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

JOEL DAVIS MOULTRIE v. GOODYEAR TIRE & RUBBER COMPANY ET AL.

Direct Appeal from the Chancery Court for Obion County
No. 25,373 William Michael Maloan, Chancellor

No. W2007-00865-WC-R3-WC - Mailed June 23, 2008; Filed August 4, 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) (Supp. 2007) for a hearing and a report of findings of fact and conclusions of law. After working an evening shift at his job, the employee awoke the next morning with severe back pain. He sought medical treatment through his family physician who referred him to a neurosurgeon. Within a few days, he had surgery to repair bone spurring and degenerative changes in his cervical spine. After the surgery, he informed his supervisor that he believed his job caused his condition. He made a workers' compensation claim, which his employer denied. The trial court found that his injury was work-related and awarded 50% permanent partial disability to the body as a whole. The employer has appealed, contending that the claim is barred by failure to comply with the notice requirement of the workers' compensation law, and that the employee did not sustain his burden of proof concerning causation. We affirm the judgment of the trial court.

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

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

James M. Glasgow, Jr. and Kirk L. Moore, Union City, Tennessee, for the appellant, Goodyear Tire & Rubber Company

Jay E. DeGroot, Jackson, Tennessee, for the appellee, Joel Davis Moultrie.

MEMORANDUM OPINION

FACTUAL AND PROCEDURAL BACKGROUND

In 2004, Joel Moultrie worked as a tire builder for Goodyear Tire & Rubber Company ("Goodyear"). On June 8, 2004, he worked an evening shift and, the next morning, awoke with neck stiffness and pain. He immediately sought treatment with Dr. Steve Beachum, a chiropractor. Mr. Moultrie had seen Dr. Beachum for neck pain on occasion during the preceding year. Dr. Beachum referred him to Dr. Mark Fowler, a primary care physician, because Mr. Moultrie's family physician, Dr. John Cummings, was away. Dr. Fowler saw him on June 11, 2004, and again the next day in a local emergency room. On June 14, Mr. Moultrie saw Dr. Cummings who had returned. Dr. Cummings referred him to Dr. Claudio Feler, a neurosurgeon.

Dr. Feler diagnosed Mr. Moultrie as having C6 radiculopathy secondary to degenerative disc disease and cervical spondylosis (bone spurring) at the C5-6 level. He recommended surgery to correct the problem. He performed a cervical discectomy and fusion on June 16, 2004. Shortly after the surgery, Mr. Moultrie spoke to his supervisor over the telephone and told him that he thought he had injured himself at work. Mr. Moultrie testified that he had done nothing outside his work that might have caused his injury.

Dr. Feler testified by deposition. He stated that he believed Mr. Moultrie's symptoms were caused by a bone spur which placed pressure upon the nerve root at the C5-6 level. He declined to express an opinion concerning the relationship between Mr. Moultrie's job and that condition. Dr. Feler did testify that the bone spur had developed over time and that "heavy manual labor increases the rate at which you develop degenerative disc disease." He released Mr. Moultrie with no restrictions in March 2005. He opined that Mr. Moultrie had a 25% permanent anatomical impairment as a result of the surgery.

Dr. Joseph Boals conducted an independent medical examination at the request of Mr. Moultrie's attorney. He also testified by deposition. Dr. Boals agreed with Dr. Feler that a 25% impairment had resulted from the surgery. He testified that twenty years working for Goodyear as a tire builder, which he described as labor intensive, "certainly could have" caused a progression in the degenerative changes in Mr. Moultrie's neck that led to the surgery performed by Dr. Feler. He also testified that Mr. Moultrie's condition could have resulted from the activities of daily living.

At the time of trial, Mr. Moultrie was forty-six years old. He was a high school graduate and had worked for Goodyear since 1984. Prior to that, he had been a construction laborer and had worked for a meat packing company. After the injury, he returned to work for Goodyear. He applied for and was moved into a job driving a fork lift, which he described as easier work than his previous job as tire builder. He was paid from three to seven hundred dollars less per week in that position, however.

The trial court found that Goodyear had received actual notice of the injury by virtue of the telephone call from Mr. Moultrie to his supervisor. It further found that Mr. Moultrie had sustained a compensable injury and awarded 50% permanent partial disability to the body as a whole.

Goodyear has appealed, raising two issues. First, it contends that the trial court erred by finding that Mr. Moultrie's claim was not barred by failure to give adequate notice of his injury. Second, it argues that the trial court erred by finding that Mr. Moultrie had sustained a compensable injury.

STANDARD OF REVIEW

The standard of review of issues of fact is de novo upon the record of the trial court accompanied by a presumption of correctness of the findings, unless the preponderance of evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (Supp. 2007). When credibility and weight to be given testimony are involved, the trial court's findings are entitled to considerable deference because the trial judge had the opportunity to observe the witness' demeanor and to hear in-court testimony. Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 167 (Tenn. 2002). Where the issues involve expert medical testimony that is contained in the record by deposition, determination of the weight and credibility of the evidence necessarily must be drawn from the contents of the depositions, and the reviewing court may draw its own conclusions concerning those issues. Bohanan v. City of Knoxville, 136 S.W.3d 621, 624 (Tenn. 2004); Krick v. City of Lawrenceburg, 945 S.W.2d 709, 712 (Tenn. 1997); Elmore v. Travelers Ins. Co., 824 S.W.2d 541, 544 (Tenn. 1992). A trial court's conclusions of law are reviewed de novo upon the record with no presumption of correctness. Perrin v. Gaylord Entm't Co., 120 S.W.3d 823, 826 (Tenn. 2003); Ganzevoort v. Russell, 949 S.W.2d 293, 296 (Tenn. 1997).

