

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

**FILED**

**July 1, 1998**

**Cecil W. Crowson  
Appellate Court Clerk**

GALLATIN ALUMINUM PRODUCTS, INC.)  
Plaintiff/Appellee ) No. 01S01-9710-CV-00238  
)  
)  
v. ) SUMNER COUNTY CIRCUIT  
)  
)  
ROSIE L. HARRIS, ) HON. THOMAS GOODALL, JUDGE  
Defendant/Appellant )  
\_\_\_\_\_ )

FOR THE APPELLANT:

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FOR THE APPELLEE:

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MEMORANDUM OPINION

MEMBERS OF PANEL

JANICE M. HOLDER, ASSOCIATE JUSTICE, SUPREME COURT  
WILLIAM H. INMAN, SENIOR JUDGE  
WILLIAM S. RUSSELL, SPECIAL JUDGE

AFFIRMED

RUSSELL, SP. J.

This appeal in a workers' compensation case 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 to the Supreme Court of findings of fact and conclusions of law.

This case involves a claim for compensation based upon a diagnosis of injury to the employee of bilateral carpal tunnel syndrome. The trial judge dismissed the case for the employee's failure to give timely notice of the injury as required by T.C.A. Sec. 50-6-201, and for the failure of the employee to prove that the injury and also the resultant depression was caused by the work performed in the course and scope of the subject employment.

Suit was filed by the employer, as allowed by T.C.A. Sec. 50-6-225, et seq., and the employer alleged in the complaint that liability was denied for, inter alia, the failure of the employee to give timely notice as required by T.C.A. Sec. 50-6-201. This placed the burden of proving compliance with the notice requirement upon the employee. York v. Federal Chemical Company, 216 S.W. 2d 725, 726 (Tenn. 1949).

Notice is required to be given in plain and simple language of the name and address of the employee, the time, place and

nature and cause of the accident resulting in injury or death, and shall be signed by the claimant or by some person on his behalf, or by any one or more of the claimant's dependents if the accident resulted in death to the employee. T.C.A Sec. 50-6-202 (a)(1).

Notice may be waived based on conduct of the employer in recognition of his liability; or by excuse based on inability or faultless omission by the employee. Marshall Const. Co. v. Russell, 163 Tenn. 410, 43 S.W. 2d 208. This court has consistently held that the giving of statutory notice to the employer is an absolute prerequisite to the right of an employee to recover compensation, unless the employer has actual knowledge of the employee's injury or waives notice thereof, or unless the employee had a reasonable excuse for failure to give notice. Aetna Casualty and Surety Company v. Long, 569 S.W. 2d 444, 449 (Tenn. 1978).

The trial court held that the plaintiff knew that she had work related carpal tunnel syndrome on April 21, 1995, and that her obligation to report it to her employer arose at that time. The only attempt at a written report was a letter by her attorney dated June 7, 1995. In pertinent part, it said only:

I hereby give written notice, pursuant to Tennessee workers' compensation act, that your employee, Rosie L. Harris, sustained an on the job injury on or about 03/12/95. This notice is in addition to any previous notice, verbal or written, previously given; and to any actual notice on your part of this injury.

The trial court correctly held that this letter from the

employee's attorney was neither timely nor comprehensive compliance with the notice requirement, and proceeded to examine the evidence of alleged actual notice. The trial judge concluded that actual notice was not given within thirty days after full knowledge was had by the employee on April 21, 1995. Actual notice was not given until after May 30, 1995.

Although depression was not an injury claimed in her counter-complaint, the employee sought compensation for it at trial. Again, the trial judge found that no notice of that condition was timely given and no actual knowledge by the employer proved.

The notice issue is a fact issue. Our review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings below, unless the preponderance of the evidence is otherwise. T.C.A Sec. 50-6-225 (e) (2) (1991). This standard of review requires this court to weigh in depth the factual findings and conclusions of the trial court. Humphrey v. David Witherspoon, Inc., 734 S.W. 2d 315 (Tenn. 1987).

The evidence does not preponderate against the findings of the trial judge on this issue.

As to the causation issue, it is well established that medical causation and the permanency of any injury in a workers' compensation case must be established by expert testimony, in all but simple and routine cases. Aetna Casualty & Surety Co. v. Long, 569 S.W. 2d 444 (Tenn. 1978).

In this case two physicians testified. Both agreed that Ms.

Harris, the injured employee, was suffering from carpal tunnel syndrome. Dr. Leon Ensalada testified in person. He was of the clear opinion that Ms. Harris' carpal tunnel syndrome was not causally related to her employment by Gallatin Aluminum Products Company.

Dr. Arthur Cushman testified that there are no scientific or systematic studies that establish a causal relationship between carpal tunnel syndrome and repetitive work; and that it may be caused by arthritis, thyroid disease, obesity, age, the shape of the wrist, gender, injuries to the hand, and for no apparent reason at all. He did say, after reviewing a video that purported to depict Ms. Harris' job functions of repetitive grasping and use of the hands for a prolonged period of time, that her carpal tunnel syndrome was consistent with these activities. The accuracy of the activity depictions as presented in the video was strongly disputed.

We do not find that the evidence of causation at work preponderates against the finding of the trial judge.

The dismissal of the employee's counter-complaint by the trial court is affirmed. Costs on appeal are assessed to the appellant.

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WILLIAM S. RUSSELL, SPECIAL JUDGE

CONCUR:

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WILLIAM H. INMAN, SENIOR JUDGE

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JANICE M. HOLDER, ASSOCIATE JUSTICE,  
SUPREME COURT

IN THE SUPREME COURT OF TENNESSEE

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GALLATIN ALUMINUM PRODUCTS, } INC., }	SUMNER CIRCUIT
Plaintiff/Appellee }	No. 14557-C Below
vs. }	Hon. Thomas Goodall,
	Judge
ROSIE L. HARRIS, }	No. 01S01-9710-CV-00238
Defendant/Appellant }	AFFIRMED.

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 Defendant/Appellant and Surety, for which execution may issue if necessary.*

*IT IS SO ORDERED on July 1, 1998.*

PER CURIAM