

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

**FILED**  
  
October 10, 1996  
  
Cecil W. Crowson  
Appellate Court Clerk

ST. PAUL FIRE & MARINE )  
INSURANCE COMPANY and )  
LINEAL GROUP, INC., )  
 )  
Plaintiffs/Appellants, )  
 )  
v. )  
 )  
CECIL CARRICK, )  
 )  
Defendant/Appellee. )

RUTHERFORD CIRCUIT  
NO. 01S01-9509-CV-00146  
(No. Below 31413)  
  
Hon. Robert E. Corlew  
Judge

**For the Appellant:**

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**For the Appellee:**

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**MEMORANDUM OPINION**

**Members of Panel:**

Justice Frank F. Drowota, III  
Senior Judge John K. Byers  
Special Judge Robert L. Childers

**AFFIRMED.**

**CHILDERS, Special Judge**

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 court awarded Defendant/Counter-Plaintiff 85% permanent partial disability to the left lower extremity. Plaintiff/Counter-Defendant below appeals, arguing that the trial court erred in finding that the employee's testimony was credible; that the employee failed to prove that he sustained a permanent injury which arose out of and in the course of his employment; that the employee failed to give proper notice of his injury; that the evidence does not support an award of 85% to the lower extremity; and that the medical treatment awarded by the trial court was unauthorized and should not have been allowed.

We affirm the judgment of the trial court.

Defendant/Counter-Plaintiff worked at Samsonite for 30 years. Defendant/Counter-Plaintiff's other work experience includes growing tobacco and peppers, raising cattle, and performing various odd jobs. Defendant/Counter-Plaintiff has a high school education and some training in electronics.

Defendant/Counter-Plaintiff's duties at Samsonite included counting and transferring chairs from one line to another. This involved shifting his weight from one leg to the other. It also involved spending long periods of time on his feet while working on a concrete floor.

Because Defendant/Counter-Plaintiff suffered several strokes since the time of the injury and was unable to remember many of the specific facts surrounding his injury so as to be unavailable, the trial court relied on Defendant/Counter-Plaintiff's deposition testimony. Defendant/Counter-Plaintiff was 55 years old on the date that he gave his deposition testimony.

Defendant/Counter-Plaintiff testified that he suffered from pain in his left knee. For four or five months prior to the injury complained of, Defendant/Counter-Plaintiff's leg would swell from hip down to ankle.

Defendant/Counter-Plaintiff told his foreman about the problems with his legs

and that he thought the problems were work-related. Defendant/Counter-Plaintiff had previously requested that mats be put down on the concrete floor in his work area to relieve some of the stress to his legs. Defendant/Counter-Plaintiff testified that the swelling did not bother him as much when he was not working on the concrete floor.

Defendant/Counter-Plaintiff testified that on April 27, 1992, his supervisor asked him to work overtime. Defendant/Counter-Plaintiff told his supervisor that he would be willing to work if his leg held out. Around 3:00 p.m., Defendant/Counter-Plaintiff heard a pop and felt his knee lock up. He did not work the overtime. Defendant/Counter-Plaintiff told his group leader that he would need someone to replace him on the line because his leg was locked up, he could not stand on it, and he needed to go see a doctor

Defendant/Counter-Plaintiff went to the office of the plant nurse, but she was not in her office. Plaintiff then went to see Dr. Reuhland. Dr. Reuhland subsequently referred Defendant/Counter-Plaintiff to Dr. Haynes who saw Defendant/Counter-Plaintiff a couple of days later.

Dr. Haynes testified by deposition that Defendant/Counter-Plaintiff told him that he had been having some pain, and while at work, twisted and felt something in his knee pop. Dr. Haynes opined that Defendant/Counter-Plaintiff's condition is the type that takes months or years to develop. Dr. Haynes testified that, based upon Defendant/Counter-Plaintiff's description of his work, Dr. Haynes strongly suspected that Defendant/Counter-Plaintiff's injury was work-related.

Dr. Haynes further testified that a document sent to the plant nurse indicating that Defendant/Counter-Plaintiff's injury was not work-related was a clerical error on the part of his staff. Dr. Haynes testified that he asked Defendant/Counter-Plaintiff why the claim was not filed under worker's compensation.

Defendant/Counter-Plaintiff and his wife each testified that Defendant/Counter-Plaintiff called his supervisor at home after being examined by Dr. Reuhland. At trial, the supervisor did not recall having such a conversation with Defendant/Counter-Plaintiff.

The plant nurse reported Defendant/Counter-Plaintiff's injury as sick leave and automatically put Defendant/Counter-Plaintiff on sick leave pay which lasted 26

weeks. The plant nurse testified that she did not specifically ask Defendant/Counter-Plaintiff whether his injury occurred at work. The plant nurse also admitted that she had signed Defendant/Counter-Plaintiff's name, with Defendant/Counter-Plaintiff's permission, to insurance documents.

Our review is de novo on the record accompanied by the presumption that the findings of fact of the trial court are correct unless the evidence preponderates otherwise. TENN. CODE ANN. § 50-6-225(e)(2). The plaintiff must prove every element of his case by a preponderance of the evidence. *White v. Werthan Industries*, 824 S.W.2d 158, 159 (Tenn. 1992).

We find that there was no error in the trial court's assessment of Defendant/Counter-Plaintiff's credibility. Although Defendant/Counter-Plaintiff's testimony was given by deposition and Defendant/Counter-Plaintiff could not remember many details on the date of trial, the trial judge had the opportunity both to consider Defendant/Counter-Plaintiff's deposition and to observe the other witnesses who testified in the trial, none of whom were willing to question Defendant/Counter-Plaintiff's veracity. We also find that there was no error in the trial court's finding that Defendant/Counter-Plaintiff proved that he sustained a permanent injury that arose out of and in the course of his employment and that Defendant/Counter-Plaintiff gave proper notice of his injury. The trial court found that the Defendant/Counter-Plaintiff walked with apparent and great pain from the work site to his car at the end of the work day. The trial court also found that because Defendant/Counter-Plaintiff was not so impaired at the beginning of the day, this was sufficient notice of an injury arising out of and in the course of employment. Under these facts, we agree.

The trial judge concluded that the impairment rating given by Dr. Haynes, coupled with the lay testimony that the injury was substantially disabling to Defendant/Counter-Plaintiff, entitled Defendant/Counter-Plaintiff to an award of 85% permanent partial disability to the lower left extremity. We find that the evidence does not preponderate against the trial judge's finding that Defendant/Counter-Plaintiff suffered an 85% permanent partial disability to the lower left extremity. Therefore, we affirm the judgment at the costs of the Appellant.

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Robert L. Childers, Special Judge

CONCUR:

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Frank F. Drowota, III, Justice

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John K. Byers, Senior Judge