IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT KNOXVILLE
(March 16, 1999 Session)

JAMES RYAN, CHANCERY	)	HAMILTON
	)	
Plaintiff-Appellee,	)	Hon. R. Vann Owens,
	)	Chancellor.
v.	)	
	)	No. 03S01-9803-CH-00025
HANCOCK FABRICS, INC.,	)	
	)	
Defendant-Appellant.	)	

For Appellant:

Jim K. Petty
Robinson, Smith & Wells
Chattanooga, Tennessee

For Appellee:

Gary S. Napolitan
D. Scott Bennett
Leitner, Williams, Dooley & Napolitan
Chattanooga, Tennessee

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

Members of Panel:

William M. Barker, Associate Justice
Howell N. Peoples, Special 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 in accordance with Tenn. Code Ann. section 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. In this appeal, the employer contends the chancellor erred in finding "that the claimed bilateral carpal tunnel syndrome was proximately caused through the 18 days of Mr. Ryan's employment.". As discussed below, the panel has concluded the judgment should be affirmed.

The employee or claimant, Ryan, initiated this action to recover medical and disability benefits. The employer denied any liability. As stated in the employer's brief, the issue in the case involves the trial court's finding that there was a causal connection between the employment and the injury. Because the issue is one of fact, we have reviewed the case *de novo* upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. section 50-6-225(e)(2).

The claimant began working for the employer on or about August 1, 1995, doing remodeling work, including carpentry, painting, installing tile and other general labor, all involving repetitive use of the hands. On August 17, 1995, he fell from a ladder, attempting unsuccessfully to catch himself with his hands. He received emergency and follow-up care at Physicians Care, but continued working until the employer's remodeling project was completed. On August 31, 1995, he complained of numbness in his left arm, both hands and his neck and shoulder.

On October 18, 1995, the claimant was seen by Dr. Lester Littell, who, according to his notes, diagnosed "moderate right carpal tunnel syndrome" and "C6 radiculitis." On November 24, 1995, a magnetic resonance report from Erlanger Medical Center, reflected "minimal spurring on the left at the C3-C4 level." On March 3, 1996, Dr. Littell again examined the claimant and diagnosed "mild damage to the left C6 cervical root." The doctor continued to follow the claimant's progress and found maximum medical improvement on May 15, 1996. On June 6, 1996, the doctor assigned the claimant's permanent impairment first at "5% based on spine pain," then at "8% to the upper extremity," using appropriate guidelines. When the claimant continued to have symptoms, Dr. Littell recommended a second opinion. In his deposition, the doctor did not express an opinion as to whether the injuries were causally related to the employment. However, in a letter, he stated that the bilateral carpal tunnel syndrome was unrelated to the fall at work.

On August 20, 1996, still in pain, the claimant went to work for Custom Curb, Inc., as a welder. Custom Curb is not a party to this litigation.

On February 21, 1997, the claimant was seen by Dr. Carl W. Dyer, Jr., who diagnosed, after thorough examination, bilateral carpal tunnel syndrome and possible cervical radiculopathy consistent with the accident at work or other work activities. After a second examination on March 27, 1997, this doctor opined that the carpal tunnel injury was directly related to the fall at work, to

repetitive use of his hands and at the very least aggravated by his employment at Hancock. Dr. Dyer ultimately performed corrective surgery on both hands and afterwards assigned ten percent permanent impairment to both arms, in addition to the five percent to the body as a whole from the cervical injury.

The employer contends the chancellor improperly chose the opinion of Dr. Dyer over that of Dr. Littell because Dr. Littell saw him first and followed him for almost a year. While it is proper to consider the timing of medical examinations, evaluations and treatment, trial courts, as finders of fact in workers' compensation cases, have considerable discretion in determining which of conflicting medical opinions to accept and it is equally proper to consider whether a particular opinion is supported by the physical facts and circumstances, the testimony of the claimant and other lay proof, all of which, in this case, tend to support the chancellor's finding. Moreover, we find no authority for the argument, implicit in the employer's statement of the issue, that an employee's right to recover workers' compensation benefits should be somehow diminished by the duration of the employee's employment by the employer. Moreover, the Workers' Compensation Act is in the nature of an insurance policy, Hughes v. Elliott, 162 Tenn. 188, 35 S.W.2d 387 (1931), and an action to recover the benefits provided therein is an action on a contract. Woods v. City of LaFollette, 185 Tenn. 655, 207 S.W.2d 572 (1948). Concepts of proximate cause and foreseeability do not necessarily govern coverage under the Act. Jordan v. United Methodist Urban Ministries, Inc., 740 S.W.2d 411 (Tenn. 1987). Thus, the evidence fails to preponderate against the findings of the trial court.

The judgment of the trial court is accordingly affirmed. Costs on appeal are taxed to the defendant.

_____

Joe C. Loser, Jr., Special Judge

CONCUR:

_____

William M. Barker, Associate Justice

_____

Howell N. Peoples, Special Judge

IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE

JAMES RYAN	)	Hamilton County Chancery
	)	No. 96-0590
Plaintiff/Appellee	)	
	)	S. Ct. No. 03-S-01-9803-CH-00025
v.	)	
	)	
HANCOCK FABRICS, INC.	)	Hon. R. Vann Owens, Chancellor
	)	
2222 Defendant/Appellant	)	Affirmed

FILED

June 21, 1999

Cecil Crowson, Jr.
Appellate Court
Clerk

JUDGMENT ORDER

This case is before the Court upon defendants' 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 will be paid by defendant/appellant, for which execution may issue if necessary.

PER CURIAM

Barker, J., not participating