IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
June 23, 2008 Session

KNOLLWOOD MANOR v. MILDRED COX

Direct Appeal from the Circuit Court for Macon County
No. 5529 Clara Byrd, Circuit Court Judge

No. M2008-00151-WC-R3-WC - Mailed - October 1, 2008
Filed - November 20, 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 § 50-6-225(e)(3) for a hearing and a report of findings of fact and conclusions of law. In this case employer appeals the trial court's findings that the employee's injury arose out of employment, that the employee did not make a meaningful return to work, and that the employee met at least three of the four criteria set forth in Tennessee Code Annotated section 50-6-242(b) by clear and convincing evidence and thus was not subject to the six times cap. We affirm the trial court's finding that the employee's injury arose out of her employment. However, we reverse the finding of the trial court with regards to the employee's meaningful return to work. Our conclusion that employee made a meaningful return to work therefore precludes consideration of the issue of whether the six times cap applies.

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

JON KERRY BLACKWOOD, SR. J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., J., and WALTER C. KURTZ, SR. J., joined.

Timothy W. Conner, Knoxville, Tennessee, for the appellant, Knollwood Manor.

William J. Butler, Lafayette, Tennessee, for the appellee, Mildred Cox.

MEMORANDUM OPINION

Factual and Procedural Background

Employee Mildred Cox ("Mrs. Cox") sustained injuries in the parking lot of Knollwood Manor's ("Knollwood") premises. Mrs. Cox was employed as a Certified Nursing Assistant.

On August 30, 2006, she arrived at Knollwood's parking lot to board a van to attend a work-related seminar. Knollwood annually arranged trips to such seminars. Employees were permitted to attend these seminars and were paid their regular wage for attendance; however, attendance was not mandatory. As Mrs. Cox exited her car, she noticed that her vehicle was moving and then she was knocked down by the vehicle door. The vehicle then rolled over her legs.

Mrs. Cox's injuries included a fracture to the left ankle and bruising on the lower right extremity. The hospital staff referred her to her regular physician, Dr. Stewart, who then referred Mrs. Cox to Dr. John W. Bacon, an orthopaedic surgeon. Dr. Bacon provided treatment to Mrs. Cox and released her on November 7, 2005, to return to work without restrictions on November 14, 2005. Dr. Bacon did not assign an impairment rating to Mrs. Cox at the time of his last examination on November 7, 2005.

Dr. Stewart, Mrs. Cox's primary care physician, also did not place any restrictions on Mrs. Cox's work activities.[1] He found that Mrs. Cox had completely healed from her accident by the time of his examination on November 29, 2005. Dr. Stewart's records also indicated that Mrs. Cox informed him that she would like to go on disability, but Dr. Stewart did not find any condition to indicate that Mrs. Cox was disabled.

Dr. Walter Wheelhouse, an orthopedic surgeon, conducted an independent medical evaluation of Mrs. Cox at the request of her attorney. He testified that she retained a permanent anatomical impairment rating of 11% to the lower extremities. Dr. Wheelhouse also recommended as permanent restrictions for Mrs. Cox that she not stand or walk for more than an hour without rest.

Mrs. Cox returned to work around November 14, 2005. Her work duties were to attend to patients' needs, which required her to stand and walk constantly. Mrs. Cox testified that she was in pain in her brief return to work; however, she never complained about her condition to her supervisor, Ms. Linda Austin.

Approximately one month after Mrs. Cox returned to work, the December and January shift schedules were posted. Per company policy, Ms. Austin requested that employees notify her of any scheduling requests with regard to Christmas and the New Year's holiday. Mrs. Cox did not make any holiday scheduling requests. Company policy generally mandated that employees only work every other weekend; however, exceptions were made when holidays fell on weekends. In December 2005 and January 2006, both Christmas and New Year's Day fell on Sundays. Mrs. Cox was scheduled to work on both Christmas Day and New Year's Day. Notably, Mrs. Cox's work application stated her willingness to work on holidays and weekends.

After receiving her schedule, Mrs. Cox met with Ms. Austin. During this meeting, Mrs.

[1] Dr. Stewart was not deposed or called to testify and none of his records are entered as exhibits in the trial record. However, the trial court in its findings referred to Dr. Stewart's records and discussed the conclusions that Dr. Stewart made after examining Mrs. Cox. The parties do not contest the trial judge's references to Dr. Stewart's records.

Cox stated that she might quit if the schedule were not modified. Ms. Austin informed Mrs. Cox that she could either find someone to work her shift or could call in as absent on the day of the shift. Mrs. Cox declined these alternatives and gave Ms. Austin a one-week notice of resignation.

The trial court found (1) that Mrs. Cox's injury arose out of employment, (2) that she did not make a meaningful return to work, and thus was not subject to the 1.5 times cap imposed by Tennessee Code Annotated section 50-6-241(d)(1)(A), and (3) that Mrs. Cox met at least three of the four criteria set forth in section 50-6-242(b) of the Tennessee Code Annotated by clear and convincing evidence and thus was not subject to the six times cap. Based upon those findings, the trial court awarded 99.6% permanent partial disability to the body as a whole. Knollwood appeals the trial court's decision.

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 to 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). When 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). A trial court's conclusions of law are reviewed *de novo* upon the record with no presumption of correctness. *Ganzevoort v. Russell*, 949 S.W.2d 293, 296 (Tenn. 1997).

Analysis - Causation

Under the Workers' Compensation Law, an employee may recover workers' compensation benefits if the employee suffers "personal injury or death by accident arising out of and in the course of employment." Tenn. Code Ann. § 50-6-103(a)(2005). The courts have determined that "arising out of" refers to causation. *Braden v. Sears, Roebuck and Co.*, 833 S.W.2d 496, 498 (Tenn. 1992). Causation is adequately established if the injury has a rational, causal connection to the work. *Id*. Any reasonable doubt as to the relation between the injury and the employment is to be construed in favor of the employee. *White v. Werthan Industries*, 824 S.W.2d 158, 159 (Tenn. 1992).

Knollwood argues that the injuries sustained by Mrs. Cox did not arise out of her employment because they were merely incidental rather than "peculiar" to her employment. Knollwood further contends that Mrs. Cox's work duties did not expose her to the risk of injury by her vehicle because her work duties did not require operation of personal vehicles or duties regarding the parking lot of the premises. However, our Supreme Court has previously held that

injuries sustained in an employer's parking lot are compensable when an employee is going to or coming from the work site. *See e.g.*, *Lollar v. Wal-Mart Stores, Inc.*, 767 S.W.2d 143 (Tenn. 1989); *Copeland v. Leaf, Inc.*, 829 S.W.2d 140 (Tenn. 1992).

Although Mrs. Cox's work responsibilities were not specifically to arrive at work in her own vehicle, we conclude that consideration is irrelevant to the issue of causation. We find that the injuries sustained when Mrs. Cox was exiting her vehicle on her employer's premises, as a prelude to boarding a van for transportation to a work-related seminar, are rationally related to her employment. Even though Mrs. Cox's attendance of the seminar was voluntary, that is only one factor to be considered in determining whether the injury arose out of the employment. *Gooden v. Coors Technical Ceramic Co.*, 236 S.W.3d 151, 156 (Tenn. 2007). Mrs. Cox arrived at work to attend a seminar at Knollwood's cost and for Knollwood's business interest when she was injured. Therefore, we find the rational relation between Mrs. Cox's injury and her employment satisfies the "arising out of" requirement of the Workers' Compensation Act.

Analysis - Meaningful return to work

When the pre-injury employer provides employment at a wage equivalent to that which the employee received at the time of injury and the employee has made a meaningful return to work, the maximum benefits the employee may receive are capped at 1.5 times the medical impairment rating. Tenn. Code Ann. § 50-6-241(d)(1)(A)(2005); *Bailey v. Krueger Ringier, Inc.*, No. 02S01-9409-CH-00061, 1995 WL 572056 at *4 (Tenn. Workers' Comp. Panel May 17, 1995). The courts must assess "the reasonableness of the employer in attempting to return the employee to work and the reasonableness of the employee in failing to [do so]" in determining whether an employee has, indeed, made a meaningful return to work. *Newton v. Scott Health Care Center*, 914 S.W.2d 884, 886 (Tenn. 1995). When an employer offers a return to work, but an employee resigns for reasons unrelated to the injury, the 1.5 times statutory cap applies. *Lay v. Scott County Sheriff's Dept.*, 109 S.W.3d 293, 299 (Tenn. 2003). In *Newton*, the Court found the employee's refusal to return to work unreasonable because it was not related to the injury. 914 S.W.2d at 884.

Mrs. Cox contends that her resignation was based on what she perceived as retaliatory actions in the scheduling of her work. She testified that she believed that Knollwood was unhappy with the circumstances surrounding the injury and that Knollwood demonstrated this discontent by scheduling her to work four out of five consecutive weekends. She introduced no substantive or circumstantial evidence to support that assertion. The only basis for Mrs. Cox's retaliation theory is her subjective judgment about the situation. Accordingly, we find the evidence does not provide substantial support for Mrs. Cox's retaliation theory.

We conclude that the preponderance of the evidence in this record is that Mrs. Cox's resignation was unrelated to her injury. She herself testified at trial that the scheduling dispute was her reason for resigning. As discussed above, there is no substantive evidence that the scheduling dispute was related to her injury. We further note that Dr. Bacon, the treating physician, did not place any restrictions on Mrs. Cox's work activities other than wearing an air cast, which indicates that she was able to perform her job. Based upon these factors, we hold

that the evidence preponderates against the trial court's finding that she did not have a meaningful return to work. Therefore, the maximum award of permanent partial disability, based upon the impairment of 11% to both lower extremities assigned by Dr. Wheelhouse is 16.5% to both legs. We modify the judgment accordingly.

As a consequence of our ruling on the meaningful return issue, it is unnecessary for us to address the issue raised by Mrs. Cox, concerning application of Tennessee Code Annotated section 50-6-242(b).

Conclusion

The judgment of the trial court is modified to award 16.5% permanent partial disability to the body as a whole. Costs are taxed to one-half to Knollwood Manor, and its surety, and one-half to Mildred Cox, for which execution may issue if necessary.

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JON KERRY BLACKWOOD, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE
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JUNE 23, 2008 SESSION

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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 are taxed one-half to Knollwood Manor, and its surety, and one-half to Mildred Cox, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM