

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
May 22, 2003 Session

BEVERLY A. TAYLOR v. EBASCO CONSTRUCTORS, INC.

**Direct Appeal from the Chancery Court for Rhea County
No. 8173 Honorable Jeffrey R. Stewart, Chancellor**

Filed November 12, 2003

No. E2002-01929-WC-R3-CV

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 found the employee was permanently and totally disabled as a result of her exposure to aluminum during the course of her employment. The employer contends the evidence is not sufficient to establish a compensable work injury. The judgment of the trial court is affirmed.

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

THAYER, SP. J., delivered the opinion of the court, in which BARKER, J., and PEOPLES, SP. J., joined.

Robert M. Shelor and Kristi D. McKinney, of Knoxville, for Appellant, Ebasco Constructors, Inc.

Bruce D. Fox, of Clinton, Tennessee, for Appellee, Beverly A. Taylor.

MEMORANDUM OPINION

The employer, Ebasco Constructors, Inc., has appealed from the trial court's finding the employee, Beverly A. Taylor, was permanently and totally disabled as a result of her exposure to aluminum during the course of her employment.

The employee was forty-four (44) years of age at the time of the trial and had completed the ninth grade in school. She did not have any special skills and never obtained a GED certificate. She began working for Ebasco, a subcontractor at the Watts Bar Nuclear Plant in Spring City, Tennessee, on August 10, 1992, as a general laborer with janitorial duties. She testified that her job required sweeping up metal shavings as well as cleaning some chemical spills. She had only worked for a

short period of time, approximately two weeks, when she developed a rash over her body; had blood in her urine; became short of breath; and developed breathing problems. She saw a doctor and was off work from sometime during August until January 1993. She told the trial court she had never had symptoms of that nature before.

On about January 12, 1993, she returned to work and was assigned duties as an electrical helper. She began to miss work again because of these continuing problems and she was terminated on March 2, 1993 for missing too much work. She testified that she first became aware during September 1993 that her exposure to aluminum in her workplace had cause her lung condition and that she so notified her employer. The employer was not convinced her condition was a result of her work since she had been working for such a short period of time. Therefore, her claim was not recognized as a compensable injury and she filed suit in June 1994. After learning of her diagnosis she saw other doctors across the country for a lengthy period of time and was also seen at Vanderbilt Hospital in Nashville, Tennessee and at a lung research hospital in Denver, Colorado.

At the time of the first hearing during March 2000, the employee testified she could not walk very far because she was real short of breath; most of the time her joints hurt a lot; she had lesions on her skin; and that she was taking medication and was on oxygen. She stated she could not do any type of work and that her immune system was very low as it would take her weeks to get over a cold. Her income has been Social Security Disability benefits and SSI benefits.

Witness Linda King, a sister of the employee, testified her sister was not able to walk very far and that she did most of her shopping and errands.

The only medical testimony before the trial court was the deposition of Dr. Charles Bruton, a pulmonologist in Oak Ridge, Tennessee, who saw her for the first time on August 30, 1993. He stated she had come to him for a second opinion after receiving a diagnosis of sarcoidosis at the University of Tennessee Medical Center. He said after her initial visit, he did not see her again until 1998, when she decided to continue treatment locally. Dr. Bruton stated that toxicity testing in 1993 indicated high toxic aluminum levels and that this condition mostly affected the lungs. At one point during his examination, he said that generally patients improve somewhat over a long period of time but Ms. Taylor had not done so. He was of the opinion that she had a 50 percent impairment under the AMA guidelines; that she was totally disabled; and that her work conditions had caused her disability.

Dr. Craig Colvin, a professor at the University of Tennessee and a part-time vocational consultant, also testified the employee could not work in the open labor market.

At a second hearing during May 2002, the trial court heard the testimony of Fred Roper, who had worked at the Watts Bar Nuclear Plant. He stated he had been employed by TVA and worked at the plant from 1982 until 1991 and then at another location until 1992. On September 20, 1992, he went to work for Ebasco at Watts Bar and worked until December 31, 1992. While working for Ebasco, his job title was sheet metal foreman. He testified he was familiar with the different metals

used there and that aluminum was used frequently because it was lightweight, was easy to work with and easy to move in order to clean around. Roper testified that his work crew had to fabricate many things out of aluminum and that cutting and grinding aluminum stock was very common and would create a heavy dust which was cleaned up by the general labor crews. He said it would get in your hair and be everywhere and that by the end of the day, it was so heavy that sometimes you could only see the whites of his eyes.

Defendant Ebasco did not introduce any evidence at either hearing.

Standard of Review

We must review the case on appeal de novo with a presumption that the findings of the trial court are correct unless we find the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2).

Analysis

The trial court found the employee was totally disabled as a result of her exposure to aluminum during the time she was actually working at the nuclear facility. The employer does not challenge the finding of total disability but contends the evidence is not sufficient to establish her condition was caused by her work. More specifically, Ebasco argues the testimony of Dr. Bruton and witness Roper is not competent to support the award of disability on the causation question.

We have carefully reviewed Dr. Bruton's testimony and find that he clearly expressed the opinion that her exposure to aluminum dust and/or shavings at work was the cause of her medical condition. On cross-examination, he stated that in general exposure to aluminum anywhere from weeks to forty years before could have resulted in her symptoms and that he could not pinpoint when exposure exactly occurred. Counsel argues that since the evidence indicates one week of the employee's actual work record was in training and that only left about one week for actual exposure in the workplace, that the doctor's evidence is not sufficient. We disagree. While Dr. Bruton did indicate many things "could" happen or result, the last question to him on redirect examination was:

Q. Doctor, does that change your opinion that, within a reasonable degree of medical certainty, her sarcoidosis based on the history and the test results is related to her exposure at work?

A. No, sir.

With reference to the question raised concerning witness Fred Roper, counsel points out that the employee left work during late August 1992 and witness Roper did not start working for Ebasco until late September 1992 and therefore he had no knowledge of what the employee was exposed to. We are not persuaded by this argument. The employee testified about the activity of other workers at the plant and that was the same activity that witness Roper described when he was working during

his period of employment. He gave the court a more vivid description of how heavy the dust could be. He was very familiar with the different metals that were being used in the workplace and his testimony supports the finding of the trial court on the causation question.

Conclusion

The evidence does not preponderate against the findings of the trial court. The judgment is affirmed in all respects and the case is remanded for payment of all accrued benefits and payment of regular benefits until the employee becomes sixty-five (65) years of age. Costs of the appeal are taxed to the employer.

ROGER E. THAYER, SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

EBASCO CONSTRUCTORS, INC., v. BEVERLY TAYLOR

No. E2002-01929-WCM-SC-CV

ORDER

This case is before the Court upon motion for review 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, which are incorporated herein by reference;

Whereupon, it appears to the Court that the motion for review is not well-taken and should be denied 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 employer.

IT IS SO ORDERED this 12th day of November, 2003.

PER CURIAM

Barker, J. - Not participating.