

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT NASHVILLE  
July 31, 2003 Session

**JOSE SILVA v. MARTIN LUMBER COMPANY, ET AL.**

**Direct Appeal from the Chancery Court for Putnam County  
No. 2001-156    Vernon Neal, Chancellor**

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**No. M2003-00490-WC-R3-CV - Mailed - October 1, 2003  
Filed - November 5, 2003**

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This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel 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 employer appeals the judgment of the trial court awarding the employee 36% vocational disability to his left hand. The employer contends that the employee is not eligible for workers' compensation benefits because he is an illegal alien who committed fraud by presenting false documentation of his eligibility for employment. We find that injured worker in this case is an "employee" within the meaning of the Workers' Compensation Act. We hold that by presenting falsified documentation of employment eligibility, the employee did not make a false representation as to his physical condition and that there was no causal connection between this false representation and the injury to warrant denial of benefits. Accordingly, 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 Affirmed.**

JAMES L. WEATHERFORD, SR.J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and JOE C. LOSER, JR., SP.J., joined.

Lee Anne Murray, Nashville, Tennessee, for the appellant, Martin Lumber Company and TFA Selective Workers' Compensation Group.

Brian Dunigan, Goodlettsville, Tennessee, for the appellee, Jose Silva.

**MEMORANDUM OPINION**

On February 3, 2000, Mr. Jose Silva began working for Martin Lumber Company. In applying for employment, he presented a Social Security card and a Resident Alien Card containing his photograph. He also signed an Employment Eligibility Certification Form.

On June 23, 2000, Mr. Silva broke two fingers of his left hand while working with a piece of wood at Martin Lumber. He filed a complaint seeking workers' compensation benefits. At his deposition Mr. Silva testified that he did not have a green card and had not filed a petition to acquire legal immigration status.

Subsequently, Martin Lumber amended its answer in order to allege as a defense that Mr. Silva should be barred from receiving workers' compensation benefits because he was not a legal citizen or alien of the United States and he had presented false documents to verify his alleged legal status to obtain employment with Martin Lumber. At trial, Mr. Silva's counsel instructed him to invoke the Fifth Amendment and not answer questions as to the validity of the documentation he used to verify employment.

The trial court concluded that Mr. Silva was an employee covered by the Workers' Compensation Act despite the fact that his employment may have been illegal due to his immigration status. The trial court also concluded that there was no evidence that any false statement increased Mr. Silva's risk of work-related injury. The court found that Mr. Silva sustained a 36% vocational disability to his left hand and awarded \$13,613.94 in benefits.

### Analysis

Review of findings of fact by the trial court shall be *de novo* upon the record of the trial court accompanied by a presumption of correctness of the findings, unless the preponderance of the evidence is otherwise. *Tenn. Code Ann.* § 50-6-225(e)(2). Where questions of law are at issue, however, appellate review is *de novo* without a presumption of correctness. *Peace v. Easy Trucking Co.*, 38 S.W.3d 526, 528 (Tenn. 2001). Issues of statutory construction are questions of law to which the *de novo* standard with no presumption of correctness applies. *Leab v. S & H Mining Co.*, 76 S.W.3d 344, 348 (Tenn. 2002).

The Workers' Compensation Act is "a remedial statute which shall be given an equitable construction by the courts, to the end that the objects and purposes of this chapter may be realized and attained." *Tenn. Code Ann.* § 50-6-116. The Tennessee Supreme Court has held "that these laws should be rationally but liberally construed to promote and adhere to the Act's purposes of securing benefits to those workers who fall within its coverage." *Lindsey v. Smith & Johnson, Inc.*, 601 S.W.2d 923, 925 (Tenn. 1980).

The employer appellant raises the sole issue of whether an illegal alien who obtains employment by presenting fraudulent documents may recover workers' compensation benefits. As stated in its brief, the employer does not argue that Mr. Silva should be barred from receiving benefits simply because he was an illegal employee. The Tennessee Workers' Compensation Act does not contain a provision excluding illegal aliens from coverage under the Act.<sup>1</sup> *Tennessee*

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<sup>1</sup>Illegal aliens are not excluded from coverage pursuant to *Tenn. Code Ann.* § 50-6-106 entitled "Employments not covered" which lists types of employees who are not entitled to receive workers' compensation benefits.

*Code Annotated* § 50-6-102(9)(A) provides that an “[e]mployee includes every person, including a minor, whether lawfully or unlawfully employed.....” It is well-settled that the Act extends benefits to employees regardless of the legality of their employment.<sup>2</sup>

Martin Lumber argues that Mr. Silva should be barred from receiving workers’ compensation benefits because he produced fraudulent documents regarding his eligibility to work in the United States. In order to prevail when asserting the defense of fraud and misrepresentation in a workers’ compensation case, the employer must satisfy a three-pronged test:

- (1) the employee must have knowingly and willfully made a false representation as to his physical condition; (2) the employer must have relied thereon and such reliance must have been a substantial factor in the hiring; and
- (3) there must have been a causal connection between the false representation and the injury.

*Anderson v. Chattanooga Gen. Servs. Co.*, 631 S.W.2d 380, 384 (Tenn. 1981) (emphasis added).

In this case, we find that the above requirements are not met because: 1) the employee did not make a false representation as to his physical condition and 2) there was no causal connection between the false representation and the injury. Mr. Silva’s false representation did not increase his susceptibility to injury. Martin Lumber, therefore, cannot prevail on the affirmative defense of fraud so as to bar Mr. Silva from obtaining workers’ compensation benefits. The evidence does not preponderate against this finding of the trial court.

### **Conclusion**

The judgment of the trial court is affirmed. Costs are taxed to the appellant, Martin Lumber.

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JAMES L. WEATHERFORD, SR.J.

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<sup>2</sup>The Tennessee Supreme Court has noted that, “The ordinary and usual meaning of the word ‘employee’ is one who is employed by another and works for wages or salary without regard to whether the employment be legal or illegal.” *Am. Sur. Co. v. City of Clarksville*, 315 S.W.2d 509, 513 (Tenn. 1958). Further, the Tennessee Supreme Court has recognized that “employment which has been obtained by the making of false statements- whether by a minor or an adult, is still employment; that is, the technical illegality will not of itself destroy compensation coverage.” *Fed. Copper & Aluminum Co. v. Dickey*, 493 S.W.2d 463, 465 (Tenn. 1973) (quoting 1A Larson’s Workmen’s Compensation Law, § 47.53, at 800).

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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 will be paid by the Appellant, Martin Lumber Company, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM