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

FILED

March 11, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

HELEN McCURRIE,	)	
	)	
Plaintiff/Appellee	)	GIBSON CHANCERY
	)	
v.	)	NO. 02S01-9805-CH-00047
	)	
EATON CORPORATION,	)	HON. GEORGE E. ELLIS,
	)	CHANCELLOR
Defendant/Appellant	)	

For the Appellant:

John R. White
Charles L. Rich
Bobo, Hunt & Bobo
202 Union Planters Bank Bldg.
P.O. Box 169
Shelbyville, TN 37162

For the Appellee:

George L. Morrison, III
P.O. Box 182
Jackson, TN 38302

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

Members of Panel:

Justice Janice Holder
Senior Judge John K. Byers
Senior Judge F. Lloyd Tatum

REVERSED

BYERS, Senior Judge

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. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

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 findings, 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 548, 550 (Tenn. 1995). The application of this standard requires this Court to weigh in more depth the factual findings and conclusions of the trial court in a workers' compensation case. *See Corcoran v. Foster Auto GMC, Inc.,* 746 S.W.2d 452, 456 (Tenn. 1988).

The trial court found the plaintiff had suffered an injury arising out of and in the course of her employment with the defendant. The court found the plaintiff has suffered a 22 percent permanent impairment to her right hand.

We reverse the judgment of the trial court and dismiss the case.

The plaintiff was 28 years of age at the time of the trial, has a 12th grade education, and has worked as a cook and factory worker. The plaintiff began working for the defendant in October of 1994. The plaintiff did work on various jobs for the defendant until she began to work on what is known as the brake line in the plaintiff's plant, which makes auto parts.

In doing this work, the plaintiff operated a deburring gun to grind burrs off of parts. This tool operates similar to and appears much like a hand held drill. To operate the tool, the operator grasps the tool like holding a pistol and triggers the action of the tool by use of the index finger. It is from this work that the plaintiff alleges an injury to her right hand. The plaintiff testified she began to experience pain in her right hand and arm in August of 1996, some six months after commencing work with the deburring tool. The plaintiff continues to work for the defendant at another job.

The plaintiff was seen by a Dr. Barker on one occasion and then went to Dr. Richard Murphy, a family physician, who was the plaintiff's regular physician. Dr. Murphy testified the plaintiff had some tenderness over the knuckle on the back of

her hand near the thumb. Dr. Murphy referred the plaintiff to Dr. Ronald Bingham for a nerve conduction test. The test did not show any abnormality in the nerve of the forearm.

Dr. Murphy testified that the plaintiff had tendinitis of the right forearm and that the tool which she was using would not, in his opinion, cause a problem between the plaintiff's thumb and index finger, as described by the plaintiff.[1] Dr. Murphy found the plaintiff had suffered no medical impairment as a result of her work for the defendant.

An exhibit which the plaintiff characterizes as a report from Dr. Matthew Michaels, but which is signed by someone else, says Dr. Michaels was unable to diagnose the plaintiff's problem after exhaustive tests. The report suggests the plaintiff do alternative work if the deburring work continues to cause her problems.

The plaintiff was sent to Dr. Joseph C. Boals, an orthopedic surgeon, for evaluation. Dr. Boals found the plaintiff had a mass in the web space between her thumb and index finger. However, there was some uncertainty as to this because he had not ruled out other medical causes for the pain the plaintiff was having and the mass he found on the plaintiff's hand.

Dr. Boals testified an MRI should be done on the plaintiff's hand to determine the cause of her problem between her thumb and index finger. Dr. Boals testified that the "highest probability here is that this [the mass he described] is caused by that work." Further, he said that is only an estimation and not 100 percent. Dr. Boals was of the opinion the plaintiff had sustained an 11 percent medical impairment to her right hand, which he said was a diagnosis based evaluation not based upon any guidelines.

The plaintiff was last seen, so far as the array of medical people in this case is concerned, by Dr. William L. Bourland, an orthopedic surgeon, who specializes in hand surgery, for purposes of a second opinion at the defendant's request. Dr. Bourland viewed a video of the way the grinder was used at a work station in the defendant's plant. He was also furnished one of the grinders to look at and had the plaintiff demonstrate how she would use the tool.

---

[1] Dr. Murphy testified he used a similar tool in his home work shop.

Dr. Bourland had an MRI done which showed no abnormal condition in the plaintiff's hand. Dr. Bourland testified the plaintiff had a hypertrophied muscle in her hand between her index finger and thumb, which is caused usually by some type of exercise. He was of the opinion the use of the grinder did not cause the plaintiff's problem and was of the opinion the plaintiff had no permanent medical impairment.

What this record reveals is that two physicians have testified the plaintiff did not have any permanent disability as a result of an injury to her hand and they were further of the opinion the work the plaintiff was doing did not cause an injury to her.

One physician, Dr. Boals, testified that the plaintiff had a mass in the area between her thumb and index finger and that the "highest probability here is that this [the mass he described] is caused by that work." Dr. Boals, however, was less than certain as to whether the plaintiff had a tumor or some other abnormality. He concluded that an MRI would be necessary to determine if the cause was from work or something else. Dr. Boals found the plaintiff had an 11 percent disability to her hand. Dr. Boals testified the disability rating was not based on any guidelines. As reflected in this record, an MRI was done and it showed no tumor in the plaintiff's hand.

In all but the most obvious cases, an employee must establish by expert testimony the causal relationship between the injuries complained of and the employment activity. *Masters v. Industrial Garments Mfg. Co.,* 595 S.W.2d 811 (Tenn. 1980); *Bolton v. CNA Ins. Co.,* 821 S.W.2d 932 (Tenn. 1991). Further, causation cannot be based upon speculation. *Simpson v. H.D. Lee Co.,* 793 S.W.2d 929 (Tenn. 1990).

It appears to us that the physicians, other than Dr. Boals, who testified in this case were unequivocal in their testimony that there was no causal relationship between the plaintiff's complaint and her work. Even if there were a connection shown, these physicians found the plaintiff suffered no medical impairment.

Dr. Boals, on the other hand, was in our view less than reasonably certain about whether the plaintiff's alleged injury was work related and whether she suffered any medical impairment.

From all of this, we find the evidence preponderates against the judgment of the trial court and we reverse the judgment and dismiss this case.

The cost of this appeal is taxed to the plaintiff.

_____
John K. Byers, Senior Judge

CONCUR:

_____
Janice Holder, Justice

_____
F. Lloyd Tatum, Senior Judge

IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

HELEN McCURRIE	)	Gibson Chancery
	)	No. H-3786
Plaintiff-Appellee,	)	
	)	
	)	Hon. George E. Ellis, Chancellor
v.	)	
	)	
	)	NO. 02S01-9805-CH-00047
EATON CORPORATION,	)	
	)	
Defendant-Appellant.	)	Reversed

FILED

March 11, 1999

Cecil Crowson, Jr.
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 plaintiff-appellee.

PER CURIAM

Holder, J., not participating