IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE

FILED

June 20, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

FARHAD YASIN SORANI,	)	
	)	
Plaintiff/Appellee,	)	
	)	
	)	SUMNER CHANCERY
VS.	)	
	)	Hon. Jane Wheatcraft, Judge
	)	
ROYAL INSURANCE COMPANY OF AMERICA and KENCO PLASTICS, INC.,	)	No. 01S01-9510-CH-00179
	)	
	)	
Defendants/Appellants.	)	

For Appellants:	For Appellee:
David T. Hooper Hooper & Hooper Brentwood, Tennessee	Frank D. Farrar William Joseph Butler Farrar & Holliman Lafayette, Tennessee

MEMORANDUM OPINION

Members of Panel:

Adolpho A. Birch, Jr., Associate Justice
Ben H. Cantrell, Special Judge
Joe C. Loser, Jr., Special Judge

AFFIRMED AS MODIFIED — Cantrell, Special Judge

OPINION

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

The trial judge awarded compensation to the worker based on 50% permanent partial disability to both arms. Because we find that the evidence preponderates against the award, we modify it to 25% disability to both arms.

I.

Mr. Sorani, an Iraqi Kurdish refugee, went to work for Kenco Plastics, Inc. on or about February 1, 1994. His duties included gripping and cutting plastic, and involved repetitive hand movements. On May 16, 1994 he went to the Sumner County Regional Medical Center complaining of soreness in his left arm. He was diagnosed with tendonitis and put on light duty for seven days.

On June 24, 1994 Mr. Sorani consulted an orthopaedic specialist for pain and numbness in both hands. An examination resulted in a diagnosis of bilateral carpal tunnel syndrome. On July 20, 1994 he was referred to another specialist, for complaints of numbness and tingling in the fingers of both hands. This specialist confirmed the carpal tunnel syndrome diagnosis and concluded that it was caused or aggravated by the work at Kenco Plastics. The doctor treated Mr. Sorani conservatively until October 28, 1994 when he performed carpal tunnel release surgery on the right hand.

Following the surgery, Mr. Sorani suffered from an involuntary "triggering" movement in the ring finger on his right hand. His doctor thought that the condition would improve on its own if he was given three weeks rest. The doctor

scheduled a return visit for December 1, 1994. On that date, Mr. Sorani seemed to be doing well but continued to show some triggering of the right ring finger. The doctor injected the finger with cortisone, and scheduled a follow-up visit for December 12, 1994.

At the final visit on December 12, the doctor released Mr. Sorani to return to work the next day. The doctor noted "Patient is doing well. He has had no further triggering of the right ring finger following the injection." He noted also that Mr. Sorani had reached maximum medical improvement as far as his right hand was concerned and that he retained a 10% permanent partial injury to the right arm. With respect to the left hand, the doctor noted, "Currently Mr. Sorani is not complaining of any problems in his left hand, hence I would not recommend surgery at this time on his left wrist." At his deposition the doctor said with reference to the left hand, "it really was my feelings that he might get into further problems if he went back doing repetitive gripping with it."

Mr. Sorani went back to work and the company placed him in another job. He worked without any complaints for a short period of time until he was asked to operate a different machine. He refused to take the new job and left the plant. As a consequence, the company fired him.

Within a month Mr. Sorani took a job at a restaurant in Nashville washing dishes and mopping the floors. Handling the big pots and pans caused the pain in his hands to return and become even more pronounced. The pain became so severe that he left that job and started working at a cleaning establishment in Nashville.

While Mr. Sorani was employed at the Nashville restaurant, he was evaluated by another orthopaedic specialist on January 19, 1995. The doctor noted

some further triggering of the right ring finger and, based on an examination and Mr. Sorani's history, gave an opinion that he retained a 10% permanent disability to the left upper extremity and 12% to the right. He related both injuries to Mr. Sorani's employment at Kenco.

II.

The employer in this case asserts that all of the employee's disability, or at least any permanent disability to the left arm, is attributable to the work at the Nashville restaurant under the "last injurious injury rule." In the case of *McCormick v. Snappy Car Rentals, Inc.*, 806 S.W.2d 527 (Tenn. 1991), the court restated the rule:

> "The rule then in Tennessee is that an employer takes an employee as he finds him. He is liable for disability resulting from injuries sustained by an employee arising out of and in the course of his employment even though it aggravates a previous condition with resulting disability far greater than otherwise would have been the case.
>
> This rule seems to be almost identical with the Massachusetts-Michigan rule . . . . (footnote omitted) It is the rule in Tennessee that there must be a causal connection between the employment and the resulting injury or that the most recent injury causally related to the employment renders the employer at that time liable for full compensation for all of the resulting disability even though increased by aggravation of a previous condition of disease or injury of such employee."

806 S.W.2d at 529. See also *Bennett v. Howard Johnson Motor Lodge*, 714 S.W.2d 273 (Tenn. 1986); *Baxter v. Smith*, 211 Tenn. 347, 364 S.W.2d 936 (1962).

The rule, however, has some limitations. In *McCormick* the Supreme Court said, "To avoid the result reached in this and other similar cases, separate worker's compensation suits must be filed for each injury in order to avoid the 'last

injurious injury rule.'" 806 S.W.2d at 531. Thus, the rule applies only where an employee has been injured in two separate employments and sues to recover his or her benefits in a single action. The second limitation on the applicability of the rule is a requirement that the employee must have been injured by an accident while in the service of the second employer. "For the last injurious injury rule to have any application there must be qualitative evidence of a second injury." *Johnson v. Levi Strauss*, slip op. At 4, No. 03S01-9104-CV-00031 (Tenn. Knoxville, February 21, 1992). Where the employment simply aggravates a prior disabling injury by making the pain worse, the employee has not sustained an "injury by accident" as defined in the workers' compensation laws. *Smith v. Smith's Transfer Corp.*, 735 S.W.2d 221 (Tenn. 1987); *Boling v. Raytheon Co.*, 223 Tenn. 528, 448 S.W.2d 405 (1969).

There is no evidence in this record that Mr. Sorani suffered an injury at the Nashville restaurant. All we can say is that the proof showed the work he performed there made his pain worse. Therefore, we hold that Kenco cannot escape liability for the injury Mr. Sorani suffered while he worked there.

III.

We are convinced that Mr. Sorani did suffer a permanent injury to both hands/arms while he worked at Kenco. His treating physician gave him a 10% disability rating to the right arm, but because Mr. Sorani was not complaining about his left hand after several weeks of rest, the doctor did not give him a rating on it. The doctor did say, however, that if Mr. Sorani went back to doing work that required repetitive gripping, he would "get into further problems" with his left hand.

The doctor who evaluated Mr. Sorani in order to testify at the trial estimated that he would retain a 10% disability in the left arm and a 12% disability in the right. He related the injuries to both arms to Mr. Sorani's work at Kenco.

The trial judge's findings with respect to Mr. Sorani's permanent disability are presumed to be correct unless the preponderance of the evidence is otherwise. See Rule 13(d), Tenn. R. App. Proc.; Tenn. Code Ann. § 50-6-225(e)(2). Considering all the factors set out in *Orman v. Williams Sonoma, Inc.*, 803 S.W.2d 672 (Tenn. 1991), we think the evidence does preponderate against the finding that Mr. Sorani's occupational disability amounts to 50% to each upper extremity. Instead, we think a finding of 25% to each arm is more in line with the proof. Specifically, we note that Mr. Sorani has the equivalent of a high school education, he has worked at several jobs since he reached maximum improvement, and Kenco provided him a job which he could successfully do when he went back to work.

The judgment of the trial court should be modified in accordance with this opinion. Tax the costs on appeal one-half to the appellant and one-half to the appellee.

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BEN H. CANTRELL, SPECIAL JUDGE

CONCUR:

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ADOLPHO A. BIRCH, JR.
ASSOCIATE JUSTICE

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JOE C. LOSER, JR., SPECIAL JUDGE