

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT JACKSON  
April 5, 2004 Session

**RANDY HOLLINGSWORTH v. MAYTAG CORPORATION**

**Direct Appeal from the Chancery Court for Madison County  
No. 60060 James F. Butler, Chancellor**

---

**No. W2003-02407-WC-R3-CV - Mailed June 2, 2004; Filed July 7, 2004**

---

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 ruled that the Employee's injury, superficial thrombophlebitis, did not arise out of his employment and that the Employee was therefore not entitled to workers' compensation benefits. The issue raised on appeal is whether the trial court erred in finding that the Employee's thrombophlebitis did not arise out of his employment pursuant to the Tennessee Workers' Compensation Act. We now reverse the trial court's finding and remand for hearing on the determination of vocational disability.

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

LARRY B. STANLEY, JR., SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and WILLIAM B. ACREE, JR., SP. J., joined.

Ricky L. Boren, Jackson, Tennessee, for the appellant, Randy Hollingsworth.

P. Allen Phillips, Jackson, Tennessee, for the appellee, Maytag Corporation.

**MEMORANDUM OPINION**

**Factual Background**

At the time of trial Randy Hollingsworth, Employee, was a 36-year-old man with a high school diploma. His vocational background consisted primarily of factory work involving material handling. Employee began working for Maytag Corporation,

Employer, in July 1997 on an assembly line. In 1998 Employer began implementing the Kaizen Manufacturing Principle, which requires employees to work in a standing position to increase efficiency and production. For much of 1998 through 2002, the Employee worked overtime, including many six-day workweeks.

In 1995, the Employee suffered several insect bites on his legs that became infected. The Employee was hospitalized to treat the infection. In May 1999, Employee was seen by Dr. Hollingsworth for treatment for veins on the side of his knee that were swollen, sore, and protruding. Dr. Hollingsworth advised him to wear support hose, which he did, and Employee had no other problems of this type until June 2002.

On June 4, 2002, Employee awoke at 10:30 p.m. to find his leg swollen and hot. He went to the Huntingdon Emergency Room and was admitted to rule out a deep vein blood clot. An ultrasound determined that he did not have a blood clot at that time, but Employee was released and remained on leave from work for two weeks. During that two-week period, Employee saw Dr. James B. Witherington, who performed another ultrasound and diagnosed Employee with superficial thrombophlebitis. Dr. Witherington recommended that Employee wear support hose, keep his leg elevated when possible, and walk on a treadmill two to three times a week to improve his circulation. Dr. Witherington opined that Employee's job contributed more than fifty percent to the causation of Employee's condition and recommended that Employee change jobs to prevent further flare-ups. Dr. Witherington also gave Employee restrictions consisting of alternating between sitting and standing every thirty minutes and no prolonged standing. Employee returned to work on June 19, 2002, and gave Dr. Witherington's restrictions to his supervisor. Employer accommodated the restrictions by providing him a task he could perform by alternating sitting and standing positions. Employee voluntarily left his position with Employer on April 7, 2003, and obtained a job working as an apprentice boiler maker.

Dr. Witherington assigned Employee a permanent impairment rating of twenty-five percent to thirty percent (25-30%) to the lower extremity due to chronic venous insufficiency. Dr. Witherington also opined that Employee's standing on the job contributed to the phlebitis and swelling, but that obesity and heredity could also contribute to the condition.

On August 26, 2003, Employee was seen by Dr. Kenneth Warren at the request of Employer for an independent medical evaluation. After reviewing the medical records, the deposition of Dr. Witherington, and the medical history given to him by Employee, Dr. Warren examined Employee and assigned no permanent impairment rating. At the time of Dr. Warren's examination, he observed no objective findings of thrombophlebitis or chronic sequelae from varicose veins; however there was evidence of varicose veins in the left lower extremity. It was Dr. Warren's opinion that the infection caused by the bug bites in 1995 caused inflammation in the veins and destruction of the valves, which resulted in the Employee's development of recurrent superficial thrombophlebitis. Dr. Warren further opined that Employee's position on the assembly line would not have

caused the condition because it did not involve absolutely motionless standing, and that any upright position, whether sitting or standing, can aggravate varicosities.

Employee filed suit against Employer on July 22, 2002. Employer denied that the Employee's injury arose out of the course and scope of his employment or that the Employee suffered any permanent disability. The trial court found that Employee's condition did not arise out of his employment and that it did not appear to be a natural or common disease unavoidably resulting from his employment. It therefore ruled that Employee's claim was not compensable.

### **Standard of Review**

The standard of review in an award of workers' compensation benefits is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2003 Supp.); *Walker v. Saturn Corp.*, 986 S.W.2d 204, 207 (Tenn. 1998). The reviewing Court is required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. *Vinson v. United Parcel Service*, 92 S.W.3d 380,383-4 (Tenn. 2002). Where the issues involve expert medical testimony and the record contains medical information presented by deposition, all impressions of weight and credibility must be drawn from the depositions and the reviewing court makes its own assessment of the medical proof to determine where the preponderance of the evidence lies. *Cooper v. Insurance Co. of North America*, 884 S.W.2d 446, 451 (Tenn. 1994).

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 be accorded those findings on review, because the trial court had the opportunity to observe the witnesses' demeanor and to hear the in-court testimony. *Long v. Tri-Con Ind.*, 996 S.W.2d 173, 178 (Tenn. 1999). In addition, when there is any doubt as to whether an injury arose out of the course and scope of one's employment or results in disability is to be resolved in favor of the employee. See *Legions v. Liberty Mutual Ins. Company*, 703 S.W.2d 620, 622 (Tenn. 1986); *Tapp v. Tapp*, 192 Tenn. 1, 236 S.W.2d (1951); *Hall v. Auburntown Industries, Inc.*, 684 S.W.2d 614, 617 (Tenn. 1985).

