

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT JACKSON  
April 25, 2002 Session

**JERRY WAYNE MATLOCK v. LTV STEEL, INC. AND INSURANCE  
COMPANY OF THE STATE OF PENNSYLVANIA**

**Direct Appeal from the Circuit Court for Hardin County  
No. 3012 Honorable C. Creed McGinley, Judge**

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**No. W2001-02512-SC-WCM-CV - Mailed - August 8, 2002; Filed December 4, 2002**

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This worker's compensation appeal has been referred to the Special Worker's Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for a hearing and reporting to the Supreme Court of findings of fact and conclusions of law. In this appeal, the employer questions the trial court's finding of permanent partial disability for injury to the back, neck and hand. The employer also questions the award of benefits to claimant's right hand for carpal tunnel syndrome, due to the lack of notice of the injury to employer. As discussed below, the panel has concluded the evidence supports the findings of the trial court.

**Tenn. Code Ann. § 50-6-225(e) (2001 Supp.) Appeal as of Right; Judgment of the Circuit Court Affirmed.**

HAMILTON V. GAYDEN, JR., SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J. and JOE C. LOSER, JR., joined.

Lori Keen, Memphis, Tennessee, for Appellant.

Art D. Wells, Jackson, Tennessee, for Appellee.

**MEMORANDUM OPINION**

The employee for Plaintiff initiated this civil action on September 4, 1998 in the Hardin County Circuit Court seeking an award of worker's compensation benefits for injury to his back, neck, and right arm. After a trial on the merits the trial court awarded Plaintiff permanent partial disability to the body as a whole in the amount of 45%, medical expenses associated with the injuries, future medical expenses, and discretionary costs.

The two issues raised in this appeal are: 1) whether the trial court erred in awarding permanent partial disability benefits to the body as a whole, and 2) whether the trial court erred in finding that the Plaintiff gave sufficient notice of the injury to the right arm and hand.

For injuries occurring on or after July 1, 1985, appellate 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)(2). The reviewing court is required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. *Wingert v. Government of Sumner County*, 908 S.W. 2d 921, 922 (Tenn. 1995). Conclusions of law are subject to de novo review on appeal without any presumption of correctness. *Nutt v. Champion. Corp.*, 980 S.W.2d 365, 367 (Tenn. 1998).

The Plaintiff has been an employee of the Defendant since 1983. He previously worked for the Defendant in the 1970's but left due to layoffs. He started a career in the air conditioning business, but eventually left that enterprise to rejoin employment with the Defendant. During the last period of employment with the Defendant, the Plaintiff worked for twelve years on an apparatus known as a "fly saw." He was then promoted to a quality control inspector, and at the time of the injury, was learning a new job operating a "crop saw." All of these jobs required varying usage of Plaintiff's hands.

The job involving the "crop saw" entailed the Plaintiff cutting pieces out of pipes, and sending the sample pieces to the lab for testing. On June 23, 1998, the Plaintiff fell behind in his work, causing the pipes to backlog and stack up on the line. In an attempt to clear the line, the Plaintiff hurriedly pushed one of the pipes. A "burr" near the end of the pipe caused the machine to stall, which injured the Plaintiff. The Plaintiff was unable to get up after the accident, and was taken from the shop on a flat board to the ambulance, which transferred him to the Hardin County General Hospital. He was later transferred to Nashville where he remained hospitalized for an additional four days.

When the Plaintiff arrived at the emergency room, his initial complaint was only of back pain. He later complained of pain in his neck, and further complained of pain in his back, neck, and arm at the Nashville hospital.

During the course of Plaintiff's medical treatment, multiple physicians diagnosed injuries to his back, neck, arm, and right hand. However, it was after the injury on June 23, 1998, that Plaintiff underwent surgery on his right hand for carpal tunnel syndrome. The carpal tunnel syndrome in the right arm was first diagnosed following the June 23, 1998, incident by the company physician, Dr. Jerry Engleberg. Plaintiff was unaware that he was suffering from the refined diagnosis of carpal tunnel syndrome prior to the June 23, 1998 incident.

The day before surgery for carpal tunnel syndrome, the Plaintiff informed the plant nurse of his impending operation and that the injury to his right arm was a work related injury. The employer contends that this statement was the first notification of the injury to his right arm. Tennessee Worker's Compensation law requires that an injured employee give notice of a work related injury within 30 days of the injury. Tenn. Code Ann. § 50-6-201. There was disputed testimony as to when the Plaintiff first notified the employer of his injury to the right arm that required surgery.

The testimony at trial of Dr. Engleberg and Dr. Boals was by way of their respective

depositions. Dr. Engelbrook, the company physician, testified that the Plaintiff was not permanently partially impaired, and he did not award any percentage of impairment. On the other hand, Dr. Boals awarded the Plaintiff a combined impairment of 18% to the body as a whole inclusive of injuries to his back, neck, and right arm.