ANALYSIS

1. Notice

Goodyear contends that Mr. Moultrie did not provide written notice of the injury as required by Tennessee Code Annotated section 50-6-201(a) (Supp. 2007). That section provides, in pertinent part:

> Every injured employee or such injured employee's representative shall, immediately upon the occurrence of an injury, or as soon thereafter as is reasonable and practicable, give or cause to be given to the employer who has no actual notice, written notice of the injury, and the employee shall not be entitled to physician's fees or to any compensation that may have accrued under the provisions of the Workers' Compensation Law, compiled in this chapter, from the date of the accident to the giving of such notice, unless it can be shown that the employer had actual knowledge of the accident.

Tenn. Code Ann. § 50-6-201(a).

It is undisputed that Mr. Moultrie did not give written notice of his alleged work injury until this lawsuit was filed on October 14, 2004, slightly more than four months after it occurred. Mr. Moultrie testified, however, that he notified his shift foreman, Lewis Davis, that he "hurt [his] neck building tires" during a telephone call which took place shortly after Mr. Moultrie's surgery. This conversation occurred within the thirty-day period required by the statute, albeit after he had already

had surgery. The testimony was not contradicted. If the telephone conversation with Mr. Davis provided actual notice of the injury to Goodyear, then the requirements of section 201 were satisfied. If not, then his claim was barred.

Tennessee Code Annotated section 50-6-202 (2005) sets out the following requirements for the contents of the notice required by section 201:

> (a)(1) The notice required to be given of the occurrence of an accident to the employer shall state in plain and simple language the name and address of the employee, the time, place, and nature and cause of the accident resulting in injury or death . . . .
>
> (2) No defect or inaccuracy in the notice shall be a bar to compensation, unless the employer can show to the satisfaction of the tribunal in which the matter is pending that the employer was prejudiced by the failure to give the proper notice, and then only to the extent of such prejudice.

In Clarendon v. Baptist Memorial Hospital, 796 S.W.2d 685 (Tenn. 1990), the injured employee was a nurse who injured her back while lifting a patient. Three days later, she called her employer from her doctor's office. She spoke to a co-worker, described the injury, and asked the co-worker to inform their employer. The co-worker did so. Approximately nine days after the injury, the employee telephoned her supervisor and informed her of the injury. The trial court found that these facts were sufficient to demonstrate that the employer had "actual knowledge" of the injury. The Supreme Court affirmed. Clarendon, 796 S.W.2d at 688. The facts in this case are not significantly distinguishable from those in Clarendon. We agree with the trial court that Goodyear had actual notice of Mr. Moultrie's claim within the statutory period.

2. Causation

Goodyear contends that the testimony of Dr. Boals on the issue of causation was no more than speculation and conjecture, and therefore was insufficient to support the trial court's finding that Mr. Moultrie sustained a compensable injury. See Woodlawn Mem'l Park, Inc. v. Keith, 70 S.W.3d 691, 696-97 (Tenn. 2002); Tindall v. Waring Park Ass'n, 725 S.W.2d 935, 937-38 (Tenn. 1987). Mr. Moultrie contends that the evidence satisfies the standard that an award may properly be based upon medical testimony to the effect that a given incident "could be" the cause of the employee's injury.

It is appropriate for a trial judge to predicate an award on medical testimony to the effect that a worker's employment "could be" the cause of his or her injury, when the trial court also has before it lay testimony from which it reasonably may be inferred that the employment was in fact the cause of the injury. Reeser v. Yellow Freight Sys., Inc., 938 S.W.2d 690, 692 (Tenn. 1997); Clarendon, 796 S.W.2d at 688; Osborne v. Burlington Indus., Inc., 672 S.W.2d 757, 760 (Tenn. 1984); P & L Constr. Co. v. Lankford, 559 S.W.2d 793, 794 (Tenn. 1978). While the medical proof that the injury was caused in the course of the employee's work must not be so speculative or uncertain that attributing it to the plaintiff's employment would be an arbitrary determination or a mere possibility,

when equivocal medical evidence combined with other evidence supports a finding of causation, such an inference may be drawn by the trial court under our case law. Orman v. Williams Sonoma, Inc., 803 S.W.2d 672, 676 (Tenn. 1991); Jackson v. Greyhound Lines, Inc., 734 S.W.2d 617, 620 (Tenn. 1987).

Mr. Moultrie held a physically demanding job with Goodyear for more than twenty years. He testified the job as a tire builder involved the whole body and required twisting, pulling, pushing, lifting, and stretching. According to Mr. Moultrie, the tires he handled weighed up to fifty-two pounds. Both physicians testified that hard manual labor can cause an increase in the progression of degenerative disc disease. The trial court found that there was no evidence Mr. Moultrie had injured himself outside his employment.

In considering this evidence, we are mindful of both our obligation to resolve all reasonable doubts as to causation in favor of the employee, Phillips v. A. & H Constr. Co., 134 S.W.3d 145, 150 (Tenn. 2004), and of the presumption of correctness that attaches to the trial court's findings. Skinner v. CNA Ins. Co., 824 S.W.2d 164, 166 (Tenn. 1992). After carefully reviewing the record, we are unable to find that the evidence preponderates against the trial court's finding that Mr. Moultrie's injury was caused by his employment. We therefore affirm the judgment.

CONCLUSION

We conclude that Mr. Moultrie fulfilled the statutory notice requirements by providing Goodyear with actual notice of the injury. We further conclude that the evidence does not preponderate against the trial court's finding of causation. Accordingly, we affirm the judgment of the trial court. Costs are taxed to Goodyear Tire & Rubber Company and its surety, for which execution may issue if necessary.

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DONALD P. HARRIS, 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