

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

**BOBBIE JO COKER v. MODERN MOLD INTERNATIONA, INC. d/b/a
NATIONAL PEN CORPORATION**

**Circuit Court for Bedford County
No. 7898**

No. M1999-01521-WC-R3-CV - Decided - June 23, 2000

JUDGMENT

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 appellants, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM

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AT NASHVILLE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL

**BOBBIE JO COKER v. MODERN MOLD INTERNATIONAL, INC. d/b/a
NATIONAL PEN CORPORATION**

**Direct Appeal from the Circuit Court for Bedford County
No. 7898, Lee Russell, Judge**

**No. M1999-01521-WC-R3-CV - Mailed May 23, 2000
Filed - June 23, 2000**

In this appeal, the employer, National Pen Corporation, contends (1) the employee did not experience a work related injury and (2) the employee failed to give notice as required by Tenn. Code Annotated § 50-6-201.

Tenn. Code Ann. § 60-6-225(e) (1999) Appeal as of Right; Judgment of the Circuit Court Affirmed.

LOSER, SP. J., delivered the opinion of the court, in which DROWOTA, J., and GAYDEN, SP. J., joined.

Fred B. Hunt, Bobo, Hunt & Bobo, Shelbyville, for the appellant, Modern Mold International, Inc. d/b/a National Pen Corporation, et al.

C. Kelly Wilson, Shelbyville, for the appellee, Bobbie Jo Coker.

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

The employee or claimant, Coker, began working for National Pen in 1995 and worked at several different jobs, all requiring repetitive use of the hands and arms. In early 1997, she began to experience pain in her right wrist and elbow, but did not report it to the employer or seek medical care. She did report two other injuries in 1997, for which she sought and received medical benefits and had her name placed on the bulletin board. Having one's name placed on the bulletin board had a negative effect on bonuses at National Pen.

At about the same time, in June of 1997, the claimant purchased a computer and began taking

a computer class. She spent considerable time using her new computer.

In September of the same year, the pain in her right wrist and elbow worsened and, in mid-September, became so severe that she told her supervisor, Tommy Sloan, that her arm was hurting and that she was having trouble performing her job. Sloan procured some tape from his office and told the claimant to wrap her wrist with it. She did, but it did not help.

When the pain continued to worsen, she saw Dr. A. T. Richards on September 19th. That doctor ordered tests and referred the claimant to an orthopedic surgeon, Dr. Stephen Miller. Dr. Miller diagnosed ulnar neuropathy and, when conservative care failed, performed corrective surgery.

When she returned to work, the claimant told the employer that the doctor had told her the injuries were work related. However, she did not file a workers' compensation claim until April of 1998 and then only because of the employer's refusal to abide by restrictions imposed by the surgeon.

Another orthopedist, Dr. Richard Fishbein, evaluated the claimant and opined that her injuries were work related.

From the above summarized evidence, the trial judge found the injury to have been work related and that the employer had actual notice of the injury. Appellate review is 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. § 50-6-225(e)(2). The reviewing court is not bound by a trial court's factual findings but instead conducts an independent examination to determine where the preponderance of the evidence lies. Galloway v. Memphis Drum Serv., 822 S.W.2d 584 (Tenn. 1991).

An injury is work related if it arises out of the employment. McCaleb v. Saturn Corp., 910 S.W.2d 412 (Tenn. 1995). An injury arises out of the employment if it has a rational causal connection to the work. We cannot say the evidence preponderates against the trial judge's finding that the claimant's injury was work related.

Immediately upon the occurrence of an injury, or as soon thereafter as is reasonable and practicable, an injured employee must, unless the employer has actual knowledge of the accident, give written notice of the injury to her employer. Tenn. Code Ann. § 50-6-201. We are unable to conclude that the evidence preponderates against the trial judge's finding that the employer had actual knowledge of the claimant's gradually occurring injury.

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