

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE

GLENN H. HALL,)
)
 Plaintiff/Appellee,)
)
 VS.)
)
 BRIDGESTONE/FIRESTONE, INC.)
 and INSURANCE COMPANY OF)
 THE STATE OF PENNSYLVANIA,)
)
 Defendants/Appellants.)

RUTHERFORD CHANCERY

Hon. Robert E. Corlew, III,
Chancellor

No. 01S01-9510-CH-00175

FILED

June 20, 1996

**Cecil Crowson, Jr.
Appellate Court Clerk**

For Appellants:

Patrick A. Ruth
Kitty Boyte
Nashville, Tennessee

For Appellee:

R. Steven Waldron
Terry A. Fann
Murfreesboro, Tennessee

MEMORANDUM OPINION

Members of the Panel:

Adolpho A. Birch, Jr., Associate Justice
Ben H. Cantrell, Special Judge
Joe C. Loser, Jr., Special Judge

AFFIRMED

Cantrell, Special Judge

OPINION

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.

The trial court awarded the employee, Glenn Hall, workers' compensation benefits for the total loss of hearing in his left ear. On appeal the employer asserts that the employee failed to notify the employer of the injury as required by the workers' compensation statute. We affirm the trial court's finding that the proper notice was given.

I.

Mr. Hall testified that on June 22, 1993 his left ear began hurting after an explosion occurred in the department where he worked. Explosions are not uncommon in that department, and Mr. Hall customarily wore ear plugs to protect his ears from the noise. At the time of the accident, however, Mr. Hall had removed the ear plugs because he was shutting down the process to investigate a problem. Mr. Hall told a co-worker that his ear was hurting and went to see his supervisor. He told the supervisor that his ear hurt, and the supervisor referred Mr. Hall to the company nurse.

The company nurse was not called to testify but the forms generated by Mr. Hall's visit to the nurse were introduced as business records. The records show that Mr. Hall had an inner ear infection, was out of the antibiotic he had been taking, and was referred to the company doctor. The records do not reflect that Mr. Hall claimed his ear problems were work-related. Neither do the doctor's notes from that same day reflect that Mr. Hall was claiming a work-related injury. Mr. Hall, however,

testified that he told the nurse and the doctor about the explosion and the injury to his ear.

Mr. Hall also testified that six or eight days after the accident he told the manager of his department about the accident, and that at a shift meeting the next morning the supervisor talked about the explosion and the injury to Mr. Hall. Neither the supervisor nor the department manager testified at the trial.

The trial judge found that Mr. Hall was a credible witness and that he had given his employer the statutory notice.

II.

The notice requirement is set out in Tenn. Code Ann. § 50-6-201 which provides in pertinent part:

Every injured employee or [his] representative shall, immediately upon the occurrence of an injury, or as soon thereafter as is reasonable and practical, give or cause to be given to the employer who has not actual notice, written notice of the injury, . . . and no compensation shall be payable under the provisions of this chapter unless such written notice is given to the employer within thirty (30) days after the occurrence of the accident, unless reasonable excuse for failure to give such notice is made to the satisfaction of the tribunal to which the claim for compensation may be presented.

Timely notice to an agent or representative of the employer is sufficient notice under the statute, as long as the agent or representative has actual or apparent authority to receive notice on behalf of the employer. *Kirk v. Magnavox Consumer Electronics Co.*, 665 S.W.2d 711 (Tenn. 1984). Oral notice to the employee's supervisor is sufficient especially where the employer does not claim any prejudice

from the lack of written notice. *Aluminum Company of America v. Baker*, 542 S.W.2d 819 (Tenn. 1976).

The discrepancies between Mr. Hall's testimony at trial and in his discovery deposition and the lack of any notice in his medical records immediately after the accident cast some doubt on his version of the facts. But the credibility issue was resolved in his favor by the trial judge and that determination is ordinarily not re-examined on appeal. *Kirk v. Magnavox Consumer Electronics Co.*, 665 S.W.2d 711 (Tenn. 1984). The trial judge's finding that Mr. Hall gave the required notice is presumed to be correct. Rule 13(d), Tenn. R. App. Proc. We cannot find that the evidence preponderates against it.

The judgment is affirmed. Costs on appeal are taxed to the appellants.

BEN H. CANTRELL, JUDGE

CONCUR:

ADOLPHO A. BIRCH, JR.
ASSOCIATE JUSTICE

JOE C. LOSER, JR., SPECIAL JUDGE