

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
April 6, 2004 Session

CATINA L. FASON v. SPHERION

**Direct Appeal from the Chancery Court for Shelby County
No. CH-02-0810-1 Walter L. Evans, Chancellor**

No. W2003-02406-WC-R3-CV - Mailed May 4, 2004; Filed June 9, 2004

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with Tennessee Code Annotated section 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. In this appeal, Employer argues that the trial court's finding that Employee's injury was causally related to her October 20, 2000 accident is not supported by a preponderance of the evidence. We conclude that the evidence fails to preponderate against the trial court's award, and therefore, we affirm the judgment of the trial court.

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

JANICE M. HOLDER, J., delivered the opinion of the court, in which E. RILEY ANDERSON, J., and ALLEN W. WALLACE, SR. J., joined.

Joshua M. Booth, Knoxville, Tennessee, for the appellant, Spherion.

Christopher L. Taylor, Memphis, Tennessee, for the appellee, Catina L. Fason.

MEMORANDUM OPINION

FACTUAL BACKGROUND

Catina L. Fason ("Employee") was 23 years old at the time of trial. She has a high school diploma, and her work history consists mainly of positions as cashier, hostess, and waitress. In August 2000, Employee began working for Spherion ("Employer"), a temporary service. On October 20, 2000, Employee was involved in an accident at work during which she injured her right arm when she unplugged a computer and was shocked. Employee complained of pain, tingling,

numbness, and discoloration in her right arm following the electrical shock. She filled out an incident report with her left hand and then was taken to an emergency room.

Employee was later seen by a panel physician who referred her to Dr. Cape, a neurologist, for a nerve conduction study. Dr. Cape examined Employee on November 9, 2000. He opined that although Employee had “very, very mild carpal tunnel syndrome,” her injury on October 20, 2000, did not have any causal relationship to the carpal tunnel syndrome. Dr. Cape noted that Employee did not exhibit hypersensitivity in her right arm and hand, that Employee’s skin did not have any changes to indicate a severe shock, and that the nerves that would have been expected to be affected by receiving an electrical shock while unplugging an electrical cord, the nerves of the index and middle fingers, were completely normal. He testified that Employee was not a candidate for carpal tunnel surgery when he saw her and that he could not have assigned Employee an anatomical impairment rating based upon the results of his examination.

Employee continued to experience problems with her right arm, so she sought treatment from her family physician, Dr. Faulkner. Dr. Faulkner referred her to Dr. Lindermuth, who performed a carpal tunnel release in January 2002. Employee said that although she experienced some relief following the surgery, she has had ongoing problems with pain and numbness.

Dr. Joseph C. Boals, III, performed an independent medical examination of Employee in August 2002. He noted that Employee had a positive Phalen’s test, decreased sensation, and swelling in her right hand. Dr. Boals opined that Employee’s carpal tunnel syndrome was caused by the electrical shock she received on October 20, 2000. He admitted that a diagnosis of carpal tunnel syndrome as a result of a shock injury is “rare,” that he made the diagnosis “simply by association,” and that he is unfamiliar with any medical literature that documents this phenomenon. However, Dr. Boals stated that he has personally seen about ten other patients who had no carpal tunnel syndrome symptoms until after receiving an electrical shock. Dr. Boals assigned Employee a 20% permanent physical impairment rating to her right upper extremity.

Employee stated that she had no significant problems with her right arm prior to receiving the electrical shock at work. She testified that pain, numbness, and tingling in her right arm continues. Employee said that she has difficulty cooking, cleaning, driving, lifting her child, combing her hair, and opening jars. She also said that her sleep has been affected because she awakens at night with numbness and pain.

The trial court found that Employee’s injury was causally related to her employment and awarded Employee benefits based upon a 50% permanent partial disability to her right arm.

ANALYSIS

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) (Supp. 2003). Where medical testimony differs, it is within the

discretion of the trial court to conclude that the opinion of certain experts should be accepted over that of other experts and that it contains the more probable explanation. Hinson v. Wal-Mart Stores, Inc., 654 S.W.2d 675, 676-77 (Tenn. 1983). Where the medical testimony in a workers' compensation case is presented by deposition, as it is in this case, the reviewing court may make an independent assessment of the medical proof to determine where the preponderance of the proof lies. Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 167 (Tenn. 2002).

In a workers' compensation action, the employee must establish by a preponderance of the evidence every element of the case, including the existence of a work-related injury by accident. Hill v. Eagle Bend Mfg., Inc., 942 S.W.2d 483, 487 (Tenn. 1997). An employee's right to recover workers' compensation benefits must be based upon a finding that the employee suffered an "injury by accident arising out of and in the course of employment which causes either disablement or death." Tenn. Code Ann. § 50-6-102(12) (Supp. 2003). The phrase "arising out of" refers to causation. Reeser v. Yellow Freight Sys., Inc., 938 S.W.2d 690, 692 (Tenn. 1997). In all but the most obvious cases, causation must be established through expert medical testimony. Thomas v. Aetna Life & Cas. Co., 812 S.W.2d 278, 283 (Tenn. 1991). However, such testimony must be considered in conjunction with the lay testimony of the employee as to how the injury occurred and the employee's subsequent condition. Id.

In the present case, there is no dispute that Employee's injury occurred in the course of her employment. Rather, the dispute focuses on whether Employee's injury arose out of her employment. Employer argues that the trial court's finding that Employee's injury was causally related to her October 20, 2000 accident is not supported by a preponderance of the evidence.

An injury arises out of employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the employment and the resulting injury. See Reeser, 938 S.W.2d at 692; Fink v. Caudle, 856 S.W.2d 952, 958 (Tenn. Workers' Comp. Panel 1993). Although causation in a workers' compensation case may not be based upon speculative or conjectural proof, absolute certainty is not required because medical proof is rarely certain, and any reasonable doubt in this regard must be construed in favor of the employee. Hill, 942 S.W.2d at 487. Our courts have consistently held that medical testimony that the employment could or might have been the cause of an employee's injury, when coupled with lay testimony from which it reasonably may be inferred that the employment caused the injury, is sufficient to show causation. GAF Bldg. Materials v. George, 47 S.W.3d 430, 432-33 (Tenn. Workers' Comp. Panel 2001).

We are not inclined to disturb the trial court's determination with regard to causation. Dr. Boals opined that the October 20, 2000 incident caused Employee's injury. Furthermore, Employee testified that she had no significant problems with her right arm prior to October 20, 2000, and that her carpal tunnel symptoms began just after she received the electrical shock at work on that date. Although the trial court did not explicitly find Employee to be a credible witness, we presume her testimony was credible, especially because the trial court found in her favor. See, e.g., Cleek v. Wal-Mart Stores, Inc., 19 S.W.3d 770, 775 (Tenn. 2000) (assuming the credibility of a witness in part

based on the absence of trial judge's findings on the record). To the extent that any reasonable doubt exists as to causation, we must construe it in Employee's favor. Hill, 942 S.W.2d at 487. Viewed in this light, we cannot conclude that the trial court erred in choosing to accept the opinion of Dr. Boals with respect to causation.

CONCLUSION

From our independent review of the record and consideration of the relevant factors, we conclude that the evidence fails to preponderate against the trial court's findings as to causation. The judgment of the trial court is therefore affirmed. Costs are taxed to the appellant, Spherion, and its surety, for which execution may issue if necessary.

JANICE M. HOLDER, JUSTICE

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JUDGMENT ORDER

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 Appellant, Spherion, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM