

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE MARCH 1997 SESSION

FILED

August 25, 1997

Cecil W. Crowson
Appellate Court Clerk

TAMMY S. WATSON JAMES,	)	LAWRENCE CHANCERY
)	
Plaintiff/Appellee	)	NO. 01S01-9608-CH-00159
)	
v.	)	HON. JAMES L. WEATHERFORD
	)	CHANCELLOR
LIBERTY MUTUAL INSURANCE)	
COMPANY,)	
)	
Defendant/Appellant)	
and)	
)	
BETTY BUSH d/b/a/ McDONALDS)	
OF LAWRENCEBURG,)	
)	
Defendant/Appellee)	

For the Appellant

Liberty Mutual Ins. Co:

Paul Bates
Christopher V. Sockwell
Boston, Bates & Holt
P. O. Box 357
Lawrenceburg, TN 38464

For the Appellee

Tammy S. Watson:

Herschel D. Koger
P. O. Box 1148
Pulaski, TN 38478
(on appeal)

Roger N. Hayes
P. O. Box 409
Pulaski, TN 38478
(at trial)

For the Appellee

Betty Bush:

D. Randall Mantooth
James Lee Deckard
Leitner, Williams, Dooley
& Napolitan
2300 First American Ctr.
Nashville, TN 37238

MEMORANDUM OPINION

Members of Panel:

Chief Justice Adolpho A. Birch, Jr.
Senior Judge John K. Byers
Special Judge Joe C. Loser, Jr.

AFFIRMED

BYERS, 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 plaintiff originally claimed injury to the right arm while working at La Del Manufacturing Company and injury to or aggravation of a pre-existing injury to the left arm at her later employment at McDonalds of Lawrenceburg. The two cases were consolidated for trial, and the trial court dismissed the second employer after the hearing. Plaintiff was awarded 35% permanent partial disability to each upper extremity, and the first employer was found liable for both injuries.

We affirm the judgment of the trial court.

On February 7, 1992, Plaintiff banged her right hand on a chair while working at La Del Manufacturing Company. She continued to work for La Del, using her left hand to perform tasks previously performed by the right or with both hands, until March 3, 1992. There is no contest concerning the injury to the plaintiff's right arm.

On March 15, 1992 she saw Dr. Kenneth L. Moore, whose deposition indicates paresthesia in *both* hands. On April 22, 1992, she underwent surgical release due to carpal tunnel syndrome on the right. On May 27, 1992, when she returned to the surgeon for post-surgical follow-up care, she complained of tingling in her left hand.

In November of 1993, plaintiff obtained a job at McDonalds through a program which hires handicapped workers. McDonalds placed her in various jobs in an effort to accommodate her limitations. Plaintiff testified that she continued to experience pain whenever she tried to do anything with the left hand.

After a leg injury at McDonalds unrelated to the case at bar, plaintiff was unsuccessful in her efforts to get appropriate work limitation documentation for McDonalds from her doctor. When McDonalds withheld her return to work pending receipt of the required release, she went to work at Hardees, and later at Shoneys.

On June 16, 1994, plaintiff had carpal tunnel surgery on the left hand.

Dr. Moore opined when deposed that plaintiff sustained no additional medical impairment as a result of her job at McDonalds. However, he was unwilling to assert

with a reasonable degree of medical certainty that her job at La Del resulted in overuse syndrome which caused the carpal tunnel problem in her left hand; at most, he said it was possible that the overuse was the cause of the left arm problem.

The plaintiff was seen by Dr. Davidson, an associate of Dr. Moore. Dr. Davidson's notes, which were entered through Dr. Moore, assert the left arm injury was probably caused by overuse of the left arm at La Del after the right arm injury.

Dr. Robert Cochran, neurologist, was unable to do more than speculate about whether her left hand problem was caused by overuse when the right was injured.

Various witnesses testified on plaintiff's behalf, corroborating her contention that both hands were swollen and that she complained of pain in both hands while working at La Del.

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).

It is entirely appropriate for a trial judge to predicate an award on medical testimony to the effect that a given incident 'could be' the cause of the plaintiff's injury, when he also has before him lay testimony from which it may reasonably be inferred that the accident was in fact the cause of the injury." *Orman v. Williams Sonoma, Inc.*, 803 S.W.2d 672 (Tenn. 1991).

There is no medical evidence to show the plaintiff's left arm problem was caused by or exacerbated by the work she did at McDonalds. The trial judge found McDonalds was not liable.

The trial judge considered both the medical and the lay testimony and reached the conclusion that plaintiff's left hand injury was a repetitive-use injury which began at La Del and was caused by her inability to use the right hand.

We find the preponderance of the evidence supports the judgment of the trial court, which is affirmed at the cost of the appellant.

John K. Byers, Senior Judge

CONCUR:

Adolpho A. Birch, Jr., Chief Justice

Joe C. Loser, Jr., Special Judge

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

TAMMY S. WATSON (JAMES),	)	Lawrence Chancery
	)	No. 6228-93 & 7088-94 Below
Appellee,)	
)	
V.)	
	)	NO. 01-S-01-9608-CH-00159
LIBERTY MUTUAL INSURANCE	)	Hon. James L. Weatherford
COMPANY,	)	Chancellor
)	
Defendant/Appellant,)	
)	
and)	
)	
BETTY BUSH d/b/a McDONALDS OF)	
LAWRENCEBURG,)	
)	
Defendant-Appellee.	)	AFFIRMED

FILED
August 25, 1997
Cecil W. Crowson
Appellate Court Clerk

JUDGMENT ORDER

This case is before the Court upon motion for review pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), 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 motion for review is not well-taken and should be denied; 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 are taxed to the appellant and its surety, for which execution may issue if necessary.

It is so ordered this 25th day of August, 1997.

Birch, J., not participating

PER CURIAM