At the hearing, Plaintiff testified to previous bouts with back and neck problems including substantial time that he missed from work due to these problems. He offered contradicting testimony as to the existence of previous episodes of back and neck complaints, as his deposed testimony stated that he did not have any prior problems with his back and neck. Nevertheless, the proof reflects that the Plaintiff did in fact have multiple episodes of prior neck and back problems and had previously sought medical and chiropractic assistance for his neck and back.

This case hinges on credibility issues of both expert and lay witnesses. The trial judge chose to accept the testimony of Dr. Boals, the evaluating physician chosen by Plaintiff, over that of Dr. Englebrook, a treating physician and the company doctor. Dr. Boals awarded Plaintiff a combined impairment rating of 18% to the body as a whole. In a review of the record we agree with the trial judge that the Plaintiff did incur partial impairment to his body as a result of the injury of June 23, 1998. When medical testimony is conflicting, the trial court must choose which expert or experts to believe. In doing so, the court may consider the qualifications of the experts, the circumstances of their examination and treatment, the information available to them, and the evaluation of the importance of that information by other experts. *Orman v. Williams Sonoma Inc.*, 803 S.W.2d 672, 676 (Tenn.1991).

The Court has also reviewed the trial court's findings that Plaintiff is entitled to 45% permanent partial disability. At the time of the trial the Plaintiff was fifty-one (51) years of age. He is a high school graduate; later, he also obtained a vocational certification in the air conditioning and refrigeration business. He is a Vietnam veteran who was honorably discharged due to an injury. In the past, in addition to working most of his adult life for the Defendant, he ran his own air conditioning business for five (5) years prior to rejoining Defendant's company. Plaintiff was also formerly a greens keeper for a state park. All of his past employment skills require moderate to heavy physical exertion. Based on Plaintiff's age, occupation, experience and availability of suitable employment based on his skills, the court finds that the trial court did not abuse its discretion in awarding 45% permanent partial disability.

On the issue of whether the Plaintiff gave sufficient notice to the employer of a carpal tunnel syndrome injury to his right arm, we likewise concur with the trial judge in his findings that the Plaintiff did give notice, or alternatively, was excused from giving notice under the facts and circumstances of this case. From the record it is evident that the injury to the right arm was only known to Plaintiff during a time frame subsequent to the injury to his back and neck.

The reasons for the notice requirement are: 1) to give the employer an opportunity to make an investigation while the facts are accessible and 2) to enable the employer to provide timely and proper treatment to the injured employee. *McCaleb v. Saturn Corporation*, 910 S.W.2d (Tenn. 1995). The court in *McCaleb* further stated that in deciding whether there exist a reasonable excuse for not providing notice of an injury courts should consider: 1) the employer's actual knowledge of the employee's injury; 2) the lack of prejudice to the employer and; 3) the excuse or inability of the employee to timely notify the employer. *McCaleb*, at 415.

In *Quaker Oats v. Smith*, the court stated, “we know of no requirement that an employee give notice of each and every injury he received in an on-the-job accident. He is in compliance with the statutory requirement of notice if he notifies his employer of the accident and the fact that he has suffered an injury. The nature and extent of the employee’s injuries, and the issue of medical causation, usually come in light in the course of treatment of the employee’s injuries.” 574 S.W.2d 45, 48 (Tenn. 1978).

The court accepted the testimony of the Plaintiff as to the timeliness of the notice of injury to his right arm. Plaintiff testified he told the nurse of his injury to his right hand just before surgery, as well as having previously told a foreman of pain in his arm days in advance of his diagnosis of carpal tunnel syndrome by Dr. Englebrook. The employer countered this statement with the testimony of a foreman who testified that there had never been any other employee who had incurred carpal tunnel syndrome in the same line of work that Plaintiff was engaged in. “Where 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 accorded to those circumstances on review, because it is the trial court which had the opportunity to observe the witnesses demeanor and to hear the in-court testimony. *Long v. Tri-Con Ind., Ltd.*, 996 S.W.2d 173, 178 (Tenn. 1999). Similarly, the court ruled that the June 23, 1998 injury was a new injury despite previous contradictory evidence that the Plaintiff had prior problems with his back and neck.

After considering the above legal principles and a review of the record, giving due deference to the findings of trial court, we cannot say the evidence preponderates against the trial court’s finding that the evidence failed to support the judgment that Plaintiff was 45% permanently partially disabled, and that the plaintiff either gave timely notice of his injury to his right arm or was reasonably excused under the circumstances from giving notice prior to surgery. Costs to be taxed to the appellant.

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HAMILTON V. GAYDEN, JR.

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**ORDER**

This case is before the Court upon the motion for review filed by Jerry Wayne Matlock, pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), 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.

It appears to the Court that the motion for review is not well-taken and is therefore denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to the appellant, for which execution may issue if necessary.

PER CURIAM

Holder, J. - Not participating.