

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
March 21, 2016 Session

DAMON HAWKS v. LISA CHRISTIAN, ET AL.

**Appeal from the Chancery Court for Montgomery County
No. MCCHCVWC143 Laurence M. McMillan, Jr., Chancellor**

**No. M2015-02200-SC-R3-WC – Mailed May 18, 2016
Filed June 20, 2016**

In this workers' compensation case, the employee sustained an injury in the course of his employment when he fell off a roof. His employer denied the employee's claim for workers' compensation benefits pursuant to Tennessee Code Annotated section 50-6-110 because the employee failed to use a required safety appliance. The trial court found that the employee provided a valid excuse for failing to wear the required equipment and awarded benefits. The employer has appealed. Pursuant to Tennessee Supreme Court Rule 51, the appeal has been referred to the Special Workers' Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law. We reverse the judgment of the trial court.

**Tenn. Code Ann. § 50-6-225(a)(2) (2014) Appeal as of Right; Judgment of the
Chancery Court Reversed; Case Remanded for Dismissal**

PATRICIA J. COTTRELL, SP.J., delivered the opinion of the Court, in which CORNELIA A. CLARK, J., and BEN H. CANTRELL, SR.J., joined.

Michael L. Haynie, Nashville, Tennessee, for the appellants, Eric Christian, Lisa Christian, Christian Construction, Inc., and Auto Owners Insurance Company.

Matt McFarland, Nashville, Tennessee, for the appellee, Damon Hawks.

OPINION

Factual and Procedural History

On June 28, 2013, Damon Hawks (“Employee”) was performing roofing work for Christian Construction (“Employer”) with six or seven other employees who were attempting to finish the project that day. Employee testified that he was wearing the required safety harness, which was attached via cable to a “retractable box.” Much like an automobile seat belt, the cable would play out if moved slowly but would lock if a sudden movement occurred. According to Employee, he was working about six to eight inches from the edge of the roof when the cable became wrapped around his left leg. He continued working for three or four minutes with the cable around his leg, but then unhooked the cable to unwrap it. After unhooking, Employee accidentally stepped off of the roof, falling approximately eight and a half feet to the ground.

Employee’s coworkers allowed him to rest for a few minutes before placing him in a chair. When Employee then decided to go to a hospital, one of his coworkers transported him. He was diagnosed with “a fractured hip socket, a completely obliterated pubic bone on the right side, and a non-displaced fracture of [his] right arm.” He had surgery on his hip three days later,¹ and remained in the hospital for fourteen days, where he received simple physical therapy. Employee’s treating physician declared Employee to be at maximum medical improvement on January 3, 2014, and recommended that Employee avoid climbing because of the injury to his hip. Employee testified that he was “particularly tickled” with his recovery, in light of the extent of his injuries, though he still has pain in his hip every day, is unable to squat, and has elbow pain when he straightens his arm.

Employee did not return to work for Employer. When the trial occurred in August 2015, he was working for Mid-South Prestress in Dickson, Tennessee. His job consisted of welding, using a cutting torch, and driving a forklift. His hourly wage was higher than his wage from Employer, and he received fringe benefits that Employer had not provided.

Prior to trial, the parties stipulated that Employer had a rule requiring employees to use a safety harness at all times when working on a roof, that the rule was enforced, and that Employee was aware of both the rule and of the danger associated with not following the rule. Employee also testified that he was aware of Employer’s work rule, which required all workers to wear a safety harness, including an attached cable, “100%” of the time. He stated

¹ The nature of the surgical procedure(s) is not disclosed in the record. It appears that the medical evidence was presented by means of an evidentiary deposition of Dr. David Gaw. That document is not contained in the record on appeal. Because neither side in this appeal has raised any issue concerning causation, medical treatment, impairment or restrictions, Dr. Gaw’s testimony is not required in order to dispose of this appeal.

that, in his eighteen years as a roofer, Employer was the only place where he was employed that had such a requirement. Employee also stated that he knew the purpose for the rule was to prevent workers from falling off roofs. He agreed that he could have asked another employee to assist him in untangling the cable, detached the cable while he was in a sitting position, or climbed higher on the roof to slacken the cable.

Employee justified unhooking the harness in several statements:

A. I felt -- ironically, I felt in danger of tripping, you know, having to work close to the edge. And in my mind at the time, I felt it was safer for me to unhook and untangle rather than continue to be tangled up.

...

A. I don't think there was any other way to get it untangled. I mean, I possibly could have sat down and had someone, you know, work the cables above me; but in the interest of the situation in trying to get the job done, I just decided at the time to unhook my own cable[] . . . [i]n order to complete the job as quick as possible.

...

... And I know it's hard to understand, but in the interest of having roofed for so long, there are certain situations I do feel comfortable, even though to the layman it would be a dangerous situation.

...

Q. And you said on [d]irect that you did it the way you did it in order to save some time.

A. Yes, sir.

Q. And as you said in your deposition, the amount of time you saved was about thirty or forty seconds; is that right?

A. Uh-huh. (Affirmatively)

Q. Yes?

A. Yes, sir.

Employee was the only witness to testify at trial, and the trial court issued its findings and conclusions from the bench. The court found that Employee had provided a valid excuse for not adhering to Employer's safety rule and, therefore, Employee's claim was not barred by operation of Tennessee Code Annotated section 50-6-110. The court further found that Employee had sustained a 25% permanent partial disability to the body as a whole. Judgment was entered consistent with those findings. Employer has timely appealed from that judgment, asserting that the trial court erred by finding that Employee's claim was not barred by Tennessee Code Annotated section 50-6-110.

Analysis

Appellate review of decisions in workers' compensation cases is governed by Tennessee Code Annotated section 50-6-225(a)(2) (2014), which provides that appellate courts must "[r]eview . . . the trial court's findings of fact . . . de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise." This appeal does not involve any disputed issues of fact, as the evidence consists of the stipulations of the parties and Employee's uncontradicted testimony. Therefore, Employer is challenging only the trial court's application of the law. "The interpretation of a statute and its application to undisputed facts involve questions of law." Seiber v. Reeves Logging, 284 S.W.3d 294, 298 (Tenn. 2009). A trial court's conclusions of law are reviewed de novo upon the record with no presumption of correctness. Id.; Ridings v. Ralph M. Parsons Co., 914 S.W.2d 79, 80 (Tenn. 1996).

Employer contends that the trial court erred in its application of Tennessee Code Annotated section 50-6-110(a) (Supp. 2012) by finding that Employee had provided a valid excuse for violating Employer's safety rule. Tennessee Code Annotated section 50-6-110 states in pertinent part that "[n]o compensation shall be allowed for an injury or death due to . . . [t]he employee's willful failure or refusal to use a safety device[.]" Tenn. Code Ann. § 50-6-110(a). Furthermore, "[i]f the employer defends on the ground that the injury arose in any or all of the ways stated in subsection (a), the burden of proof shall be on the employer to establish the defense." Id. § 50-6-110(b).

Our Supreme Court recently discussed this statutory defense and modified the test that previously had applied to determine if the defense had been established. See Mitchell v. Fayetteville Pub. Utils., 368 S.W.3d 442, 449 (Tenn. 2012). In Mitchell, the plaintiff was a lineman for an electric utility concern, and, similar to the present case, the Mitchell parties stipulated:

that the Employer had in effect a policy requiring the Employee to wear protective gloves for safety purposes; that the Employer carried out strict, continuous, and bona-fide enforcement of the policy; and that the Employee

had actual knowledge of the policy through his training program, including the danger involved in violating the policy.

Id. at 446. To determine whether the statutory defense had been established, the Mitchell Court modified a test previously articulated by this Panel, see Nance v. State Indus., Inc., 33 S.W.3d 222, 226 (Tenn. Workers' Comp. Panel 2000), and adopted instead a test that requires consideration of four factors:

(1) [T]he employee's actual, as opposed to constructive, notice of the rule; (2) the employee's understanding of the danger involved in violating the rule; (3) the employer's bona fide enforcement of the rule; and (4) the employee's lack of a valid excuse for violating the rule.

368 S.W.3d at 453 (internal citations omitted) (citing 2 Lex K. Larson, Larson's Workers' Comp. Law §§ 35.02-.04 (Matthew Bender rev. ed. 2008)).

In Mitchell the employee was in a bucket lift at the time he sustained the injury and testified that he was wearing his gloves when he ascended in the bucket and while performing some preliminary tasks. Id. at 445-46. After being lifted higher to a nearby, taller pole, the employee testified that he felt he was in a "safe zone," so he removed his gloves to hammer a metal staple into the pole because "it was easier to hammer without the gloves and . . . he 'didn't want to puncture a hole' in the gloves," though the employer replaced punctured gloves. Id. at 446-47. The employee agreed that he could have hammered the staple while wearing the gloves but added that it was difficult to do so. Id. at 446. The employee came into contact with a charged wire and received a severe shock and burn. The trial court awarded benefits, finding the employee had removed the gloves because removal made it easier to staple, to avoid puncturing the gloves, and because he had believed that the pole was not hot. See id. at 447. The trial court found that, "respectfully, I'm going to find that the [Employee's conduct] was not willful within the meaning [of the] applicable case law." Id.

The Supreme Court reversed the trial court, stating:

In this instance, the established policy, clear and unequivocal, was known to the Employee. As stipulated, the Employee, having nine years of experience, understood the rationale for wearing protective gloves, fully appreciated the danger involved in a violation, and conceded that the rule was enforced. His admission that he knew the safety policy required protective gloves while in the bucket lift and his acknowledgment that he elected to take them off anyway clearly established that his act was willful—and not merely negligent or reckless.

Id. at 455.

In the case before us, the first three prongs of the Mitchell test are satisfied by the stipulations of the parties. In addition, Employee testified that he was well aware of the rule and the danger created by violating it. Consequently, this appeal turns on whether Employee had a valid excuse for violating the rule. During the trial, Employee testified that he unhooked his cable because: he felt it was safer to unhook and untangle rather than continue to be tangled up; “to complete the job as quick[ly] as possible;” and, due to his experience as a roofer, he felt it was safe to unhook his harness, though it would have been dangerous for a layman to do so. The trial court found that Employer had failed to prove that Employee lacked a valid excuse for breaking Employer’s harness rule, and stated:

The employee testified that, at the time, they were struggling to get the job finished. He also said it was a fast-paced job, and he also testified that there were other employees on the roof with cables perhaps intertwining with his which could have -- I think the words were -- taken up slack at some point. And he thought it was in his best interest to unwrap it. The Court finds that that is a valid excuse for violating the rule.

Employee’s explanation for unhooking his harness in this case is, in our view, substantially similar to the explanation proffered in Mitchell. In this case, Employee stated that, because of his experience as a roofer, he considered it safe to unhook and untangle rather than to continue to work with a cable around his leg. It is undoubtedly true that it was in everyone’s interest for Employee to untangle the cable from his leg. However, Employee admitted that he could have removed the cable from his leg by various means without unhooking his harness. He stated that he chose to unhook the harness because his crew was working quickly to finish the job, but he conceded that the amount of time to be saved by unhooking his harness rather than using a safer alternative method to remove the cable from his leg was roughly thirty to forty seconds. Finally, he thought that it was safe to unhook his harness while standing six to eight inches from the edge of the roof because of his many years of experience. None of these explanations amounts to a valid excuse for violating a known safety rule when safer alternatives were available.

Employee chose to violate the rule at the very edge of the roof, where the possibility of falling was greatest. Employee’s belief that he would be safe while unharnessed because of his experience is not an excuse in the circumstances of this case. The purpose of safety rules in general is to avoid employees applying their own individual determinations of what is safe. While there may be circumstances in which an experienced employee must make a decision in emergency situations, this case does not provide such circumstances.

Having reviewed the undisputed facts, we conclude that the trial court incorrectly applied Tennessee Code Annotated section 50-6-110 in this case. Employer successfully carried its burden of establishing that Employee did not have a valid excuse for willfully violating the safety harness rule.

Conclusion

The judgment of the trial court is reversed. The case is remanded to the trial court for entry of an order dismissing Employee's claim, and for such additional proceedings as may be required. Costs are taxed to Damon Hawks, for which execution may issue if necessary.

PATRICIA J. COTTRELL,
SPECIAL JUDGE

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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 Damon Hawks, and his surety, for which execution may issue if necessary.

PER CURIAM

