IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE APRIL 1997 SESSION

FILED

June 24, 1997

Cecil W. Crowson
Appellate Court Clerk

EMPIRE BEROL, U. S. A.,	)	BEDFORD CHANCERY
	)	
Plaintiff/Appellant	)	NO. 01S01-9610-CH-00205
	)	
v.	)	HON. TYRUS H. COBB
	)	CHANCELLOR
NANCY LEE ESTES,	)	
	)	
Defendant/Appellee	)	

For the Appellant:

Fred B. Hunt, Jr.
202 First National Bank Building
P. O. Box 169
Shelbyville, TN 37160-0169

For the Appellee:

Jerry W. Carnes
Jennifer A. Lawrence
424 Church Street
SunTrust Center, 14th Floor
Nashville, TN 37219-2392

M E M O R A N D U M O P I N I O N

Members of Panel:

Justice Lyle Reid
Senior Judge William H. Inman
Special Judge William S. Russell

AFFIRMED **INMAN, Senior 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 posture of this case is somewhat unusual. The plaintiff is Empire Berol U.S.A., the employer of the defendant Nancy Lee Estes. It sought a declaratory judgment on March 11, 1993 of the respective rights of the parties under the workers' compensation law, alleging that Estes was asserting a job-related accident resulting in physical injury. Estes filed her answer, admitting that she was injured, but that her condition was one that progressively occurred and was not diagnosed as carpal tunnel syndrome until December 28, 1992. About four months later, Estes filed another answer, coupled with a counter-claim, through different counsel, in which she alleged that she sustained an injury by accident on or about November 17, 1992 during the course of her employment by the plaintiff.

All this was followed by the filing of another complaint, by the plaintiff, on May 20, 1994, against Estes and Golden Corral, alleging as a result of discovery, that the injury to Estes arose out of her employment at the Golden Corral, which was designated as a third-party defendant.

Golden Corral filed a motion to dismiss, alleging, in effect, procedural errors. The plaintiff thereupon amended its complaint, alleging that Golden Corral was a necessary party under RULE 19, but the procedural problem was unaddressed. Before the motion to dismiss was heard, the parties agreed that it was well-taken, and Estes averred her intention to file a complaint against Golden Corral, which soon followed, in which she alleged that a "gradual injury did occur and that [she] was employed by Golden Corral during a time frame in which the injury may have begun" and that she "sustained an injury by accident arising out of and in the course of her employment while performing work at the place of business of Golden Corral in Shelbyville, Tennessee."

Golden Corral denied that Estes was injured as alleged, but if so, her suit was time-barred under TENN. CODE ANN. § 50-6-201.

Upon the trial of the case, the central issue was causation, since Ms. Estes' carpal tunnel syndrome was evident and not disputed. She testified that she began

work at Golden Corral as a "meat cutter, salad bar" on October 17, 1992 [having worked there earlier from September 1989 to May 1990], but that the pain and numbness in her hands which had been intermittent over the years became severe and continuous in June 1992 while she was employed by Empire Berol U.S.A. She was employed there from July 1990 until January 1993. As the dates reflect, her job at the Golden Corral was part-time and overlapping with her employment at Empire Berol U.S.A.

The Chancellor found that Ms. Estes had abandoned her suit against Golden Corral, and that her carpal tunnel syndrome was caused by her employment at Empire Berol U.S.A. He awarded temporary total benefits from January 3, 1993 to June 29, 1993, and benefits for 35 percent permanent partial disability to both arms. The sole issue is whether the finding that Ms. Estes' carpal tunnel surgery arose out of her employment by Empire Berol is supported by a preponderance of the evidence.

Our review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise. TENN. CODE ANN. § 50-6-225(e)(2). *Stone v. City of McMinnville,* 896 S.W.2d 584 (Tenn. 1991).

The appellant argues that the issue of causation was based solely on the report of Dr. James Lanter who stated "if the majority of her work was performed at Empire during the past several years prior to the onset of symptoms, then I would have to assume this would be a major contributing factor to her problems," which is criticized as a conclusion based upon an erroneous assumption and thus is insufficient for the purpose.

Dr. George Lien, a neurosurgeon, testified that he saw Ms. Estes on referral in December 1992. He diagnosed her complaint of bilateral hand numbness and weakness as carpal tunnel syndrome, which is "a cumulative result so it could have been ongoing for several months." He was equivocal in attributing her condition to either employer.

Dr. Lanter's report, which contains the quote previously referenced, also states that " . . . this is probably related to her work, both at Empire and at other locations."

Ms. Estes testified that she worked a 12-hour shift at Empire Berol, lifting 170,000 pencils per day, and that she began developing numbness in her hands in June 1992, which she thereafter reported to her supervisor. Her work at the Golden Corral began in October 1992, part-time, and four weeks later she consulted her family physician about the pain in her hands. Given these circumstances it is quite unlikely that her employment at the Golden Corral had little effect on the causative factors, but, even so, the opinion of Dr. Lanter is warrantable evidence of causation while employed at Empire Berol U.S.A. If the medical proof is equivocal, supportive lay testimony will support a finding of causation. *Smith v. Empire Pencil Co.,* 781 S.W.2d 833 (Tenn. 1989), and there is sufficient lay testimony, logical in effect, that Ms. Estes' condition developed during the course of her employment by Empire Berol. We cannot find that this evidence preponderates against the judgment and it is affirmed at the costs of the appellant.

_____
William H. Inman, Senior Judge

CONCUR:

_____
Lyle Reid, Justice

_____
William S. Russell, Special Judge

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

EMPIRE BEROL, U. S. A.,	}	BEDFORD CHANCERY
	}	No. 18,449 Below
Plaintiff/Appellant	}	
	}	Hon. Tyrus H. Cobb,
vs.	}	Chancellor
	}	
NANCY LEE ESTES,	}	No. 01S01-9610-CH-00205
	}	
Defendant/Appellee	}	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 Plaintiff/Appellant and Surety, for which execution may issue if necessary.

IT IS SO ORDERED on June 24, 1997.

PER CURIAM