IN THE SUPREME COURT OF TENNESSEE
WORKERS' COMPENSATION APPEALS PANEL
KNOXVILLE, SEPTEMBER 1998 SESSION

FILED

January 20, 1999

Cecil Crowson, Jr.
Appellate Court
Clerk

CONSTANCE H. WILSON	)	BRADLEY
CHANCERY	)	
Plaintiff/Appellee	)	
V.	)	Hon. Earl H. Henley,
	)	Chancellor
COPPINGER COLOR LAB, INC.,	)	
Defendant/Appellee	)	
and	)	
TRAVELERS INSURANCE COMPANY	)	
Defendant/Appellant	)	No. 03S01-9711-CH-00130

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

Members of Panel:

E. Riley Anderson, Chief Justice
Roger E. Thayer, Special Judge
John S. McLellan, III, Special Judge

AFFIRMED. THAYER, Special 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.

This appeal has resulted from a finding by the trial court that plaintiff, Constance H. Wilson, sustained a compensable injury while in the employment of her last employer, Telecable. The trial court dismissed the case against the former employer, Coppinger Color Lab, Inc., and held Travelers Insurance Company liable as the insurance carrier for the last employer.

The only issue is whether the Last Injurious Injury Rule applies so as to hold the last employer liable for the compensable claim.

Plaintiff, age 41 years, began working for Coppinger Color Lab, Inc. during August 1986. She worked eight years before leaving to take a job with Telecable. During her eight year period of employment, she did data entry work with a computer. She estimated that this type of work activity consumed about 85-90% of her time. During the last two years of employment, she started having problems with numbness in both hands. Her condition continued to get worse and she testified the numbness and tingling was almost a daily event. However, she continued to work.

Plaintiff went to work for Telecable, her last and present employer, on June 1, 1994 and was employed as a dispatcher which involved computer work to a lesser extent than in her former employment. She stated she did this type of work about 25-50% of the time. The first two weeks of this new job was a training period that required her to watch another employee most of the time. While working she continued to have the same problem with her hands and wrists. During the last part of June 1994 she awoke during the night with severe pain in her left arm between her elbow and wrist which she described as being worse than any pain she had ever encountered before. This scared her and she decided to see a doctor.

She continued to work and during her last year of employment, she received a promotion to a job classified as an administrative assistant. Her condition began to improve but the medical evidence is quite clear that she needs to have surgery for bilateral carpal tunnel syndrome injury.

Plaintiff saw Dr. Robert A. Beasley, an orthopaedic surgeon, on July 18, 1994, about six weeks after becoming employed with Telecable. Dr. Beasley opined she was suffering from bilateral carpal tunnel syndrome and recommended she use splints to keep and restrict the movement of her wrists. He testified she told him her symptoms had become much worse recently. Dr. Beasley did not give an opinion concerning causation of the injury.

Plaintiff saw Dr. Sharon N. Farber, a neurologist, on August 18, 1994 and she concurred in the diagnosis of bilateral carpal tunnel syndrome. When the doctor was questioned as to whether her work activities with her former employer could have caused her condition, the doctor stated that the former employment could have caused it. The doctor was also questioned as to whether her work activities at her last and present employer could have caused or aggravated her condition, the doctor answered that it could have been aggravated by the last employment and especially if her symptoms had become worse.

Dr. Cauley W. Hayes, surgeon, testified he saw plaintiff on March 6, 1995 and March 11, 1996. He opined she needed to have surgery on both wrists. He was of the opinion her present job was less likely to be a causative factor in her condition but admitted that her work activity with her last employer could cause her condition to become worse.

All of the expert medical testimony was presented to the trial court by deposition.

The review of the case is de novo accompanied by a presumption of the correctness of the findings of fact unless the preponderance of the evidence is otherwise. T.C.A. § 50-6-225(e)(2).

The employee has the burden of proving every element of the case, including causation and permanency by a preponderance of the evidence. *Tindall v. Waring Park Ass'n,* 725 S.W.2d 935, 937 (Tenn. 1987).

Although causation cannot be based upon speculative or conjectural proof, absolute medical certainty is not required and reasonable doubt is to be construed in favor of the employee. *White v. Werthan Indus.,* 824 S.W.2d 158, 159 (Tenn. 1992). It is entirely appropriate for a trial judge to predicate an award on medical testimony to the effect that a given incident "could be" the cause of the employee's injury when

the trial judge also has heard lay testimony from which it may reasonably be inferred that the incident was in fact the cause of the injury. *Orman v. Williams Sonoma, Inc.,* 803 S.W.2d 672, 676 (Tenn. 1991).

Travelers Insurance Company argues that the evidence merely shows the employee had an increase in pain alone and that the Last Injurious Injury Rule would not apply as to hold the last employer liable. We respectfully disagree with this contention.

An employer is responsible for workers' compensation benefits, even though the claimant may have been suffering from a serious pre-existing condition or disability, if the employment causes an actual progression or aggravation of the prior disabling condition or disease which produces increased pain that is disabling. *Hill v. Eagle Bend Manuf., Inc.,* et al, 942 S.W.2d 483 (Tenn. 1997); *Fink v. Caudle,* 856 S.W.2d 952, 958 (Tenn. 1993).

Thus, an employer takes an employee as he or she is and assumes the responsibility of having a pre-existing condition aggravated by a work-related injury which might not affect a normal person.

Under the Last Injurious Injury Rule, the last employer or insurance carrier will be liable in full for any permanent disability resulting from a last of successive injuries taking place under different employers. *McCormick v. Snappy Car Rentals, Inc.,* 806 S.W.2d 527 (Tenn. 1991); *Helton v. State,* 800 S.W.2d 823 (Tenn. 1990).

From our review of the case, we are of the opinion the Last Injurious Injury Rule has application to the facts of the case. The record supports the conclusion that plaintiff sustained gradual injuries to her hands or wrists during her former employment and that her condition was aggravated by similar type work activity with her last and present employer causing her greater pain and discomfort. Since an employer is deemed to take an employee as the employer finds the employee at the commencement of employment, the last employer is responsible for the resulting total disability. The evidence does not preponderate against the findings of the trial court.

The judgment is affirmed. Costs of the appeal are taxed to Travelers Insurance Company.

_____
Roger E. Thayer, Special Judge

CONCUR:

_____
E. Riley Anderson, Chief Justice

_____
John S. McLellan, III, Special Judge

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 taxed to the appellant.

IT IS SO ORDERED this ____ day of _____, 1998.

PER CURIAM

Anderson, J. - Not participating.