IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
May 16, 2001 Session

IDA PERRY v. COPELAND ELECTRIC CORPORATION, ET AL.

Direct Appeal from the Chancery Court for Gibson County
No. H4070 George R. Ellis, Chancellor

No. W2000-02022-SC-WCM-CV - Mailed June 29, 2001; Filed September 27, 2001

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. In this appeal, the appellant insists (1) the trial court erred in granting the plaintiff's motion to amend her complaint, (2) the trial court erred in finding that the plaintiff sustained an injury arising out of and in the course and scope of her employment, (3) the trial court erred in finding that the plaintiff suffered any permanent partial disability related to any alleged injury and (4) the trial court erred in finding that the claim is not time barred. As discussed below, the panel has concluded the judgment should be affirmed.

Tenn. Code Ann. § 50-6-225(e) (2000) Appeal as of Right; Judgment of the Chancery Court Affirmed.

JOE C. LOSER, JR., SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and ROBERT L. CHILDERS, SP. J., joined.

P. Allen Phillips and Jay Dustin King, Jackson, Tennessee, for the appellant, Emerson Motor Company.

Lisa June Cox, Jackson, Tennessee, for the appellee, Ida Perry.

MEMORANDUM OPINION

This civil action was commenced by Ida Perry, on July 22, 1998 against Copeland Electric Corporation and Emerson Electric Company, d/b/a Emerson Motor Company, a manufacturer of electric motors, seeking to recover workers' compensation benefits for a gradually occurring injury. The complaint averred the date of injury to be June 1998. The complaint was amended at trial to add "as a result of performing her employment duties with the Defendants, the Plaintiff, Ida Perry, sustained bilateral arm injuries, which arose out of and in the course of her employment with Defendants." The case was tried on June 19, 2000.

At the time of the trial, the employee or claimant, Perry, was 53 years old with a ninth grade education and no vocational training. She had worked for the employer, Emerson, for 20 years on the assembly line, performing repetitive motion duties using both hands. She gradually developed pain, numbness and tingling in both hands and arms.

At trial, the treating physician, Dr. Nicholas B. Appleton, gave conflicting testimony as to whether she had carpal tunnel syndrome. So did Dr. Glenn Barnett. Dr. Robert P. Christopher, to whom the claimant was referred by her attorney, diagnosed mild synovitis in both wrists, causally related to the claimant's work. Dr. Christopher estimated her permanent medical impairment to be 7 percent to the left upper extremity and 6 percent to the right upper extremity, using AMA guidelines.

Dr. Christopher advised the claimant to avoid work that requires repetitive wrist and finger movement. The doctor imposed other restrictions regarding the use of her hands and arms. The claimant testified that, as a result of the injuries superimposed on pre-existing fibromyalgia, her ability to work is severely limited. However, she continues to work with pain.

Upon the above summarized evidence, the trial court awarded, inter alia, permanent partial disability benefits based on 21 percent to the left arm and 18 percent to the right arm. 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) (2000). This tribunal is not bound by the trial court's findings but instead conducts an independent examination of the record to determine where the preponderance lies. Galloway v. Memphis Drum Serv., 822 S.W.2d 584, 586 (Tenn. 1991). Where the trial judge has seen and heard the witnesses, especially if issues of credibility and weight to be given oral testimony are involved, considerable deference must be accorded those circumstances on review, because it is the trial court which had the opportunity to observe the witnesses' demeanor and to hear the in-court testimony. Long v. Tri-Con Ind., Ltd., 996 S.W.2d 173, 178 (Tenn. 1999). The appellate tribunal, however, is as well situated to gauge the weight, worth and significance of deposition testimony as the trial judge. Walker v. Saturn Corp., 986 S.W.2d 204, 207 (Tenn. 1998). The extent of an injured worker's permanent vocational disability is a question of fact. Story v. Legion Ins. Co., 3 S.W.3d 450, 456 (Tenn. 1999).

The employer first contends the amendment to the complaint should not have been allowed because it introduced "a new cause of action, specifically alleging bilateral arm injuries," thereby jeopardizing the employer's rights. In her original complaint, the employee averred that she had developed gradually occurring carpal tunnel syndrome. The motion to amend was made after the medical proof was taken by deposition and was intended to cause the pleadings to conform to the proof by averring gradually occurring bilateral arm injuries. The amendment did not state a different cause of action, but stated the claim in less specific terms. We are not persuaded that any of the employer's rights were jeopardized. For that reason and because Tenn. R. Civ. P. 15[1] requires

[1] 15.01 Amendments. A party may amend the party's pleadings once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive

amendments to be liberally allowed where justice requires it, the first issue is resolved in favor of the employee.

The employer next contends there was no medical evidence of bilateral carpal tunnel syndrome. In fact, the principal diagnosis was mild synovitis in both wrists, superimposed on bilateral carpal tunnel syndrome and fibromyalgia. Her symptoms included chronic numbness and loss of grip strength, according to the treating physician. Whatever the medical term is, the claimant clearly suffered a work-related injury. The second issue is resolved in favor of the employee.

The employer next contends there is no evidence of permanency. Where the employee's claim is for permanent disability benefits, permanency must be proved. Hill v. Royal Ins. Co., 937 S.W.2d 873, 876 (Tenn. 1996). In all but the most obvious cases, causation and permanency may only be established through expert medical testimony. Thomas v. Aetna Life and Cas. Co., 812 S.W.2d 278, 283 (Tenn. 1991). Dr. Christopher assigned a permanent impairment rating and imposed permanent restrictions. The third issue is resolved in favor of the employee.

The employer finally contends the claim is barred by the one-year statute of limitations. An action by an employee to recover benefits for an accidental injury, other than an occupational disease, must be commenced within one year after the occurrence of the injury. Tenn. Code Ann. § 50-6-224(1). 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, 115, 350 S.W.2d 65, 69 (1961). In such cases, however, unless the date of injury can be determined, compensation may be denied. The date of injury has been fixed as of the date on which the claimant was forced to quit work because of severe pain. Barker v. Home-Crest Corp., 805 S.W.2d 373, 374 (Tenn. 1991). In the present case, the employee was forced to quit working in June of 1998, well within one year of the commencement of a civil action to recover benefits.

For the above reasons, the judgment of the trial court is affirmed. Costs are taxed to the appellant, Emerson Motor Company.

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JOE C. LOSER, JR., SPECIAL JUDGE

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pleading is permitted and the action has not been set for trial, the party may so amend it at any time within fifteen (15) days after it is served. Otherwise a party may amend the party's pleadings only by written consent of the adverse party or by leave of court; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within fifteen (15) days after service of the amended pleading, whichever period may be longer, unless the court otherwise orders.

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

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Chancery Court for Gibson County
No. H4070

No. W2000-02022-WCM-SC-CV - Filed September 27, 2001

ORDER

This case is before the Court upon motion for review filed on behalf of Emerson Electric Company d/b/a Emerson Motor Co.; Copeland Electric Corporation 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 Emerson Motor Company, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM

HOLDER, J. - NOT PARTICIPATING