IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE
(January 19, 1999 Session)

SHARON ABBOTT,	)	MONTGOMERY CIRCUIT
	)	
Plaintiff-Appellee,	)	Hon. James E. Walton,
	)	Judge.
v.	)	
	)	No. 01S01-9805-CV-00087
QUEBECOR PRINTING,	)	
	)	
Defendant-Appellant.	)	

For Appellant:

John R. Lewis
Nashville, Tennessee

For Appellee:

Stacy A. Turner
Sherry Phillips
Clarksville, Tennessee

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

Members of Panel:

Adolpho A. Birch, Jr., Associate Justice
James L. Weatherford, Senior Judge
Joe C. Loser, Jr., Special Judge

AFFIRMED

Loser, Judge

MEMORANDUM 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. section 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. The employer, Quebecor, insists the trial judge erred in finding that the plaintiff suffered a permanent compensable injury and that the claim is barred by the last injurious injury rule. As discussed below, the panel has concluded the judgment should be affirmed.

The employee or claimant, Abbott, initiated this action for the recovery of workers' compensation benefits for a gradually occurring injury to her right arm. After a trial on the merits, the trial court awarded, *inter alia*, permanent partial disability benefits based on twenty-five percent to the right arm. Appellate review is *de novo* upon the record of the trial court, accompanied by a presumption of correctness, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. section 50-6-225(e)(2).

The claimant began working for this employer in March of 1994, feeding loads of paper into feeding pockets to make magazines. She worked four twelve hour shifts and was off for three days, then worked three twelve hour shifts and was off for four days. From the repetitive use of her right hand and arm, she gradually developed disabling pain and was referred by the employer to Dr. Cooper Beazley, who prescribed steroid injections. She was unable to work for about four weeks. Shortly after returning to work, she was involved in an automobile accident. After that accident, she did not return to work for the employer.

Dr. Beazley diagnosed lateral epicondylitis or tennis elbow. He was equivocal as to whether the injury was permanent. Dr. Dewey Thomas, who examined and evaluated the claimant, assigned a permanent impairment rating of ten percent to the right arm. His testimony established a causal connection between the injury and the repetitive use of the claimant's right arm at work and was supported by the lay proof offered by the claimant. The only evidence offered at trial by the employer was the testimony of its insurance administrator, who testified that the claimant did not complain after the steroid injections.

At the time of the trial, the claimant was working with pain for another employer. She testified that her disability had not increased as a result of her new job.

Where a condition develops gradually over a period of time resulting in a definite, work-connected, unexpected, fortuitous injury, it is compensable as an injury by accident. Brown Shoe Co. v. Reed, 209 Tenn. 106, 350 S.W.2d 65 (1961). Trial courts are not required to accept the opinion of a treating physician over any other conflicting expert medical testimony. The trial judge did not abuse his discretion by accepting the testimony of Dr. Thomas concerning causation and permanency. The first issue is resolved in favor of the claimant.

The successive or "last injurious" injury rule is that where an employee

is permanently disabled as a result of a combination of two or more accidents occurring at different times and while the employee was working for different employers, the employer for whom the employee was working at the time of the most recent accident is generally liable for permanent disability benefits. McCormick v. Snappy Car Rentals, Inc., 806 S.W.2d 527 (Tenn. 1991). It has no application to the present case because the claimant's only compensable injury, according to her unrebutted testimony, occurred while she was working for Quebecor.

For the above reasons, the evidence fails to preponderate against the findings of the trial court and the judgment is therefore affirmed. Costs on appeal are taxed to the defendant.

_____

Joe C. Loser, Jr., Special Judge

CONCUR:

_____

Adolpho A. Birch, Jr., Associate Justice

_____

James L. Weatherford, Senior Judge

IN THE SUPREME OF TENNESSEE

AT NASHVILLE

SHARON ABBOTT	}	*MONTGOMERY CIRCUIT*
	}	*No. Below C12-404*
Plaintiff/Appellee	}	
	}	*Hon. James E. Walton*
vs.	}	
	}	
	}	*No. 01S01-9805-CV-00087*
QUEBECOR PRINTING	}	
	}	
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, for which execution may issue if necessary.

IT IS SO ORDERED on April 7, 1999.

PER CURIAM