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

FILED

July 14, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

ADRIAN JONES, Plaintiff/Appellant v. COCA-COLA ENTERPRISES, INC., Defendant/Appellee	)))))))))))	SHELBY CIRCUIT (No. 83738-3 T.D.) NO. 02S01-9810-CV-00102 HON. KAREN R. WILLIAMS, JUDGE AFFIRMED

For the Appellant:	**For the Appellee:**
Adrian Jones, Pro Se 4860 Chuck Street Memphis, TN 38118	Betty Ann Milligan Janelle S. Evyan 80 Monroe Avenue, Suite 500 Memphis, TN 38103

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

AFFIRMED

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.

The plaintiff alleged that "on or about December 13, 1995, [he] was diagnosed with carpal tunnel syndrome, which arose out of and in the course of his employment." The trial court found the plaintiff had failed to give timely notice of this injury or to present an adequate excuse for not doing so, as required by T.C.A. § 50-6-201, and dismissed his complaint.

We affirm the judgment of the trial court.

Plaintiff began working for Coca-Cola as a route salesman, driving a Coke truck, in 1992. In July, 1995, he was involved in a non-work-related automobile accident, after which he worked only one week for Coca-Cola. As a result of the auto accident, he received medical treatment from Drs. William Turner, Paul Williams and John P. Howser. EMG nerve conduction testing in December 1995 revealed carpal tunnel syndrome, which Dr. Howser thought was work-related, and he so-informed the plaintiff. Dr. Howser testified that, in his opinion, the work-related bilateral carpal tunnel syndrome pre-existed the July, 1995 automobile accident, and that the auto accident exacerbated it.

Surgical correction of bilateral carpal tunnel was accomplished in April and May of 1996 and resulted in Dr. Howser's assessment of "a two percent anatomic disability rating to the body as a whole as a result of his left carpal tunnel and a two percent due to his right carpal tunnel."[1]

The Plaintiff testified when deposed that he first received treatment for carpal tunnel from Dr. Howser in December, 1995, but that

> "I had always had a little pain or aggravation in there, and I was just thinking that, you know, it was just, you know, from - - just doing the strain

[1]But on cross-examination, he responded "Yes" to the question, "Speaking of the 2 percent, you said 2 percent to each extremity for this more recent injury. Is that correct?"

> of my job, you know, filling Coke machines . . . I really noticed it around about the time of the injury to my thumb." [2]

When asked why he had never reported any carpal tunnel symptoms before the automobile accident, although he alleged having such symptoms as far back as July, 1992, he replied,

> "Well, actually yes, ma'am, I did. . . to Bryant Randolph and Jeff McElveen. See, in '92, I had a problem with my right hand with numbness and tingling then and a pain in my forearm, and I had taken off because I didn't know anything about carpal tunnel."

Plaintiff further testified that immediately after seeing Dr. Howser and being diagnosed with carpal tunnel syndrome, he notified Coca-Cola representatives Bryant Randolph, the full-service department manager, Vincent Page, his immediate supervisor, and Betty Smith, the human resources manager, about his work-related carpal tunnel syndrome. He said he talked with these employer representatives about his work-related injuries "on a daily basis, weekends included," and that he attempted unsuccessfully to notify Tonceia Wilkinson, the benefits coordinator at Coca-Cola, by leaving numerous messages on her voice mail, but she did not respond. Finally, several months later, Betty Smith referred him to "Stephanie," who told him to "come up and fill out an on-the-job injury form," which he did, in May, 1996.

Stephanie Ray, human resources administrator, testified that the plaintiff came to see her in May of 1996 and told her that he had carpal tunnel syndrome and that it was work related. Further, that if the plaintiff had tried to reach Tonecia Wilkinson before that time, he would have received a message on Ms. Wilkinson's voice mail directing him to contact Ray or another human resources employee.

Vincent Page, plaintiff's immediate supervisor, testified that plaintiff did not come to him at any point after the automobile accident of July 1995, either on the telephone or in person, and advise him that he had sustained work-related carpal tunnel syndrome. Further, that his supervisor, Bryant Randolph, never told him that plaintiff had sustained any work-related injury.

The trial court found:

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[2]Plaintiff had a prior workers' compensation claim for a thumb injury in March, 1993.

> The primary issue at trial was whether the plaintiff gave timely notice pursuant to T.C.A. § 50-6-201, or presented an adequate excuse for not doing so. The Court finds that notice was not timely given within thirty (30) days of the date the plaintiff first was diagnosed as having carpal tunnel syndrome, and that the excuses articulated by plaintiff for his failure to timely file written notice are inadequate. Additionally, the Court finds that the credibility of the plaintiff has been successfully challenged by the defendant.

Where the trial judge has made a determination based upon the testimony of witnesses whom he has seen and heard, great deference must be given to that finding in determining whether the evidence preponderates against the trial judge's determination. *See Humphrey v. David Witherspoon, Inc.,* 734 S.W.2d 315 (Tenn. 1987).

We have carefully reviewed the depositional and trial testimony of the plaintiff and the employer's witnesses and cannot find that the evidence preponderates against the finding of the trial court, which is affirmed at the cost of the appellant.[3]

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John K. Byers, Senior Judge

CONCUR:

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Janice Holder, Justice

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F. Lloyd Tatum, Senior Judge

[3]The plaintiff, acting pro se, has attempted to raise various other issues not germane to his claim on appeal, which we need not address.

IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

ADRIAN JONES,	)	SHELBY CIRCUIT
	)	NO. 83738-3 T.D.
Plaintiff/Appellant,	)	
	)	Hon. Karen R. Williams,
vs.	)	Judge
	)	
COCA-COLA ENTERPRISES, INC.,	)	NO. 02S01-9810-CV-00102
	)	
Defendant/Appellee.	)	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 Appellant, for which execution may issue if necessary.

IT IS SO ORDERED this 14th day of July, 1999.

PER CURIAM