

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

FILED
June 24, 1997
Cecil W. Crowson
Appellate Court Clerk

CALSONIC YOROZU CORPORATION and)
YASUDA FIRE AND MARINE INSURANCE)
COMPANY OF AMERICA,) WARREN CHANCERY
Plaintiffs/Appellees)
)
) HON. J. RICHARD MCGREGOR
v.) Special Judge
)
SULAY LAMIN,) No. 01S01-9608-CH-00163
Defendant/Appellant) (No. 5903 below)
)
_____)

FOR THE APPELLANT:

MICHELLE M. BENJAMIN
P.O. Box 177
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FOR THE APPELLEES:

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MEMORANDUM OPINION

MEMBERS OF PANEL:

FRANK F. DROWOTA, III, ASSOCIATE JUSTICE, SUPREME COURT
WILLIAM H. INMAN, SENIOR JUDGE
WILLIAM S. RUSSELL, RETIRED JUDGE

AFFIRMED

RUSSELL, SP. J.

This appeal from the judgment of the trial court in a workers' compensation case 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 hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

THE CASE

Sulay B. Lamin was an assembly line worker for Calsonic Yorozu Corporation. He underwent surgery for a herniated lumbar disc and claimed that the condition was a compensable injury. Two issues of fact were dispositive: (1) was the disc herniated in the course and scope of Mr. Lamin's employment; and (2) if so, was the statutory notice requirement complied with or waived.

The trial judge found both issues against the employee and dismissed the case.

The employee contends on appeal that the trial court erred in holding that a compensable injury was not proved; erred in holding that timely notice to the employer was not given; and erred in holding that the failure to timely give notice was prejudicial.

It is our duty to review these findings of fact by the trial judge de novo upon the record, accompanied by a presumption of the

correctness of the findings; and to affirm the findings of the trial court, unless the preponderance of the evidence is otherwise. Tennessee Code Annotated Section 50-6-225 (e) (2); Lollar v. Wal-Mart Stores, Inc., 767 S.W. 2d 143, 149 (Tenn. 1989); Whiteside v. Morrison, Inc., 799 S.W. 2d 213 (Tenn. 1990); Simpson v. H.D. Lee Co., 793 S.W. 2d 929 (Tenn. 1990).

The employee claimed to have experienced back pain at work in June and on July 30, 1994. On September 26, 1994, he was diagnosed as having a ruptured disc in his low back by Dr. Warren F. McPherson, M.D. a neurosurgeon. The employee told the doctor that "he was trying to work out whether this is a workers' compensation case or not, and would call us when he wanted anything to be done." Dr. McPherson recorded that "Mr. Lamin gave me no specific history of an incident that started his pain. He thinks that it may be related to his lifting and that may be true or it may be related to other factors equally". Dr. McPherson did a lumbar laminectomy on January 27, 1995.

There was credible evidence that the employee had suffered an injury to his lower back in a motor vehicle accident in 1990, for which he was treated for five months.

Mr. Lamin was treated by Dr. K. P. Kumar, M.D., on August 29, 1994. He made no reference to his employment in giving the history of his complaints to Doctor Kumar.

While on vacation in Lima, Ohio, on September 9, 1994, he sought treatment for pain in his left hip. He gave a history of "no known injury". He stated that his hip pain was aggravated by

his activities of softball, soccer and sometimes with sexual activity. He subsequently again went to Dr. Kumar and gave no history of injury at work or onset of symptoms at work.

Mr. Lamin claims that he reported low back pain to the company nurse. However, her report is a record of shoulder and neck pain from working above shoulder level, with no reference to low back pain.

The employee gave a formal injury report on September 29, 1994, (three days after Dr. McPherson diagnosed the ruptured disc) and claimed that he hurt his back on July 30, 1994.

Mr. Lamin's efforts to show actual knowledge of an on-the-job low back injury by company supervisory and/or medical personnel were unconvincing and substantially denied.

There simply is no evidence of an event in the course and scope of Mr. Lamin's employment that can be pointed to as the time and place of this low back injury. He suffered some neck and shoulder pain in June, 1994, from repetitive high lifting; but was taken off that job and immediately got over the soreness. That prompt recovery negates the idea that the disc was ruptured then.

Since an incident marking the time of the rupture of the disc cannot be identified, the notice issue becomes a non-issue. There is no identifiable time frame for giving notice of an injury which cannot be shown to have occurred on the job.

Mr. Lamin simply did not have convincing evidence that his

back injury was job related. It was his burden to prove that it was, and he failed to carry this burden.

The judgment of the trial court is affirmed. Costs on appeal are assessed to the appellant.

WILLIAM S. RUSSELL, SPECIAL JUDGE

CONCUR:

FRANK F. DROWOTA, III,
ASSOCIATE JUSTICE

WILLIAM H. INMAN, SENIOR JUDGE

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INSURANCE COMPANY OF	}	WARREN CHANCERY
AMERICA,	}	No. 5903 Below
	}	
Plaintiffs/Appellees	}	
	}	Hon. J. Richard McGregor,
vs.	}	Special Judge
	}	
SULAY LAMIN,	}	No. 01S01-9608-CH-00163
	}	
Defendant/Appellant	}	AFFIRMED.

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 will be paid by Sulay Lamin and Surety, for which execution may issue if necessary.

IT IS SO ORDERED on June 24, 1997.

PER CURIAM