, however, the parties stipulated that her vocational disability is thirty-four percent to each upper extremity.

Employee contends, and the trial court agreed, that Employee provided Employer with actual notice that she had suffered a workplace injury when she complained to Mr. Allison in late 2003/early 2004 that her hands were hurting while she worked the second end plate position. We respectfully disagree.

This Court has previously held that "an employee who relies upon alleged actual knowledge of the employer must prove that the employer had actual knowledge of the time, place, nature, and cause of the injury." Masters v. Indus. Garments Mfg. Co., Inc., 595 S.W.2d 811, 815 (Tenn. 1980). Further, "timely notice [of an injury] to the agent or representative of the employer is a sufficient

notice to the employer, *provided the agent or representative to whom notice is given has actual or apparent authority to receive notice on behalf of the employer*." Kirk v. Magnavox Consumer Elec. Co., 665 S.W.2d 711, 712 (Tenn. 1984) (emphasis added). It is undisputed that, prior to July 1, 2004, the only alleged "agent" to whom Employee spoke about the pain in her hands was Mr. Allison. The trial court determined that Mr. Allison had both the actual and apparent authority to handle Employee's complaints.

Initially, the evidence preponderates against the trial court's conclusion that Mr. Allison possessed the actual authority to handle injury reports. As pointed out by Employee in her brief, actual authority "'consists of the powers which a principal directly confers upon an agent or causes or permits him to believe himself to possess.'" Milliken Group, Inc. v. Hays Nissan, Inc., 86 S.W.3d 564, 567 (Tenn. Ct. App. 2001) (quoting 2A C.J.S. *Agency* § 147 (1972)). No one testified that Employer had ever endowed Mr. Allison with the authority to receive notice of workplace injuries. Mr. Allison himself testified that he did not have the authority to receive and investigate such reports. Even Employee acknowledged that she knew Mr. Allison did not have such authority. The proof at trial simply does not support the trial court's finding that Mr. Allison possessed the actual authority to handle reports of work-related injuries or accidents.

Employee makes much of Mr. Higgs' testimony that, if a worker on line 1310 reported an injury to Mr. Allison, Mr. Allison was expected to "pass it up the chain." However, Mr. Higgs went on to testify that, in such an event, the worker was also expected to report the injury directly to his or her supervisor. This testimony does not establish any actual authority on Mr. Allison's part with respect to workplace accidents but simply illustrates Employer's recognition that a setup operator might be the first person to learn of an accident or injury. In that event, he was expected to report the problem to a person who *did* have the authority to address it. The injured worker was expected to do the same. This workplace practice simply recognized the necessity that someone notify a supervisor as soon as possible about a workplace accident; it did not vest setup operators with the actual authority to receive, respond to, or otherwise handle such occurrences.

Secondly, the proof also preponderates against the trial court's finding that Mr. Allison had the apparent authority to handle notice of a workplace injury. An employee who has the apparent authority to handle notices of workplace accidents "must be someone whose position justified the inference that authority has been delegated to him by the employer as his representative to receive notice of accidental injury." Kirk, 665 S.W.2d at 712. The scope of an agent's apparent authority is determined by the acts of his or her principal. See Intersparex Leddin KG v. Al-Haddad, 852 S.W.2d 245, 247-48 (Tenn. Ct. App. 1992).

According to the testimony of every witness who testified about Mr. Allison's job responsibilities, no one was entitled to draw the inference that he had the authority to receive notice of workplace injuries. To the contrary, Employee herself, along with Ms. Sparks, Ms. Martin and Mr. Allison, each knew that Mr. Allison was *not* authorized to receive such reports. Rather, he was authorized to receive reports of problems the workers were having on the line resulting from technical difficulties. Thus, Mr. Allison was authorized to start and stop individual machines, make

technical adjustments to the machines, and to call maintenance if a machine needed additional service and/or repair. Mr. Allison was also authorized to notify management about production problems caused by technical difficulties, that is, the difficulty or inability of the line workers to keep up with the pace of the line. Mr. Allison was not authorized, however, either actually or apparently, to interpret the difficulties the workers were having into reports of accidents or injuries.

Finally, even if we agreed with the trial court that Mr. Allison had the authority to take injury reports, the proof preponderates against the trial court's finding that Employee made such a report to Mr. Allison. The proof establishes that problems with the pleater machine and/or the filter paper were making it difficult for the workers in the second end plate position on line 1310 to do their jobs. Significantly, Employee was not the only worker in the second end plate position to complain to Mr. Allison about difficulties with placing the filters in the second end plates. The technical difficulties required the workers to exert more pressure and use more hand strength in order to do their jobs. Their hands and arms hurt as a result. Mr. Allison responded to these complaints insofar as they represented technical difficulties with the machines and/or the materials used on line 1310. That is, he adjusted the machines and/or called maintenance and/or reported the technical difficulties, including the physical difficulties being experienced by the workers, to supervision. There is no proof in the record that Mr. Allison understood Employee was reporting an *injury* as opposed to problems with the materials she was working with. Indeed, there is no proof in the record that *Employee* understood she had suffered an injury in late 2003 or early 2004. It is too much to expect Mr. Allison to understand that Employee had suffered a workplace injury if she herself did not understand that.

Once Employee understood that she was suffering something beyond the additional physical strain created by mechanical malfunctions on line 1310 - strain that her coworkers were also suffering simultaneously - she reported her problems not to Mr. Allison but to Employer's nurse. Clearly, Employee understood that workplace *injuries* were to be reported in that manner rather than simply complained of to Mr. Allison.

In sum, Employee notified Employer that she had suffered a workplace injury when she reported to Employer's nurse on October 1, 2004, that her hands had gone numb. Accordingly, for the purposes of this case, Employee's date of injury was October 1, 2004, and her vocational disability is seven and one-half percent to each upper extremity.

Conclusion

The evidence preponderates against the trial court's finding that Employee gave Employer actual notice of her workplace injury prior to July 1, 2004. Accordingly, the judgment of the trial court is reversed and this matter is remanded to the trial court for further proceedings consistent with this opinion.

The costs of this appeal are assessed against the appellee Susan Randolph and her surety, for which execution may issue if necessary.

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ALLEN W. WALLACE, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

SUSAN RANDOLPH v. FLEETGUARD, INC.

Circuit Court for Putnam County
No. 05N0291

No. M2006-02134-SC-WCM-WC - Filed - April 3, 2008

JUDGMENT ORDER

This case is before the Court upon the motion for review filed by Susan Randolph 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 against Susan Randolph and her surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

Cornelia A. Clark, J., not participating