

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT KNOXVILLE
(December 3, 1996 Session)

FILED
March 4, 1997
Cecil Crowson, Jr.
Appellate Court Clerk

WILBUR E. CAGLE,)	KNOX CIRCUIT
)	
Plaintiff-Appellee,)	Hon. Dale Workman,
)	Judge.
v.)	
)	No. 03S01-9605-CV-00057
MIKE UNDERWOOD BUILDERS,)	
INC. and MIKE UNDERWOOD,)	
)	
Defendant-Appellant.)	

For Appellant:

Wade M. Boswell
William T. Magill
O'Connor, Petty, Child & Boswell
Knoxville, Tennessee

For Appellee:

James R. Lafavor
Knoxville, Tennessee

MEMORANDUM OPINION

Mailed: January 27, 1997

Members of Panel:

E. Riley Anderson, Associate Justice, Supreme Court
Roger E. Thayer, Special Judge
Joe C. Loser, Jr., Special Judge

AFFIRMED

Loser, Judge

MEMORANDUM 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. section 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. In this appeal, the employer, Underwood, contends the evidence preponderates against the trial court's findings that (1) the employee's injury was one arising out of and in the course of employment, (2) the employer had actual notice of the injury, and (3) the employee retains a forty percent permanent partial disability to the right leg from a torn meniscus. The panel has concluded the judgment should be affirmed.

The employee or claimant, Cagle, is forty-eight years old and has a ninth grade education. He has worked primarily in construction and as a machine operator in a factory. His duties with Underwood include performing repairs on new houses during the first year after they are sold, but not home maintenance. His normal working hours are from 8:30 a.m. until 4:30 p.m., but he often works later. He is paid a salary rather than wages.

On September 29, 1993, Underwood left the work site at 4:00 p.m., instructing the claimant to "lock up" when he left. The claimant went to one of the houses to check mortar joints and, as he was about to leave, Suzanne Chandler, who had purchased one of the employer's houses in April of the same year, asked to borrow some WD-40. Although it was after normal hours, the claimant offered to spray Ms. Chandler's squeaky door. While doing so, Cagle slipped and fell, injuring his knee. He had to call his wife to come and drive him home.

Two months earlier, the claimant had slipped and slightly injured his knee while performing a repair at the Chandler home, but the injury was so slight that he did not lose time or require medical attention. He did not report that occurrence. The record is clear that the employer had actual knowledge of the accident which is the basis of this workers' compensation claim.

The treating physician, an orthopedic surgeon, diagnosed a complex bucket handle tear of the lateral meniscus and probable exacerbation of pre-existing arthritic disease, caused by the occurrence of September 29th.

He assigned a permanent impairment rating of twenty percent to the injured knee, using appropriate guidelines. Almost all of the damaged meniscus was surgically removed. The claimant returned to work without restrictions on November 29th wearing a brace, but continues to have pain and swelling.

The trial court awarded, among other things, permanent partial disability benefits based on forty percent to the leg. Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings of the trial court, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. section 50-6-225(e)(2).

An accidental injury arises out of one's employment when there is apparent to the rational mind, upon a consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury, and occurs in the course of one's employment if it occurs while an employee is performing a duty he was employed to do. Fink v. Caudle, 856 S.W.2d 952 (Tenn. 1993). The trial judge rejected the employer's argument that this injury was not covered because it occurred after normal working hours and because the oiling of a squeaking door is maintenance not repair, and resolved the issue in favor of the employee. The evidence fails to preponderate against the finding of the trial judge.

Where the employer denies that a claimant has given the written notice required by Tenn. Code Ann. section 50-6-201, the claimant has the burden of showing that the employer had actual notice, or that the employee has either complied with the requirement or has a reasonable excuse for his failure to do so, for notice is an essential element of his claim. Masters v. Industrial Garments Mfg. Co., 595 S.W.2d 811 (Tenn. 1980). We are aware of no rule which requires a worker to give notice of an accident not causing disability or requiring medical attention as a condition precedent to the assertion of a claim for benefits for a later injury. Moreover, the evidence fails to preponderate against the trial judge's finding that the employer had actual knowledge of the September 29th injury.

Once the causation and permanency of an injury have been

established by expert medical testimony, the trial judge may consider many pertinent factors, including age, job skills, education, training, duration of disability and job opportunities for the disabled, in addition to anatomical impairment, for the purpose of evaluating the extent of a claimant's permanent disability. Tenn. Code Ann. section 50-6-241(a)(2). From our independent examination of the record, we find the evidence fails to preponderate against the trial judge's finding with respect to permanent disability.

The judgment of the trial court is accordingly affirmed and the cause remanded to the trial court for such further proceedings, if any, as may be appropriate. Costs on appeal are taxed to the defendant-appellant.

Joe C. Loser, Jr., Judge

CONCUR:

E. Riley Anderson, Associate Justice

Roger E. Thayer, Judge

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AT KNOXVILLE

WILBUR E. CAGLE,)	KNOX CIRCUIT
)	NO.1-397-94
Plaintiff/Appellee,)	
)	
vs.)	Hon. Dale Workman
)	Circuit
)	
)	03S01-9605-CV-00057
MIKE UNDERWOODBUILDER,)	
INC. AND MIKE UNDERWOOD,)	
)	
Defendant/Appellant.)	

JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Worker' Compensation 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 act 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 defendent/appellant and surety, for which execution may issue if necessary.

03/04/97

