

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

FILED

March 25, 1998

Cecil Crowson, Jr.
Appellate Court Clerk

DEBBIE J. GOODLOW,)	
)	
Plaintiff/Appellant)	WEAKLEY CHANCERY
)	
v.)	NO. 02S01-9704-CH-00029
)	
HOSPITAL CORPORATION OF)	HON. WILLIAM MICHAEL MALOAN,
AMERICA, d/b/a VOLUNTEER)	CHANCELLOR
HOSPITAL,)	
)	
Defendant/Appellee)	

For the Appellant:

For the Appellee:

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MEMORANDUM OPINION

Members of Panel:

Justice Janice Holder
Senior Judge John K. Byers
Judge Robert L. Childers

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 filed suit against the defendant and alleged she sustained a back injury on March 6, 1993.

The trial judge found the plaintiff did not give notice of the injury until September 27, 1993, and the petition was dismissed for failure to give timely notice.

We affirm the judgment of the trial court.

We need not go into great detail concerning the facts in this case. The plaintiff asked her supervisor for authority to move the desk in the office in which she worked to better accommodate her work. The supervisor instructed the plaintiff to have the maintenance department to move the furniture.

The maintenance department moved the furniture on Friday. The plaintiff went to the office on Saturday and she and another employee rearranged the desk and some cabinets. On Monday and Tuesday, the plaintiff worked regular shifts with no problems. On Wednesday, the plaintiff called the emergency room to tell them she would be late to work because her back was hurting. The plaintiff saw an emergency room doctor and told her supervisor she did not know what was wrong with her back.

Ultimately, the plaintiff was referred to Dr. Frank Berklacich, an orthopedic surgeon, who testified that on May 7, 1993, the plaintiff told him she had hurt her back on March 7, 1993 while moving furniture at work. On June 1, 1993, the plaintiff underwent surgery on her back.

The plaintiff did not give notice to the defendant of a work related injury to her back until September 27, 1993. She says she did not do so earlier because she did not know her back problem was related to the moving of furniture on March 7, 1993.

We review this case *de novo* upon the record with a presumption of the correctness of the finding of fact of the trial judge. Tenn. Code Ann. § 50-6-225(e)(2).

The trial judge heard the oral testimony of the plaintiff and others in the trial of this case. He also had the benefit of the testimony of the physician. The evidence shows the plaintiff discussed with her physician the cause of her back problem.

The plaintiff contends she was not required to give notice until she was aware that her back problem was work related. She claims this was in September 1993 when Dr. Lanford told her the injury was work related. The trial judge found, and the finding is supported by the evidence, that the plaintiff told Dr. Berklacich on May 7, 1993 that she injured her back at work and that Dr. Berklacich wrote a letter to Dr. Lanford giving the history. The letter was dated May 7, 1993.

The trial judge found the plaintiff knew or should have known on March 6, 1993 that her injury was related to the moving of furniture at work. Further, the court found there was no notice given as required and there was no reasonable excuse for the failure to give the notice within 30 days from the injury.

An employee is required to give notice of an injury to the employer within 30 days thereof, Tenn. Code Ann. § 50-6-201, unless there is a reasonable excuse for the failure to do so. *Pentecost v. Anchor Wire Corp.*, 695 S.W.2d 183 (Tenn. 1985). There seems to be little in this case to excuse the failure of the plaintiff to give notice of the injury. The plaintiff told her physician her injury was related to the incident on March 7, 1993, but later claimed that she did not know she was injured at work. The trial court found the plaintiff's claim of lack of knowledge of the nature of her injury was not persuasive. We agree.

The plaintiff contends the defendant had actual notice of a work related injury. This is not supported by the evidence. The plaintiff was injured doing what she was told not to do. She never informed her employer that she was injured at work until September 27, 1993 when she told a supervisor she was injured moving furniture.

The trial judge saw and heard the witnesses who testified on this issue. The trial judge evaluated the credibility of their testimony; we cannot weigh the credibility of these witnesses. See *Townsend v. State*, 826 S.W.2d 434 (Tenn. 1992).

We find the evidence does not preponderate against the judgment of the trial court in this case and we affirm the judgment.

Costs of this appeal are taxed to the plaintiff.

John K. Byers, Senior Judge

CONCUR:

Janice Holder, Justice

Robert L. Childers, Judge

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AT JACKSON

DEBBIE J. GOODLOW,
Plaintiff/Appellant,

vs.

HOSPITAL CORPORATION OF
AMERICA, d/b/a VOLUNTEER HOSPITAL,
Defendant/Appellee.

) WEAKLEY CHANCERY
) NO. 13456
)
) Hon. William Michael Maloan,
) Chancellor
)
) NO. 02S01-9704-CH-00029
)
)
) AFFIRMED.

FILED
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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 Appellant, and surety, for which execution may issue if necessary.

IT IS SO ORDERED this 25th day of March, 1998.

PER CURIAM

(Holder, J., not participating)

