IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE
(September 25, 1997 Session)

FAYETTE TUBULAR PRODUCTS INC. and NATIONAL UNION FIRE INSURANCE COMPANY,	)	OVERTON CHANCERY
Plaintiffs-Appellants,	)	Hon. Vernon Neal, Chancellor.
v.	)	No. 01S01-9704-CH-00091
ANTHONY S. BELLI,	)	
Defendant-Appellee.	)	

For Appellants:

Jerry W. Carnes
Joel T. Galanter
Stewart, Estes & Donnell
Nashville, Tennessee

For Appellee:

S. Roger York
York, Bilbrey & Davis
Crossville, Tennessee

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

Members of Panel:

Lyle Reid, Associate Justice, Supreme Court
William S. Russell, Special Judge
Joe C. Loser, Jr., Special Judge

AFFIRMED and REMANDED

Loser, Judge

MEMORANDUM OPINION

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. section 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. The employer and its insurer contend the claim should be disallowed because the employee engaged in willful misconduct or willfully failed to use a safety appliance. As discussed below, the panel has concluded the judgment should be affirmed.

At the time of his injury, the employee or claimant, Belli, was working on a bender, a machine designed to bend and contour parts. The machine was equipped with a light curtain, which is a safety device designed to prevent the machine from operating if the beam of light is broken.

When the machine did not work properly, the claimant reached over the light beam to press the reset button. He inadvertently pressed the wrong button and his hand became caught in the machine, injuring him.

The chancellor found the claim to be compensable. Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. section 50-6-225(e)(2). Where the trial judge has seen and heard the witnesses, considerable deference must be accorded those circumstances on review. McCaleb v. Saturn Corp., 910 S.W.2d 412 (Tenn. 1995).

An employer may refuse to pay compensation benefits for an injury resulting from a claimant's willful or intentional misconduct or self-inflicted injury, or because of intoxication or willful failure to use a safety appliance or perform a duty required by law. Tenn. Code Ann. section 50-6-110(a).[1] The burden of proof to establish such defense(s) is on the employer. Tenn. Code Ann. section 50-6-110(b).[2]

The defense of willful misconduct is generally limited to deliberate and intentional violations of known regulations. See Larson, Workmen's Compensation Law (1979) section 32. The essential elements of the defense are (1) an intention to do the act, (2) purposeful violation of orders and (3) an element of perverseness. Rogers v. Kroger Co., 832 S.W.2d 538 (Tenn. 1992).

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[1] **50-6-110. Injuries not covered -- Drug and alcohol testing. --** (a) No compensation shall be allowed for an injury or death due to the employee's willful misconduct or intentional self-inflicted injury, or due to intoxication or illegal drugs, or willful failure or refusal to use a safety appliance or perform a duty required by law.

[2] (b) If the employer defends on the ground that the injury arose in any or all of the above stated ways, the burden of proof shall be on the employer to establish such defense.

When an employee is performing the duties assigned to him by his employment contract and is acting in furtherance of his employer's interests, regardless of the fact that he performs those duties in an unnecessarily dangerous or rash manner, it cannot be said that his resulting injuries did not arise out of his employment, provided his conduct could be reasonably anticipated. Wright v. Gunther Nash Mining Construction Co., 614 S.W.2d 796 (Tenn. 1981). Disobedience of a rule is not willful misconduct where the rule is habitually disregarded with the knowledge and acquiescence of the employer. Bryan v. Paramount Packaging Corp., 677 S.W.2d 453 (Tenn. 1984). Mere negligence on the part of an employee will not defeat his right to recovery. Loy v. North Bros. Co., 787 S.W.2d 916 (Tenn. 1990).

There is evidence in the record, accepted by the chancellor, that the claimant had been instructed on at least one previous occasion to bypass the light beam and hit the reset button to improve the performance of the machine, and it is implicit in the record that the claimant was acting in furtherance of the interests of the employer when the accident occurred. From our deliberate consideration of the record, the evidence fails to preponderate against the chancellor's finding that the injury arose out of and in the course of the employment.

The judgment of the trial court is affirmed and the cause remanded to the Chancery Court for Overton County. Costs are taxed to the plaintiffs-appellants.

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Joe C. Loser, Jr., Special Judge

CONCUR:

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Lyle Reid, Associate Justice

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William S. Russell, Senior Judge

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

FILED

December 2, 1997

Cecil W. Crowson
Appellate Court Clerk

FAYETTE TUBULAR PRODUCTS, INC. and NATIONAL UNION FIRE INSURANCE COMPANY,	}	*OVERTON CHANCERY No. 16-395 Below*
Plaintiffs/Appellants	}	*Hon. Vernon Neal, Chancellor*
vs.	}	
ANTHONY S. BELLI,	}	*No. 01S01-9704-CH-00091*
Defendant/Appellee	}	*AFFIRMED AND REMANDED.*

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 Fayette Tubular Products, Inc. and National Union Fire Insurance Company and their Surety, for which execution may issue if necessary.

IT IS SO ORDERED on December 2, 1997.

PER CURIAM