

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
March 24, 2008 Session

**MARY JO PATTERSON v. CLARKSVILLE-MONTGOMERY COUNTY
SCHOOL SYSTEM**

**Direct Appeal from the Chancery Court for Montgomery County
No. MC CH CV WC 04-53 Laurence M. McMillan, Jr., Chancellor**

**No. M2007-01115-WC-R3-WC - Mailed - August 5, 2008
Filed - September 5, 2008**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated section 50-6-225(e)(3) (Supp. 2007) for a hearing and a report of findings of fact and conclusions of law. The trial court found that the employee complied with the notice requirement of Tennessee Code Annotated section 50-6-201(a) (Supp. 2003). It further found that she had sustained a compensable injury to her lower back and awarded 30% permanent partial disability. The employer has appealed, contending that the claim is barred by failure to provide timely notice and that the evidence preponderates against the finding of causation. We affirm the judgment.

**Tenn. Code Ann. § 50-6-225(e) (Supp. 2007) Appeal as of Right;
Judgment of the Chancery Court Affirmed**

DONALD P. HARRIS, SR. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and ALLEN W. WALLACE, SR. J., joined.

David J. Silvus, Clarksville, Tennessee, for the appellant, Clarksville-Montgomery County School System

Peter M. Olson, Clarksville, Tennessee, for the appellee, Mary Jo Patterson

MEMORANDUM OPINION

FACTUAL AND PROCEDURAL BACKGROUND

Mary Jo Patterson is an elementary school teacher for the Clarksville-Montgomery County School System (CMCSS). On May 25, 2004, she was packing boxes in order to move from a portable classroom to a room in the main building at Ringgold Elementary School. She felt a popping sensation in her back as she performed this activity. She mentioned the incident, on or near

the date it occurred, to four other teachers with whom she had lunch.¹ However, she did not report her injury to the principal or any other school official. She mentioned the incident to her husband on the evening that it occurred. Her husband and daughter assisted her in packing the remaining boxes over the next few days.

After a brief break, Ms. Patterson taught summer school for four weeks. She had difficulty sitting for long periods of time and developed a slight limp. On July 2, 2004, she consulted her primary care physician, Dr. Tom Grabenstein. Dr. Grabenstein's note was placed into evidence. That note reads in part: "Lumbar disc disease with sciatica on the left. . . . Onset after lifting her grandchild and moving heavy books." Ms. Patterson thereafter went on vacation with her family. Her symptoms did not improve. Upon her return, she again consulted Dr. Grabenstein. He ordered an MRI scan that showed a ruptured L5-S1 disc. Dr. Grabenstein referred her to Dr. Tim Schoettle, a neurosurgeon.

Dr. Schoettle first saw Ms. Patterson on July 29. He recommended additional conservative treatment. Ms. Patterson's condition worsened over the next month; she noted numbness in her left foot. She contacted Dr. Schoettle's office on August 23 to arrange an appointment. On the same date, she reported her injury to Judy Richardson.² On August 25, Ms. Patterson met with her principal and assistant principal and advised them that she would be having surgery. She returned to Dr. Schoettle on September 2, and surgery was performed on September 13.

Dr. Schoettle testified by deposition. Based upon the history given to him by Ms. Patterson, he believed that her ruptured disc was caused by the May 25, 2004, incident. He further testified that Ms. Patterson retained a 12% impairment to the body as a whole as a result of the injury and surgery. He stated that she retained permanent functional restrictions of "maximum lifting in the 25-pound range; maximum frequent lifting in the 10- to 15- pound range . . . and avoidance of repetitive twisting, stooping and bending activities." On cross-examination, he admitted that "lifting a grandchild is a mechanism that potentially could produce a disc herniation."

Ms. Patterson testified that she was generally aware of CMCSS's policies, which required immediate reporting of on-the-job injuries. She stated that she did not report the May 25 injury immediately because she did not know that it was serious at the time. After the initial event, her symptoms gradually worsened. By August, when she began having numbness in her foot and it appeared that surgery might be necessary, she was prompted to notify CMCSS. Ms. Patterson also denied that she had injured her back lifting a grandchild. She testified that what she told Dr. Grabenstein was that she was unable to lift her grandchild at some point after the May 25 incident.

At the time of the trial, Ms. Patterson was fifty-eight years old. She had a masters' degree plus thirty additional hours of college credit. She had been a teacher for over thirty years. She

¹Transcriptions of recorded statements of those individuals were introduced into evidence by CMCSS. These witnesses generally confirmed Ms. Patterson's description of events.

²Ms. Richardson's position is not readily apparent from the record. However, CMCSS does not contest that she was an appropriate person to receive notice of an injury.

returned to work for CMCSS following her surgery in the same position she had held previously. She testified that her symptoms improved after surgery, but she still had difficulty sitting for extended periods and lifting heavy items. She also continued to have numbness in her foot. The trial court found that Ms. Patterson had given timely notice of her injury. It further found that her injury was compensable and awarded 30% permanent partial disability. CMCSS has appealed, contending that the trial court erred in its rulings on the notice and causation issues.

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) (Supp. 2007). 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). Where the issues involve expert medical testimony that is contained in the record by deposition, determination of the weight and credibility of the evidence necessarily must be drawn from the contents of the depositions, and the reviewing court may draw its own conclusions with regard to those issues. 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. Travelers Ins. Co., 824 S.W.2d 541, 544 (Tenn. 1992). A trial court's conclusions of law are reviewed *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

I. Notice

CMCSS contends that Ms. Patterson's claim should be barred by her failure to give notice of her injury within thirty days of May 25, 2004, as required by Tennessee Code Annotated section 50-6-201(a) (Supp. 2003). Ms. Patterson asserts that her notice of August 23 was timely because she did not know the seriousness of the injury until at or near that time.

An employee's reasonable lack of knowledge of the nature and seriousness of his or her injury has been held to excuse his failure to give notice within the thirty-day period. *See, e.g., CNA Ins. Co. v. Transou*, 614 S.W.2d 335, 337 (Tenn. 1981), Davis v. Travelers Ins. Co., 496 S.W.2d 458, 459 (1973); Brown Shoe Co. v. Reed, 350 S.W.2d 65 (1961).

The notice requirement affords the employer an opportunity to make an investigation while material facts are accessible and to provide timely and proper treatment for the injured employee. Masters v. Indus. Garments Mfg. Co., 595 S.W.2d 811, 815 (1980) (quoting Aetna Cas. & Sur. Co. v. Long, 569 S.W.2d 444, 449 (Tenn. 1978)). "In determining whether an employee has shown a reasonable excuse for failure to give such notice, courts will consider the following criteria . . . : (1) the employer's actual knowledge of the employee's injury, (2) lack of prejudice to the employer by an excusing of the requirement, and (3) the excuse or inability of the employee to timely notify the employer." McCaleb v. Saturn Corp., 910 S.W.2d 412, 415 (Tenn. Workers' Comp. Panel 1995).

Ms. Patterson testified that she did not initially consider the May 25 incident to be serious. When her symptoms worsened, and surgery became a possibility, she provided notice to CMCSS, roughly three months after the initial event. CMCSS contends that the delay prejudiced its ability to investigate the injury. However, it was able to obtain statements from the four teachers who confirmed Ms. Patterson's account and to obtain the medical records of Dr. Grabenstein. CMCSS does not describe what additional information or types of information might have become unavailable as a result of the delay. The evidence therefore provides a reasonable explanation for the delay, and there is no evidence of any prejudice resulting from that delay. We find that the evidence does not preponderate against the finding of the trial court on this issue.

2. Causation

CMCSS's argument that the trial court erred in concluding that Ms. Patterson's injury is compensable is based upon Dr. Grabenstein's note of July 2, 2004. That note refers to the onset of Ms. Patterson's symptoms occurring "after lifting her grandchild and moving heavy books." As previously noted, Ms. Patterson provided an explanation of that statement in her testimony. The trial court found her to be a credible witness, and no contrary evidence concerning the incident was introduced. When Ms. Patterson initially consulted Dr. Grabenstein concerning her back injury, he recommended physical therapy. The history given by Ms. Patterson to the therapist was that she had injured her back moving boxes. Moreover, Ms. Patterson's account of the May 25 incident was corroborated by the testimony of her husband and daughter and the recorded statements of the four other teachers. The latter were introduced into evidence by CMCSS. All of these persons stated that Ms. Patterson described the May 25 box-packing incident to them at or near the date it occurred.

Dr. Grabenstein's note certainly provided CMCSS with a legitimate basis to question the claim. However, all of the remaining evidence in the case, including the statements of four disinterested witnesses, supports the conclusion reached by the trial court that Ms. Patterson's injury was the result of lifting boxes at work. We find, therefore, that the evidence does not preponderate against the trial court's finding.

CONCLUSION

The judgment is affirmed. Costs are taxed to the appellant, Clarksville-Montgomery County School System, for which execution may issue if necessary.

DONALD P. HARRIS, SENIOR JUDGE

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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 appeals 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 will be paid by the Appellant, Clarksville-Montgomery County School System, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM