

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
(January 27, 2000 Session)

BOBBY RAY CARPER v. RAMER WOOD PRODUCTS

**Direct Appeal from the Chancery Court for McNairy County
No. 7200 Dewey C. Whitenton, Chancellor**

No. W1999-02147-WC-R3-CV - Mailed June 8, 2000; Filed July 21, 2000

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated §50-6-225(e) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The defendant, Ramer Wood Products (Ramer), appeals the judgment of the McNairy Chancery Court awarding permanent partial disability of thirty percent (30%) to the right arm and twenty-five percent (25%) to the left arm. For the reasons stated in this opinion, we affirm the judgment of the trial court as modified to a single award of twenty-seven and one-half percent (27-1/2%) permanent partial disability to both arms.

Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Trial Court Affirmed as Modified.

MALOAN, SP. J., delivered the opinion of the court, in which HOLDER, J., and WEATHERFORD, SR. J., joined.

Carol A. M. Hayden, Memphis, Tennessee, for the appellant, Ramer Wood Products

Christopher L. Taylor, Memphis, Tennessee, for the appellee, Bobby Ray Carper

MEMORANDUM OPINION

The plaintiff, Bobby Ray Carper (Carper), was 50 years of age at the time of trial. He completed the third grade and testified he can't read and can barely write his name. He operated a chopsaw at Ramer from 1987 to October 1989; December, 1989, to June, 1993; and from February, 1997, until he resigned in August, 1997, for breathing problems. His prior work history is manual labor.

Dr. Lowell Stonecipher examined Carper on October 28, 1997, diagnosed bilateral carpal tunnel syndrome, and performed carpal tunnel releases on May 3, 1998. As to causation,

Dr. Stonecipher stated “running a saw at a sawmill for about three years and those things can cause people to have a carpal tunnel.” Dr. Stonecipher assigned no permanent impairment.

Dr. Joseph Boals examined Carper for an independent medical evaluation. Dr. Boals was of the opinion his carpal tunnel syndrome was caused by his employment at Ramer and assigned a ten percent (10%) permanent partial impairment to each upper extremity based on grip strength testing. Dr. Boals restricted Carper to no repetitive work and no heavy gripping.

Carper was unaware his arm problems were caused by his work until Dr. Stonecipher told him so on October 28, 1997. Carper’s attorney wrote Ramer on November 5, 1997, and advised them of this claim. He testified his hands are numb, tingle, hurt all the time, and he can’t do any yard work or hold anything.

At trial and on appeal, Ramer denies Carper has suffered a compensable injury. The trial court found a compensable injury and awarded permanent partial disability of thirty percent (30%) to the right arm and twenty-five percent (25%) to the left arm.

ANALYSIS

The scope 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. Tennessee Code Annotated § 50-6-225(e)(2). *Lollar v Wal-Mart Stores, Inc.*, 767 S.W.2d 143 (Tenn. 1989). When a trial court has seen and heard witnesses, especially where issues of credibility and weight of oral testimony are involved, considerable deference must be accorded the trial court’s factual findings. *Humphrey v David Witherspoon, Inc.*, 734 S.W.2d 315 (Tenn. 1987). However, where the issues involve expert medical testimony which is contained in the record by deposition, as it is in this case, then all impressions of weight and credibility must be drawn from the contents of the depositions, and the reviewing court may draw its own impression as to weight and credibility from the contents of the depositions. *Overman v Williams Sonoma, Inc.*, 803 S.W.2d 672, 676-77 (Tenn. 1991).

Ramer first contends the trial court erred in finding a compensable injury to both arms, citing *Barker v Home-Crest Corp. et al*, 805 S.W.2d 373, 375 (Tenn. 1991). In *Barker*, the Tennessee Supreme Court relied on the “last day worked” rule to determine which of two insurance carriers would be required to provide coverage for the worker’s carpal tunnel syndrome. The rule is stated as “the date of the accidental injury occurred when plaintiff’s condition reached the point he could no longer work at his job.” Applying this rule, the Supreme Court determined the insurer providing coverage on the date when the condition’s severity prevented the worker from working would be responsible for compensation benefits. Ramer submits this rule prevents Carper from recovering because he retired in August, 1997, due to breathing problems; was not diagnosed with carpal tunnel syndrome until October 1997; and, therefore, his injury was never disabling while he worked for Ramer.

Ramer's reliance on *Barker* and the "last day worked" rule is misplaced. This argument was recently considered and rejected by the Tennessee Supreme Court in *Dana Story v Legion Ins. Co.*, 3 S.W.3d 450, 454 (Tenn. 2000). In *Story*, the employee did not miss any time from work prior to her termination and, therefore, the employer's insurance carrier asserted the employee did not suffer a compensable injury according to *Barker*. *Story* held that the "last day worked" rule is not to be applied to issues of causation and stated:

Applying this narrow rule to questions of causation would create a precedent which would make any worker injured by repetitive stress ineligible for compensation unless that worker misses work. This application is inconsistent with the nature of the Tennessee Workers Compensation Act which is designed to protect workers from economic devastation following job-related injuries. *Story*, at 454.

An injury arises out of employment if it has a rational, causal connection to the work. *Resser v Yellow Freight Sys. Inc.*, 938 S.W.2d 690, 692 (Tenn 1997). In this case, both Dr. Stonecipher and Dr. Boals expressed their opinion that Carper's carpal tunnel syndrome was caused by or aggravated by his operating a chapsaw at Ramer. The fact that Carper did not miss any work or his condition was not diagnosed until after he retired from Ramer does not control as to whether he sustained a compensable injury at work. We find the evidence does not preponderate against the trial court's finding of compensability.

The final issue is vocational disability. Tennessee Code Annotated § 50-6-241(a)(1) requires the trial court to consider all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's disabled condition in determining the extent of an injured worker's permanent disability. *Walker v Saturn Corp.*, 986 S.W.2d 204 (Tenn. 1998).

As in many workers' compensation cases, there is a disagreement among the treating and evaluating physicians as to the extent of permanent impairment. The trial court has the discretion to accept the opinion of one medical expert over the opinion of another medical expert. *Johnson v Midwesco, Inc.*, 801 S.W.2d 804, 806 (Tenn. 1990).

Based on Carper's age, lack of education, transferable job skills, lay and medical evidence, we find the evidence does not preponderate against the trial court's award of permanent partial disability to each arm.

The panel notes the trial court made separate awards to each arm. *Tennessee Code Annotated* §50-6-207-(3)(A)(ii)(w) provides scheduled benefits for the loss of two (2) arms, therefore, we modify the award to twenty-seven and one-half percent (27-1/2%) permanent partial disability to both arms which will neither increase nor decrease the award, but will conform the trial court's

judgment to the statute.¹ *McIlvain v Russell Stover Candies, Inc.*, 996 S.W.2d 179, 181 (Tenn. 1999).

CONCLUSION

The judgment of the trial court is affirmed as modified. The defendant, Ramer Wood Products, is taxed with the costs of this appeal.

¹The trial court awarded thirty percent (30%) permanent partial disability to the right arm or 60 weeks of benefits and twenty-five percent (25%) permanent partial disability to the left arm or 50 weeks of benefits based on a two hundred (200) week maximum loss of an arm for a total award of one hundred ten (110) weeks of benefits. Loss of two arms, *Tennessee Code Annotated* §50-6-207(3)(A)(ii)(w), is a scheduled injury with a maximum of four hundred (400) weeks of benefits. Twenty-seven and one-half percent (27-1/2%) permanent partial disability of both arms is also one hundred ten (110) weeks of benefits.

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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 on appeal are taxed to the Defendant/Appellant, Ramer Wood Products, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM