IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
MAY 1999 SESSION

FILED

August 23, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

LaDONNA MOORE,	)	
	)	
Plaintiff/Appellant,	)	MADISON CHANCERY
	)	
v.	)	No. 02S01-9806-CH-00056
	)	
LIBERTY MUTUAL INSURANCE COMPANY,	)	HONORABLE JOE C. MORRIS,
	)	CHANCELLOR
Defendant/Appellee.	)	

For the Appellant:

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For the Appellee:

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

Members of Panel:

Justice Janice M. Holder
Senior Judge John K. Byers
Senior Judge F. Lloyd Tatum

AFFIRMED **TATUM, Senior Judge**

O P I N I O N

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.

This is an appeal by the employee/plaintiff, LaDonna Moore, from a decision of the Chancery Court of Madison County holding that plaintiff failed to prove that her carpal tunnel syndrome arose out of and in the course of her employment for defendant's insured, Latham's Meat Market. On this appeal, she presents two issues: (1) the preponderance of the evidence established that her carpal tunnel syndrome was causally related to her work for Latham's Meat Market, and (2) the last injury rule is applicable, in that the defendant is liable for the carpal tunnel injury, even if her injury may have begun at a former employment. After reviewing the record, we find that the judgment of the trial court must be affirmed.

The plaintiff testified that she was 31 years of age and was working at that time for Pierce Distribution Company. She had a tenth grade education. She first had symptoms with her left arm in the early 1990s while working for Ekco/Glaco, where she assembled bread pans that involved repetitive type work with her hands. She testified that her left hand went numb and that it felt like a sprain to her wrist. She went to her family doctor, Dr. Murphy, and missed about one week of work. She saw Dr. Murphy two or three times before he sent her to a nerve specialist. A brace was prescribed for her left arm. When she was released by her doctor to return to work, she left the employment of Ekco/Glaco "because [her] wrist was still bothering her," and she "felt she couldn't do the job" due to her wrist pain.

After working at several other jobs without difficulty, she began working for Latham's Meat Market in 1993 as a "cashier, cook, just anything." She testified that she cooked, made and wrapped sandwiches, wrapped meat, washed dishes by hand, used a can opener, and sliced ten pounds of potatoes, two bags of carrots, and six or seven onions each day.

She testified that she began having problems with her left hand after working at

Latham's for about one year. Her left hand would feel numb when she was peeling potatoes, and she began dropping things. She testified that it took her twenty to twenty-five minutes each day to peel potatoes. She would hold the potatoes in her left hand and peel them with her right hand, as she was right-handed.

She worked at Latham's about one and one-half years before she quit for a four-month period and then went back to work at Latham's doing the same kind of work. After returning to work, she felt numbness and pain in her left hand. She testified that everything she did "bothered" her hand. She testified that she had to quit Latham's a second time on January 15, 1996, to serve a term in jail for a DUI conviction. She remained in jail until the first week in May, 1996, when she was permitted to serve the rest of her time on weekends. She was reemployed at Latham's on May 13, 1996, doing the same work. She testified that her arm did not bother her as much when she was serving the time in jail. While working at Latham's through the week and serving jail time on weekends, she was reclining in jail watching television and her left hand "went real numb." She was taken to the emergency room and was seen by Dr. Stonecipher, who diagnosed carpal tunnel syndrome of the left wrist and did surgery.

Plaintiff first made a claim against Ekco/Glaco "[b]ecause I just assumed that's who I needed to try to make a claim on since my wrist had started hurting there at one time. I figured it was -- you know, had stemmed from that." She testified that when she learned that she could not make a claim against Ekco/Glaco, she made this claim against Latham's and its insurance carrier.

The plaintiff testified that, at the time of trial, she was employed with Pierce Distribution, where she uses her hands on a daily basis to break down parts, pack parts, count items, separate parts to get them packed out, tag parts, and writes with a pencil. She has no complaints or difficulty with this work.

Two co-workers testified on behalf of the plaintiff. They described several of the plaintiff's duties at work doing many types of chores. The work described by these witnesses did not indicate repetitive use of the wrists and hands.

Mr. Paul Latham, the owner of the employer company, testified that the plaintiff "did everything" but was primarily responsible as a cook. He observed the plaintiff wearing the

wrist brace (which was prescribed by Dr. Murphy) sometimes while she was working for him.

Dr. Lowell Stonecipher testified that he performed surgery on the plaintiff's left arm for moderately severe carpal tunnel syndrome. He released her on August 19, 1996, to return to her previous duties at Latham's Meat Market. From the history she gave him that she picked up and carried heavy things, he felt like she could perform her previous duties without restriction. She was to return in six weeks after discharge for further testing to determine whether she had permanent disability, but she failed to return for this testing.

On cross-examination, plaintiff's counsel asked Dr. Stonecipher a hypothetical question describing the various duties that the plaintiff performed, such as peeling potatoes and wrapping sandwiches, and asked him if she did "all or some of these things on a regular basis, would that likely cause the type of problems that she had?" His answer was that "it could" and that, if she did these various duties on a regular basis, it would be more likely to cause "the problems" than the description of her job duties that she gave to him. However, Dr. Stonecipher was not apprised in the hypothetical question that the plaintiff suffered with carpal tunnel syndrome while working for Ekco/Glaco and that, after treatment, she had to quit working for Ekco/Glaco because of the pain in her left arm.

Plaintiff was examined by Dr. Joseph C. Boals at the request of her attorney. She gave Dr. Boals a history that "[s]he began to develop some numbness and pain in her left hand" after she began working for Latham's Meat Market. She did not inform him that the numbness and pain in her left hand developed while she was working for Ekco/Glaco. Plaintiff's counsel asked Dr. Boals a hypothetical question similar to that asked Dr. Stonecipher without including the material fact that the symptoms actually began while the plaintiff was working for Ekco/Glaco. On these facts given to Dr. Boals, he reached the opinion that the "causation of her hand problems" was the work she did at Latham's Meat Market. Dr. Boals testified that carpal tunnel syndrome was generally caused by repetitive gripping, prying, or twisting, or heavy repetitive work.

The plaintiff in a workers' compensation suit bears the burden of proving every element of the case by a preponderance of the evidence, including the existence of a work-related injury by accident. See Talley v. Virginia Ins. Reciprocal, 775 S.W.2d 587, 591

(Tenn. 1989). To be eligible for workers' compensation benefits, an employee must suffer an injury by accident arising out of and in the course of employment which causes either disablement or death. Tenn. Code Ann. § 50-6-102(a)(5). Generally, an injury arises out of and in the course and scope of employment if it has a rational connection to the work and occurs while the employee is engaged in the duties of his employment. Hall v. Auburntown Indus., Inc., 684 S.W.2d 614, 617 (Tenn. 1985). When 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 given to those circumstances on review. Townsend v. State, 826 S.W.2d 434, 437 (Tenn. 1992). Where medical testimony is documentary or by deposition, the reviewing tribunal is as able to pass on the weight and value of the evidence as the trial judge. Humphrey v. David Witherspoon, Inc., 734 S.W.2d 315, 315-16 (Tenn. 1987). Our 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). This tribunal is required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. See Landers v. Fireman's Fund Ins. Co., 775 S.W.2d 355, 356 (Tenn. 1989). All of the witnesses testified in open court except for the two doctors, who testified by deposition.

In this case, the chancellor found that the plaintiff's injury arose out of and in the course of her employment at Ekco/Glaco, not Latham's Meat Market. The record reflects that the plaintiff first began experiencing problems with her left arm while she worked at Ekco/Glaco, received medical treatment there, and terminated her employment because of the severe pain she was having in the left arm and hand. The work at Ekco/Glaco involved the repetitive use of her hands, wrists, and arms in assembling bread pans. She testified at trial that the work at Ekco/Glaco caused symptoms of carpal tunnel syndrome. She first attempted to bring suit against Ekco/Glaco, but apparently her suit against that company was barred by the statute of limitations. She then decided to bring suit against Latham's Meat Market's insurer. The work that the plaintiff was performing at Latham's Meat Market did not require repetitive use of her hands, wrists, and arms; the work at Latham's involved numerous duties requiring varied use of the hands, wrists, and arms.

The opinions given by the two medical experts are of little or no probative value. These opinions were based upon facts given by the plaintiff to the doctors and hypothetical questions that ignored the overwhelming evidence in this case that the plaintiff's carpal tunnel syndrome was caused by her employment for Ekco/Glaco. It stands to reason that a medical opinion will not be reliable if based on false medical history. See Orman v. Williams Sonoma, Inc., 803 S.W.2d 672, 676 (Tenn. 1991).

We do not find that the evidence preponderates against the finding of the trial court with regard to Issue No. 1.

In the second issue, the plaintiff argues that the defendant is liable for the plaintiff's carpal tunnel syndrome, even though her injury may have begun at Ekco/Glaco, pursuant to the last injurious injury rule.

The last injurious injury rule was first adopted and recognized in Tennessee in Baxter v. Smith, 364 S.W.2d 936 (Tenn. 1962). In Baxter, the rule is stated as follows:

> The rule then in Tennessee is that an employer takes an employee as he finds him. He is liable for disability resulting from injuries sustained by an employee arising out of and in the course of his employment even though it aggravates a previous condition with resulting disability far greater than otherwise would have been the case.
>
> This rule seems to be almost identical with the Massachusetts-Michigan rule indicated above. It is the rule in Tennessee that there must be a causal connection between the employment and the resulting injury or that the most recent injury causally related to the employment renders the employer at that time liable for full compensation for all of the resulting disability even though increased by aggravation of a previous condition of disease or injury of such employee.

Baxter, 364 S.W.2d at 942-43.

The proof is undisputed that this is a repetitive stress injury and that plaintiff's carpal tunnel syndrome did not evolve as a result of an identifiable traumatic event. The Supreme Court has applied the last injurious exposure rule in several cases involving a gradual injury resulting in carpal tunnel syndrome. Among the cases is Barker v. Home-Crest Corp., 805 S.W.2d 373 (Tenn. 1991), in which the Court was faced with the question of which of two successive insurance carriers were liable. The Court held that the second insurance carrier was liable, because this gradual injury commenced during the time that the first insurance company carried the employer's insurance but that the injury continued to

progress during the period that the second insurance company was the insurance carrier. Id. at 376.

The trial court held in effect that the symptoms occurring after the plaintiff terminated her employment for Ekco/Glaco were manifestations of the original injury at Ekco/Glaco and not a second injury or aggravation or culmination of a gradual injury. After considering the evidence summarized above, we do not find that the evidence preponderates against the findings of the trial court with respect to the second issue. It must, therefore, be overruled.

The judgment of the trial court is affirmed.

Costs are adjudged against the plaintiff.

_____
F. LLOYD TATUM, SENIOR JUDGE

CONCUR:

_____
JANICE M. HOLDER, JUSTICE

_____
JOHN K. BYERS, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

LaDONNA MOORE,	)	MADISON CHANCERY
	)	NO. 52727
Plaintiff/Appellant,	)	
	)	Hon. Joe C. Morris,
vs.	)	Chancellor
	)	
LIBERTY MUTUAL INSURANCE COMPANY,	)	NO. 02S01-9806-CH-00056
	)	
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 and surety, for which execution may issue if necessary.

IT IS SO ORDERED this 23rd day of August, 1999.

PER CURIAM