

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

LINDA COKER v. COUNTY OF OBION

**Direct Appeal from the Chancery Court for Obion County
No. 26,409 William Michael Maloan, Chancellor**

No. W2007-02289-WC-R3-WC - Mailed July 22, 2008; Filed August 25, 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) for a hearing and a report of findings of fact and conclusions of law. Employee sustained an injury to her shoulder in April 2005 while working for Employer. When she returned to the office, she made a statement in the presence of her supervisor and others that she had injured her shoulder. The supervisor testified that she did not hear the statement. In the following months, Employee received occasional medical treatment for the injury. In March 2006, her doctor recommended surgery. Employee gave written notice of the injury to her supervisor on the next day. Employer denied the claim based upon Employee's failure to give notice of her injury within thirty days. The trial court found that Employee had given sufficient notice and awarded 7.5% permanent partial disability. Employer has appealed, asserting that the trial court erred in finding that the claim was not barred by failure to give timely notice. We find that the evidence does not preponderate against the finding of the trial court and affirm the judgment of the trial court.

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

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

P. Allen Phillips, Jackson, Tennessee for the appellant, Obion County.

Scott G. Kirk, Jackson, Tennessee for the appellee, Linda Coker.

MEMORANDUM OPINION

Factual and Procedural Background

The facts of this case are largely undisputed. Linda Coker was a Deputy Property Assessor for Obion County (“Obion County”). One of her job duties was to measure properties for purposes of assessment. On April 4, 2005, she was performing this duty with another employee, Dawn Ruddle. While reaching to retrieve a document from the back of her vehicle, Ms. Coker felt a burning sensation in her shoulder. She mentioned this to Ms. Ruddle at the time it occurred. Upon returning to the Assessor’s office, Ms. Coker stated, to no one in particular, that she had injured her shoulder. The County Assessor, Ms. Kathy Robertson, was present in the office at the time this statement was made. Ms. Robertson testified that she did not hear such a statement. Ms. Coker did not repeat the statement or request medical treatment. She did not tell Ms. Robertson or anyone else that she was making a workers’ compensation claim.

Ms. Coker continued to work, and her shoulder continued to bother her. In November 2005, she sought medical attention from Dr. Samuel Meredith, a “bone doctor” who had treated her father in the past. In February 2005, she had an MRI that revealed possible shoulder impingement. In early March, Dr. Meredith recommended surgery. Shortly thereafter, on March 7, 2006, Ms. Coker submitted a first report of injury form to Ms. Robertson. Ms. Robertson testified that this was the first time she became aware that Ms. Coker was claiming a work injury. The claim was denied.

Ms. Coker sought care from Dr. Lowell Stonecipher, an orthopaedic surgeon. Dr. Stonecipher performed surgery on Ms. Coker’s shoulder in July 2006. Ms. Coker returned to work in September. In November, Dr. Stonecipher released Ms. Coker and assigned 0% impairment. Dr. Richard Fishbein, an evaluating physician, assigned 5% impairment to the body as a whole. At the time of trial, Ms. Coker continued to work in the same job she held prior to her injury. She was earning a slightly higher salary than she had at the time of the injury. The trial court found that Ms. Coker’s statement on the date of injury constituted actual notice of the injury. The parties agreed that the injury was “capped” under Tennessee Code Annotated section 50-6-241. Therefore, the trial court awarded 7.5% permanent partial disability to the body as a whole. Obion County appealed, contending that the trial court erred in finding that Ms. Coker gave sufficient notice of her injury.

Standard of Review

Our standard of review of factual issues in a workers’ compensation case is de novo upon the record of the trial court, accompanied by a presumption of correctness of the trial court’s factual findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (Supp. 2007); Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 167 (Tenn. 2002). When issues of credibility of witnesses and the weight to be given to their in-court testimony are before the reviewing court, considerable deference must be accorded to the factual findings of the trial court. Richards v. Liberty Mut. Ins. Co., 70 S.W.3d 729, 733 (Tenn. 2002). When expert medical testimony differs, it is within the trial judge’s discretion to accept the opinion of one expert over another. Hinson v. Wal-Mart Stores, Inc., 654 S.W.2d 675, 676-77 (Tenn. 1983). This Court, however, may draw its own conclusions about the weight and credibility to be given to expert

testimony when all of the medical proof is by deposition. Krick v. City of Lawrenceburg, 945 S.W.2d 709, 712 (Tenn. 1997). Questions of law are reviewed de novo with no presumption of correctness afforded to the trial court's conclusions. Gray v. Cullom Mach., Tool & Die, Inc., 152 S.W.3d 439, 443 (Tenn. 2004).

Analysis

Notice was the only contested issue at trial and is the only issue on appeal. Obion County contends that notice was not given until March 2006, eleven months after the injury, and that the claim is therefore barred by Tennessee Code Annotated section 50-6-201(a).

The trial court held that Ms. Coker's statement on the date of injury constituted actual notice of the injury. The court held that whether Ms. Robertson heard the statement was irrelevant and was analogous to the mailing and non-receipt of written notice. Wm. H. Coleman Co. v. Isbell, 19 S.W.2d 243, 243 (1929). This interpretation of section 50-6-201(a) is strained. Rather, our Supreme Court has interpreted section 50-6-201(a) to mean that written notice "is unnecessary where the employer has actual knowledge of the injury." Whirlpool, 69 S.W.3d at 169.

Ms. Coker does not rely on the trial court's theory on appeal. Rather, she contends that the written notice that she provided in March 2006 complied with the statute. She argues that she was not aware of the seriousness of her injury until surgery was recommended by Dr. Meredith and provided written notice one day later. She submits that this is a "reasonable excuse," as permitted by section 50-6-201, and therefore her claim is not barred. See Livingston v. Shelby Williams Indus., Inc., 811 S.W.2d 511, 514 (Tenn. 1991).

In Pentecost v. Anchor Wire Corp., 695 S.W.2d 183, 185 (1985), the Supreme Court explained the notice requirement as follows:

Under the terms of T.C.A., § 50-6-201, the 30-day notice period is tolled by "reasonable excuse for failure to give such notice." An employee's reasonable lack of knowledge of the nature and seriousness of his injury has been held to excuse his failure to give notice within the 30-day period. Likewise, an employee's lack of knowledge that his injury is work-related, if reasonable under the circumstances, must also excuse his failure to give notice within 30 days that he is claiming a work-related injury. It is enough that the employee notifies the employer of the facts concerning his injury of which he is aware or reasonably should be aware.

(citations omitted).

Ms. Coker testified that she was not aware of the extent of her injury until Dr. Meredith recommended surgery in March 2006. There is no evidence in the record that prior to March 2005 Ms. Coker knew or had any reason to know that her injury would require significant medical treatment or result in permanent impairment. Upon learning that information, she gave written notice immediately. The delay between the date of injury and the date of notice caused no discernible prejudice to Obion County. Under these circumstances, we conclude that the evidence

supports the conclusion that Ms. Coker complied with section 50-6-201(a) by giving written notice of her injury to Obion County on March 7, 2001.

Conclusion

The judgment is affirmed. Costs are taxed to the appellant, Obion County and its surety.

ALLEN W. WALLACE, SENIOR JUDGE

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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 Appellant, Obion County, and its surety, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM