IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
March 24, 2008 Session

DAVID JOE JACKSON v. GOODYEAR TIRE & RUBBER CO. ET AL.

Direct Appeal from the Chancery Court for Obion County
No. 25,017 William Michael Maloan, Chancellor

No. W2007-01131-WC-R3-WC - Mailed July 22, 2008; Filed August 26, 2008

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated section 50-6-225(e)(3) for a hearing and a report of findings of fact and conclusions of law. Employee sustained an aggravation of his pre-existing degenerative back condition while rising from his chair during his lunch break on Employer's premises. The trial court found the injury was compensable and awarded 15% permanent partial disability benefits. Employer has appealed, contending that the injury did not arise from the employment. We affirm the judgment.

Tenn. Code Ann. § 50-6-225(e) (Supp. 2007) Appeal as of Right;
Judgment of the Chancery Court Affirmed

ALLEN W. WALLACE, SR. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and DONALD P. HARRIS, SR. J., joined.

Randy N. Chism, Union City, Tennessee, for the appellant, Goodyear Tire & Rubber Co.

Jeffrey A. Garrety and Joseph R. Taggart, Jackson, Tennessee, for the appellee, David Joe Jackson.

MEMORANDUM OPINION

Factual and Procedural Background

The facts are undisputed. David Joe Jackson ("Jackson") worked as a tire builder for Goodyear Tire & Rubber Company ("Goodyear"). On February 13, 2004, he sustained an injury to his low back. The injury occurred while he was in a break room on Goodyear's premises. His back "locked up" as he was getting up from a chair. The injury was reported. Goodyear denied the claim.

Jackson received treatment from Dr. Yogesh Malla. Dr. Malla determined that Jackson had degenerative changes in his back. He provided conservative treatment. He assigned an impairment of 8% to the body as a whole.

Dr. Samuel Chung performed an IME. He assigned an impairment of 10% to the body as a whole.

Both doctors testified that the injury occurred simply as a result of rising from the chair. The chair was described as being attached to the table, as is common at fast-food restaurants. The trial court found that Jackson had sustained a compensable injury and awarded 15% PPD to the body as a whole. Goodyear has appealed from that judgment, contending that the trial court erred by finding that Jackson suffered a compensable injury.

Analysis

Goodyear contests only liability; the amount of the award is not at issue on appeal. When, as here, the material facts are undisputed, the interpretation and application of legislative enactments present questions of law unaccompanied by any presumption of correctness. *Lawrence County Educ. Ass'n v. Lawrence County Bd. of Educ.*, 244 S.W.3d 302, 309 (Tenn. 2007); *Billington v. Crowder*, 553 S.W.2d 590, 595 (Tenn. Ct. App. 1977). Goodyear concedes that the injury occurred "in the course of" the employment but denies that it "arose out of" the employment. Goodyear cites *Blankenship v. American Ordnance Sys., LLC*, 164 S.W.3d 350, 354 (Tenn. 2005), which summarizes the various principles used to interpret this phrase:

> [A]rising out of employment refers to causation. An injury arises out of employment when there is a causal connection between the conditions under which the work is required to be performed and the resulting injury. The mere presence of the employee at the place of injury because of the employment is not enough, as the injury must result from a danger or hazard peculiar to the work or be caused by a risk inherent in the nature of the work. Thus, "an injury purely coincidental, or contemporaneous, or collateral, with the employment . . . will not cause the injury . . . to be considered as arising out of the employment."

Id. (quoting *Jackson v. Clark & Fay, Inc.*, 270 S.W.2d 389, 390 (1954)) (citations omitted).

Goodyear argues that the act of rising from a chair does not involve a "danger or hazard peculiar to the work" and that the occurrence of this injury was merely "coincidental" with the employment. As an example of a case in which a "coincidental" injury was held not to be compensable, Goodyear cites *Connor v. Chester County Sportswear Co.*, No. W2001-02114-WC-R3-CV, 2002 WL 313348662 (Tenn. Workers' Comp. Panel Oct. 18, 2002). In *Connor*, the trial court awarded benefits for a knee injury. The employee testified that she felt her knee pop as she arose from a toilet and turned to flush it. 2002 WL 31348662 at *1. The Workers' Comp. Panel reversed, holding that the injury did not arise out of the employment. The panel noted that "[t]he injury did not result from a danger or hazard peculiar to the work." *Id.* at *3

Jackson contends that *Connor* is inapplicable because the employee in that case testified that she had "felt a little catch" in her knee prior to going to work. *Id.* at *1. The Panel, however, did not refer to this in its analysis. In addition, Jackson argues that the fixed arrangement of the chair

and table constituted a hazard associated with the workplace, because it was necessary for him to turn or twist in order to rise to his feet.

In addition, Jackson cites several cases in which injuries caused by actions similar to that in this case have been held to arise out of the employment. In *Hall v. Auburntown Indus., Inc.*, 684 S.W.2d 614 (Tenn. 1985), the employee was instructed to observe another worker. She sat on a nearby cart to observe. She twisted as she rose from the cart and suffered a ruptured disc. The trial court awarded benefits. The Supreme Court affirmed, stating: "[T]here is no requirement of a special risk in a case like this one, where it is obvious that nothing extraneous to the employment caused the injury." *Id.* at 617.

Jackson also cites *McCormick v. Aabakus, Inc.*, 101 S.W.3d 60, 62 (Tenn. Workers' Comp. Panel 2000), in which the employee choked to death on a sandwich during her lunch break in a break room on the premises of her employer. The trial court denied benefits, but the Special Workers' Compensation Panel reversed, holding that "where an employee is injured on the employer's premises during a break period provided by the employer, such injury is generally compensable." *Id.* at 64.

Tennessee courts have long held that injuries suffered on the employer's premises during lunch breaks "arise out of and in the course of employment." *Johnson Coffee Co. v. McDonald*, 226 S.W. 215, 216 (Tenn. 1920); *Drew v. Tappan Co.*, 630 S.W.2d 624, 625 (Tenn. 1982).

The situation presented here is undoubtedly at the outer limit of compensability under our workers' compensation law. Our review of the cases leads us to the conclusion that these facts are more akin to those in *Hall* and *McCormick* than those in *Connor*. This conclusion is consistent with the rule quoted above from *McCormick* and with the overarching principle that "any reasonable doubt as to whether an injury 'arose out of the employment' is to be resolved in favor of the employee." *Bell v. Kelso Oil Co.*, 597 S.W.2d 731, 734 (Tenn. 1980). We therefore affirm the judgment of the trial court.

Conclusion

The judgment is affirmed. Costs are taxed to the appellant, Goodyear Tire & Rubber Company, and it surety, for which execution may issue if necessary.

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ALLEN W. WALLACE, SENIOR JUDGE

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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 on appeal are taxed to the Appellant, Goodyear Tire & Rubber Company, and its surety, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM