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

FILED

October 21, 1997

Cecil W. Crowson
Appellate Court Clerk

ALMA JEAN GRAYSON	)	
	)	
Plaintiff/Appellant	)	
	)	
	)	**DAVIDSON CHANCERY**
V.	)	
	)	**Hon. Robert S. Brandt**
	)	**Chancellor**
	)	
HEALTHTRUST, INC.-	)	**NO. 01S01-9607-CH-00153**
THE HOSPITAL COMPANY	)	
	)	
Defendant/Appellee	)	

For the Appellant:
Ann Buntin Steiner
Steiner & Steiner
214 Second Avenue North
Suite 203
Nashville, TN 37201-1644

For the Appellee
W. Reese Willis, Jr.
Willis & Knight
215 Second Avenue North
Nashville, TN 37

MEMORANDUM OPINION

Members of Panel:
Chief Justice Adolpho A. Birch, Jr.
Senior Judge James L. Weatherford
Special Judge Joe C. Loser, Jr.

REVERSED AND REMANDED **WEATHERFORD, Senior Judge**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme in accordance with TENN. CODE ANN. Sec hearing and reporting to the Supreme and conclusions of law.

Plaintiff Alma Jean Grayson, has a of the trial court in dismissing her timely notice as required by TENN. CODE ANN. § 50-6-2 and 50-6-202.

Plaintiff, 55 at the time of the trial, h education. She completed the sevent Her grades were poor "about the lowest in her Her reading level was at about first or second gr basically she cannot read.

The plaintiff began working for defendant, Nashville Memorial Hospital, in September, 1991, as duties as a cleaning aide were to clean such as going in and picking up tras treatment rooms, picking up all of the trash, cle sinks, commodes, high dusting, clean dust mopping and mopping all the treatment rooms. required constant repetitive use of

Prior to going to work for defendant, the plaintiff worked caring for an elderly man for ab after she left school in the seventh

married in 1959, had five children, and did not work during the
time she was raising her children. Pla
with cancer and she took care of him
the 80's.

Plaintiff worked for Holiday Inn a
work at various hotels, also worked for
house.

While working for the defendant, plai
problems with her hands in late part of 1992. She told
Owen, her supervisor, that the work she
and dusting and cleaning the sink, wa
arms. Mr. Owen denied that he knew tha
problem with her hands that may have been work related. He
stated, however, that if an employee came to hin
got carpal tunnel, it would have been his dut
incident report even though the employee
condition was work related. Mr. Owen fur
employee had come in with braces on their hands
put him on notice that there was a pr
have filed notice.

In the fall of 1993, Lenora Honeycutt, plaintiff's
supervisor. Mrs. Honeycutt knew that plaintiff was havi
problems with her hands and knew that th
she was suffering from bilateral carpal
Honeycutt knew that plaintiff was wearing something on her

for this condition, knew she was havin

condition was worse near the end of the

did not file a notice of injury statin

injury and that she didn't do anythi

Plaintiff saw Dr. Robert Pilkinton for pain in

her hands and arms. Dr. Pilkinton referred plaintiff to Dr. Cushman

who performed tests and diagnosed ca

left and right hands. Plaintiff then was referr

Dr. Huber. Dr. Huber advised plaintiff to have surgery. She decided

against surgery because as she stated,

couldn't lay out of work because I d

coming in." She continued to work on her a

discussed with her supervisors about

hand and arms.

The only experience plaintiff had wi

during this time was a "needle stick".

one time. The plaintiff thought an

was filed, but she never stated that

compensation claim or this was a wor

In July of 1994, plaintiff saw Dr.

was about 14 months after she had se

period of time, working full time as a cleani

with the defendant, and her symptoms

On July 14, 1994, Dr. Collins diagno

bilateral carpal tunnel syndrome includi

symptoms in her left arm. Dr. Collins referr

EMG which indicated "advanced changes" in plaintiff's
nerve in the left forearm and wrist.

On the 22nd day of August, 1994, plaintiff had her annual physical with Nurse Neal at McKinney Memorial Hospital and informed Nurse McKinney that she was suffering carpal tunnel syndrome. She informed Nurse work that she did would make her arm dusting and stuff".

Dr. Collins performed surgery on S Plaintiff worked up until the time o

An injured employee must generally p written notice of injury within thir unless a reasonable excuse exists for not complying with th TENN. CODE ANN. Sec. 50-6-201.

This panel must, therefore, determine whether or evidence preponderates against the trial court's find plaintiff failed to give notice of her work-relate her employer as required by TENN. CO Sec. 50-6-202, and if there exists a complying with the rule.

The Supreme Court has held that the carpal tunnel syndrome condition is a gradual injury, and that the accidental occurred on the date the employer's severe to prevent the employee from wor Crest Corp., 805 SW2d 373, 374 (Tenn. 1991). Shoe Company v. Reed, 350 SW2d 65 (T

Defendant argues plaintiff's delay of o
providing notice was not reasonable an
plaintiff was diagnosed with carpal tunne
1992.

The date of injury in this case was
the holding of Barker v. Home-Crest
1919). Defendant's argument that plain
notice when she was diagnosed with carp
November, 1992, would in effect, req
give notice of an injury before the

During this time, plaintiff consta
supervisors about how her hands and arms hur
the end of a work day. Her supervisors
braces on her arms. Also, the plaintif
about a month before her surgery that
syndrome and that her work made her

In this case, it can be reasonably
employer had actual knowledge of plaintiff's
much knowledge of the nature of the injury as di
During the time Ms. Honeycutt was the plain
plaintiff's condition was discussed

A condition which justifies the delay in as
compensation claim is the employee's limite
condition and her rights and duties un
compensation law. Livingston v. Shelby Williams, S.W.2d
511 (Tenn. 1991).

The record in this case reflects that the claimant cannot

read or write or reads at the second g

She is functionally illiterate. Sh

remembering dates and difficulty in

The trial judge was obviously concerned about discrepancies

in the information furnished by the

interrogatories and her testimony at trial

misrepresentations, however, the trial judge did not find these

misrepresentations to be intentional

From the record in this case, it i

plaintiff was totally ignorant of the Work

A glaring example of this is when she was asked why

agreed to Dr. Huber to do surgery in 1993, she stated,

I didn't have ---- I couldn't lay ou

have no other income coming in."

Therefore, we find and hold that plaintiff is suffering

from carpal tunnel syndrome, an injury due to re

work-related movements in her hands and ar

that she never became disabled to work until 19

the accident is alleged to have occur

defendant employer, had notice of this injury thr

plaintiff's supervisors and nurse.

Therefore, the judgment of the tri

We do not find the record in this

determine the extent of plaintiff's perma

therefore remand this case to the trial court fo

determining the extent of plaintiff'
foranyfurther proceedings necessary.
taxetdo the appellee, HealthTrCuosmtp,amIyn,c
for which execution may issue if nec

_____

James L. Weatherfor

CONCUR:

_____

Adolpho A. Birch, Jr. , Chief Justice

_____

Joe C. Loser, Jr., Special Judge

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

ALMA JEAN GRAYSON,	DAVIDSON CHANCERY
	No. 95-700-III Below
Appellant,	
	Hon. Robert S. Brandt,
v.	Chancellor
HEALTHTRUST, INC.,	
THE HOSPITAL COMPANY,	No. 01S01-9607-CH-00158
Appellee,	REVERSED AND REMANDED.

FILED

October 21, 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 on appeal are assessed to the appellee.

IT IS SO ORDERED this 21st day of October, 1997.

PER CURIAM

Birch, J. - Not participating.