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

RONALD WADE ALLEN,	)	SUMNER CHANCERY
	)	
Plaintiff/Appellant,	)	No. 01S01-9504-CH-00062
	)	
vs.	)	Honorable Tom E. Gray, Chancellor.
	)	
BOSCH/GENERAL ELECTRIC, d/b/a B.G.A.M., INC.,	)	
	)	
Defendant/Appellee.	)	

FILED

August 19, 1997

Cecil W. Crowson
Appellate Court Clerk

For the Appellant:	For the Appellee:
Michael W. Edwards	Judith E. Beasley
Hendersonville, TN	Nashville, TN

MEMORANDUM OPINION

AFFIRMED

MADDUX, SPECIAL JUDGE

This workers' compensation appeal from the Sumner County Chancery Court has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. §50-6-225(e) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The dispositive issue before us is whether the chancellor erred in dismissing plaintiff's suit for benefits due to plaintiff's failure to provide timely notice of his injury to the employer as required by Tenn. Code Ann. §50-6-201. For the reasons set forth below, we affirm the judgment of the trial court.

The plaintiff, Ronald Wade Allen, began working for the defendant, Bosch/General Electric, d/b/a B.G.A.M., Inc., on November 8, 1990. Plaintiff claims that on December 20, 1990, he was lifting a tray of motors with two other employees, Clara Branham and Marilyn Rogan, when he felt a sharp pain and burning sensation in his back. According to plaintiff, he put the motors down and told Branham and Rogan that he had hurt his back. He then left the employer's place of business and went home without telling the employer's nurse or the plaintiff's supervisors about the injury.

Plaintiff testified that on the following day, December 21, 1990, he told his supervisors, Donald Felts and Cornise Gillespie, about the incident lifting the motors the day before. Gillespie purportedly told plaintiff that he needed to see Jill Richardson, the company nurse. According to plaintiff, he saw Richardson who gave him ice packs for his back.

Rogan, one of the employees working with plaintiff at the time he claims

to have injured his back, testified that she did not notify plaintiff's supervisors of his back injury, and that she told plaintiff he needed to report the injury to the company nurse. Branham, the other co-worker who was with plaintiff, testified somewhat inconsistently. She first testified that she notified Gillespie about plaintiff's injury on the same day that it occurred. She later testified that the conversation with Gillespie took place in May, 1991, about the same time that she gave a statement to the company nurse. This would have been approximately five months after the accident. Branham indicated she told plaintiff he would have to tell the nurse himself and that she could not report the injury to a supervisor for him.

Plaintiff's supervisors, Felts and Gillespie, testified by deposition. Neither of these individuals were employed by the defendant when they were deposed. Both Felts and Gillespie testified that plaintiff did not notify them that he had suffered a work-related injury. They said they did not learn of the injury until several months after it occurred. Felts testified he did not learn of plaintiff's injury until he was asked about it by the company nurse in May, 1991. In this regard he testified as follows:

> Q. Do you know when it was that [nurse] Jill Richardson asked you about Mr. Allen's claim that his injury was work-related?
>
> A. Sometime in the first quarter or right after the first quarter of 1991 she called and asked me. And then I told her that I was not aware of a work-related injury. And at that point in time I gave Jill a statement and I signed it.
>
> Q. And do you know when that was that you gave her a statement?
>
> A. Well, I know now because I looked at the statement.

> And that statement was dated on like, I think, 5-21 of '91.

Felts further testified that had he known about plaintiff's injury, he would have documented it:

> Q. Mr. Felts, if Mr. Allen had reported to you that he suffered an injury on the job, would you have filled out a report to that effect?
>
> A. I--I--I think I would have. I sure do. That was the standard operating procedure when an employee came to you and reported an injury. You would fill out an accident report, and you would encourage him or tell him to immediately go -- or go to the medical center and get a record of it also at the medical center.
>
> Q. Is there any reason why you would not have filled out an incident report if an employee reported to you that they had suffered an injury on the job?
>
> A. No, there is no reason that I wouldn't. Because that was part of our job, to make sure that we kept the well-being of the employees first.

Gillespie, plaintiff's other supervisor, testified similarly to Felts. Gillespie denied that plaintiff had ever informed him that he had injured himself on the job. Gillespie also did not become aware that plaintiff regarded his back injury as work-related until May, 1991, when he was asked about it by the company nurse. He also stated that Branham and Rogan told him that nothing had happened to plaintiff.

Larry Freeland, a union official where plaintiff worked, testified that plaintiff came to him sometime in February, 1991, complaining that he had a problem with his back. Plaintiff told Freeland that he had not reported the injury to the company nurse because he was on probation and was afraid of not being hired as a permanent employee.

Jill Richardson, the company nurse, testified that plaintiff came to see her in January, 1991, complaining of back pain. She gave him an ice pack and Ibuprofen. She specifically asked plaintiff how he had injured his back. Plaintiff said he had a problem with his back prior to his employment with the defendant and was seeing a physician for the problem. Richardson first became aware that plaintiff was claiming that his injury was work-related when plaintiff's chiropractor called her in March or April and wanted to know why his medical bills had not been paid. She then launched an investigation. She called Felts to ask whether plaintiff had informed him of the purported injury on December 20, 1990. Felt's response was "no." The first time that plaintiff told Richardson that his injury was work-related was in May, 1991.

After hearing all the evidence and testimony, the chancellor found that plaintiff failed to provide timely notice of his injury to the employer as required by Tenn. Code Ann. §50-6-201. The chancellor dismissed the suit. Our review of the chancellor's decision is de novo on the record, accompanied by a presumption that the chancellor's finding is correct unless the evidence preponderates otherwise. Tenn. Code Ann. §50-6-225(e)(2).

The controlling statute, Tenn. Code Ann. §50-6-201, provides in pertinent part:

> Every injured employee or such injured employee's representative shall, immediately upon the occurrence of an injury, or as soon thereafter as is reasonable and practicable, give or cause to be given to the employer who has not actual notice, written notice of the injury...and no compensation shall be payable under the provisions of this

> chapter unless such written notice is given to the employer within thirty (30) days after the occurrence of the accident, unless reasonable excuse for failure to give such notice is made to the satisfaction of the tribunal to which the claim for compensation may be presented...

In order to satisfy Tenn. Code Ann. §50-6-201, the notice must reasonably convey to the employer that the employee has suffered an injury arising out of and in the course of the employment. Masters v. Industrial Garments Mfg., 595 S.W.2d 811, 816 (Tenn. 1980). The notice requirement exists so that the employer will have the opportunity to make a timely investigation of the facts while still readily accessible, and to enable the employer to provide timely and proper treatment for the injured employee. Pucket v. N.A.P. Consumer Electronic Corp., 725 S.W.2d 674, 675 (Tenn. 1987). In the absence of actual knowledge of the injury by the employer, waiver of the notice by the employer, or reasonable excuse by the employee for not giving notice, the statutory notice to the employer is an absolute prerequisite to the right of the employee to recover benefits. Aetna Cas. & Sur. Co. v. Long, 569 S.W.2d 444, 449 (Tenn. 1978). The plaintiff has the burden of proving that the required notice was given or excused. Id. at 448.

In this case, the trial court recognized that there was disputed testimony regarding whether a supervisor was informed of plaintiff's injury within the 30 days required by Tenn. Code Ann. §50-6-201. The chancellor stated from the bench that it was the court's duty to judge the credibility of all the witnesses. He specifically found credible the testimony of Richardson, Felts and Gillespie. "Where the trial judge has seen and heard witnesses, especially where issues of credibility and weight or oral testimony are involved, on review considerable deference must be accorded

to those circumstances." Landers v. Fireman's Fund Ins. Co., 775 S.W.2d 355, 356 (Tenn. 1989). The chancellor saw, heard and ultimately rejected plaintiff's testimony that he told his supervisors, Felts and Gillespie, about the injury the day after it occurred. The chancellor chose instead to believe the testimony of Richardson, Felts and Gillespie. Both Felts and Gillespie testified that they knew nothing of the injury until May, 1991. Richardson testified that she was not told by plaintiff about the injury until May, 1991. She also testified that plaintiff denied having hurt his back at work prior to that time. Richardson had asked plaintiff in January, 1991, if his injury was work-related, and he told her that it was not.[1]

Having carefully reviewed the record, mindful of the fact that issues of credibility in weight or oral testimony are involved, we are satisfied that the evidence does not preponderate against the trial court's dismissal of the case for failure to satisfy the notice requirement of Tenn. Code Ann. §50-6-201. Plaintiff had notice that he had injured himself at work on December 20, 1990, while lifting the tray of motors. The employer did not have actual notice of the injury, and plaintiff did not give the employer notice until May, 1991, some five months after the fact. Even then he gave the notice after having denied that the injury occurred at work. We thus conclude, as the chancellor did, that plaintiff did not give notice of his injury to the employer within the 30 days required by Tenn. Code Ann. §50-6-201. Also, plaintiff has failed to show any reasonable excuse for his failure to give notice within the prescribed time.

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[1]It is also noteworthy that plaintiff indicated on his application of employment that he did not have any "back pain or trouble." He had, however, consistently seen a chiropractor for back pain for several years prior to the injury for which he now seeks benefits.

We also are not persuaded by plaintiff's claim that defendant should be estopped from denying the plaintiff suffered a work-related injury based upon an award of unemployment benefits by the Tennessee Department of Employment Security. Those proceedings did not involve the issue of notice or whether the employee sustained a compensable work-related injury within the meaning of the workers' compensation law. This issue is without merit.

The judgment of the trial court is affirmed. Costs are taxed to plaintiff-appellant.

_____
John Maddux, Special Judge

Concur:

_____
Frank F. Drowota, III, Justice

_____
John K. Byers, Senior Judge

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AT NASHVILLE

RONALD WADE ALLEN,	*}*	*SUMNER CHANCERY*
	}	*No. 91CII-95 Below*
Plaintiff/Appellant	*}*	
	}	*Hon. Tom E. Gray,*
vs.	*}*	*Chancellor*
	}	
BOSCH/GENERAL ELECTRIC	*}*	*No. 01S01-9504-CH-00062*
d/b/a B.G.A.M., INC.,	*}*	
	}	
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 Ronald Wade Allen, Principal, and his Surety, for which execution may issue if necessary.

IT IS SO ORDERED on August 19, 1997.

PER CURIAM