IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
(May 23, 1997 Session)

FILED

August 18, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

SARAH ARCHIE,	)	
	)	LAUDERDALE CHANCERY
Plaintiff/Appellee,	)	
	)	HON. JOHN HILL CHISOLM,
VS.	)	CHANCELLOR
	)	NO. 02S01-9701-CH-00006
S & R OF TENNESSEE, a/k/a SIEGEL	)	
ROBERT OF TENNESSEE and ITT	)	
HARTFORD INSURANCE COMPANY,	)	
	)	
Defendants/Appellant.	)	

FOR APPELLANT:

William B. Walk, Jr.
The Hardison Law Firm
Memphis, Tennessee

FOR APPELLEE:

Lisa June Cox
Jackson, Tennessee

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

Mailed June ____, 1997

Members of Panel:

Janice M. Holder, Associate Justice, Supreme Court
Robert A. Lanier, Circuit Judge
Don R. Ash, Circuit Judge

AFFIRMED

Lanier, Judge

MEMORANDUM OPINION

This workers' compensation appeal 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 of findings of fact and conclusions of law.

As stated by counsel for the appellant in oral argument, this appeal raises only one issue: Whether the evidence preponderates against the trial court's award of thirty percent (30%) permanent partial disability to the left arm and fifteen percent (15%) permanent partial disability to the right arm.

Plaintiff is a 46 year old woman who worked for the employer for 19 years. At the time of her injury, which is not disputed, her duties were to remove five to seven pound parts from one line, inspect them and place them on another line. She began experiencing pain in her hands and was referred by the employer to Dr. D. J. Canale, who diagnosed her condition as compatible with carpal tunnel syndrome. On July 27, 1993, he operated on her left hand, which was causing her the most problem. He allowed her to return to work on September 13, 1993. He felt that she had done well and had no permanent physical impairment. She still complained of pain on November 4, 1993. He noted that she used a drill or press at work which she had to grab with both hands and had to lift stock off of an assembly line, although she did not have to do repetitive acts with the left hand. He felt that it was possible that she had some mild arthritis. He last saw her on December 8, 1993, at which time she was apparently not without symptoms and he felt that she was developing some sort of arthritic symptoms or tendonitis. He felt that her conditions were "related to her job." He recommended that she avoid repetitive stress on the hand and wrist, specifically any job that required forceful flexion of the wrist in a repetitive fashion over a number of hours in the day, and said that she would be at risk of having additional problems if she did such motions.

Claimant's attorney referred her to Dr. Robert Christopher, a physical medicine and rehabilitation specialist, for evaluation. He saw her on May 17, 1975. In his opinion the repetitive motion activity at work aggravated her preexisting condition of rheumatoid arthritis, resulting in the complaints of constant pain in the left hand with

recurrent numbness and tingling, which she also had to a lesser degree in her right hand. She also complained of weakness in both hands. Dr. Christopher felt that there was evidence of inflammatory arthritis in the hands which very likely preexisted the injury but had been aggravated by the injury. He felt that the repetitive motion activity at work aggravated the preexisting condition of rheumatoid arthritis that lead to the problems that she displayed when he saw her on two occasions. He gave his opinion, based upon the AMA Guides to the Evaluation of Permanent Impairment, 4th Ed., that she sustained permanent impairment as a result of her on-the-job injuries. He felt that this impairment was six percent (6%) to the left upper extremity related to limitation of motion, with a grip strength loss that was equal to ten percent (10%) of that extremity. Therefore, his opinion of the total impairment to the left upper extremity was fifteen percent (15%), or nine percent (9%) to the whole person on the left. With regard to the right upper extremity, he felt there was permanent impairment of three percent (3%), which converted to an impairment of the whole person of two percent (2%).

The chief dispute centers around the claimant's preexisting rheumatoid arthritis and its relationship to any permanent disability. It is the position of the employer that the carpal tunnel problem was not a permanent condition and that only the rheumatoid arthritis is a permanent condition, obviously not caused by the accident.

Dr. Christopher conceded that it was possible that the rheumatoid arthritis limited claimant's grip strength long before the carpal tunnel problem and that he was unable to separate the amount of permanency related to the carpal tunnel injury as compared to the rheumatoid arthritis. However, a close reading of Dr. Christopher's testimony reveals that he felt that the "overuse type injury" resulting in the carpal tunnel problem, superimposed on rheumatoid arthritis, resulted in a permanent aggravation. He testified as follows:

> Well, in my opinion, the repetitive motion activity at work aggravated this preexisting condition of rheumatoid arthritis that lead to the problems that she displayed when I saw her on the two occasions. (Deposition of Dr. Christopher, pg. 14).
>
> And, doctor, after evaluating her two times, did you form an opinion as to what, if any, permanent impairment that she retained *as a result of her on-the-job injuries*? [emphasis added]
>
> A. Yes, ma'am. (Deposition of Dr. Christopher, pg. 15).

> Q. And from a physiological type standpoint, doctor, anatomical standpoint, what happens to a human's upper extremities when they have an overuse type injury superimposed on rheumatoid arthritis?
>
> A. Well, one of the treatments--one of the important aspects of treatment of rheumatoid arthritis is to limit motion, not necessarily stop it completely because the person will get stiffer, but to limit repetitive motion because it is well understood that when a joint is irritated or irritable from rheumatoid arthritis repeated activity will make the arthritis flare up. And this is what I believe happened in this case. (Deposition of Dr. Christopher, pg. 25).

Dr. Christopher was of the opinion that claimant should not return to any type of work that requires her to do repetitive motion with her wrists, such as she had previously done with this employer. He felt she should also avoid activities that required her to do heavy exertion with her hands, such as turning wrenches or jar lids or the like, as well as pushing, pulling or lifting objects weighing more than 20 pounds. Finally, he recommended that she avoid any kind of work that required her to lift her arms above shoulder height on a repeated basis.

Where a preexisting condition is not aggravated by the accident on a permanent basis, and the preexisting condition merely makes its normal progress to a disability, the worker is not entitled to compensation for the ultimate condition. Tibbals v. Stanfill, 219 Tenn. 498, 410 S.W.2d 892 (1967). However, where a preexisting condition is aggravated on a permanent basis by an accident on-the-job, the ultimate permanent result is compensable. Ledford v. Miller Brothers, 194 Tenn. 467, 253 S.W.2d 552 (1952).

From our independent examination of the evidence and a consideration of the above principles of law, the evidence fails to preponderate against the trial court's award of disability in this case.

The judgment of the trial court is affirmed. Costs of this appeal are taxed to the defendants/appellants.

Robert A. Lanier, Circuit Judge

CONCUR:

_____
Janice M. Holder, Associate Justice

_____
Don R. Ash, Circuit Judge

IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

SARAH ARCHIE, Plaintiff/Appellee, vs. S & R OF TENNESSEE, a/k/a SIEGEL ROBERT OF TENNESSEE and ITT HARTFORD INSURANCE COMPANY, Defendants/Appellants.	)	LAUDERDALE CHANCERY NO. 9543 Hon. John Chisolm, Chancellor NO. 02S01-9701-CH-00006 AFFIRMED.

FILED

August 18, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

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 Appellants, and surety, for which execution may issue if necessary.

IT IS SO ORDERED this 18th day of August, 1997.

PER CURIAM

(Holder, J., not participating)