### **Analysis**

The Employee has presented this issue for our determination: whether the trial court erred in finding that the Employee's injuries did not arise out of his employment with Employer. Our law is well-settled that in order to be eligible for workers' compensation benefits, an employee's injury must be one that "aris[es] out of and in the course of employment which causes either disablement or death..." Tenn. Code Ann. § 50-6-102(12). "Arising out of" and "in the course of" are two separate elements that must be proven in order for a workers' compensation claim to be compensable. "Arising out of" refers to the cause or origin of the injury, while "in the course of" refers to the time, place and circumstances of the injury. *Hill v. Eagle Bend Mfg. Inc.*, 942 S.W.2d

483, 487 (Tenn. 1997). In order to determine if an injury arises out of the employment, the injury must “result from a danger or hazard peculiar to the work or be caused by a risk inherent in the nature of the work.” *Houser v. BI-LO, Inc.*, 36 S.W.3d 68 (Tenn. 2001).

Although causation cannot be based upon merely speculative or conjectural proof, absolute certainty is not required. We have consistently held that an award may properly be based upon medical testimony to the effect that a given incident “could be” the cause of the employee’s injury, when there is also lay testimony from which it reasonably may be inferred that the incident was in fact the cause of the injury. *Reeser v. Yellow Freight Sys., Inc.*, 938 S.W.2d 690 (Tenn. 1997). It has also been previously established that any reasonable doubt as to whether an injury arose out of the course and scope of one’s employment or results in disability is to be resolved in favor of the employee. *Tapp v. Tapp*, 192 Tenn. 1, 236 S.W.2d (1951); *Hall v. Auburntown Industries, Inc.*, 684 S.W.2d 614, 617 (Tenn. 1985). We believe that sufficient evidence was presented in this case to show a causal connection between Employee’s condition and his work.

In addition to Employer’s argument that Employee’s injury did not arise out of his employment, Employer also argues that thrombophlebitis is not a compensable work-related injury. Employer cites the only Tennessee case that deals directly with thrombophlebitis, *Fralix v. Ceco Corp.*, 1986 Tenn. LEXIS 789, \*2 (Tenn. 1986). In this case, the Plaintiff had a history of veinous problems and had been treated for thrombophlebitis in the past. The court in the *Fralix* case held that “plaintiff’s phlebitis was not an unexpected result of his work at Ceco but rather was one which could reasonably be anticipated in light of the plaintiff’s history of leg and vein problems.” *Id.* at \*4. Employer also cites cases from two other jurisdictions that have also found thrombophlebitis noncompensable as a work-related injury.<sup>1</sup>

The general rule in Tennessee is that aggravation of a pre-existing condition may be compensable under the workers' compensation laws of Tennessee, but it is not compensable if it results only in increased pain or other symptoms caused by the underlying condition. *See Sweat v. Superior Ind., Inc.*, 966 S.W.2d 31, 32 (Tenn. 1998). In order to be compensable, the pre-existing condition must be “advanced”<sup>2</sup>, there must be an “anatomical change” in the pre-existing condition<sup>3</sup>, or the employment must cause “an actual progression ... of the underlying disease.”<sup>4</sup> With regard to a pre-existing condition, it is also well-established law in Tennessee that an employer takes an employee as he finds him and assumes the responsibility of having a pre-existing condition aggravated by a work-related injury which might not affect a normal person. *Hill v. Eagle Bend Mfg., Inc.*, 942 S.W.2d 483, 488 (Tenn.1997). Further, even though an employee may have been suffering from a pre-existing condition or disability, if the employment causes an actual progression or aggravation of that condition, the employer

---

<sup>1</sup> *In re Champion v. Gurley*, 87 N.E.2d 430 (N.Y. 1949); *Young v. City of Huntsville*, 342 So.2d 981 (Ala.Civ.App. 1976).

<sup>2</sup> *Springfield v. Eden*, 1995 WL 595602, 1995 Lexis 67 (W.Comp. Appeals Panel).

<sup>3</sup> *Talley v. Virginia Ins. Reciprocal*, 775 S.W.2d 587, 591 (Tenn.1989).

<sup>4</sup> *Cunningham v. Goodyear*, 811 S.W.2d 888, 890 (Tenn.1991).

is responsible for workers' compensation benefits. *Id.* at 488; *Fink v. Caudle*, 856 S.W.2d 952, 958 (Tenn.1993); *White v. Werthan Ind.*, 824 S.W.2d 158, 161 (Tenn. 1992).

The proof in this case was that the Employee worked on an assembly line for Employer for approximately six years, and the majority of his workday, until the date of injury, was spent standing. Thereafter, Employer accommodated Employee's restrictions and allowed him to perform a task in which he could alternate sitting and standing positions. The deposition testimony and medical reports of Dr. Witherington and Dr. Warren were submitted as evidence in this case. Dr. Witherington testified that the Employee's employment contributed significantly to his thrombophlebitis and that medical literature supports the conclusion that standing for long periods of time contributes to varicosities. He also advised Employee to seek another line of work. Dr. Warren, who performed an independent medical evaluation at the request of Employer, opined that Employee's thrombophlebitis was caused primarily by valvular incompetency that resulted from infected insect bites. Dr. Warren did concede, however, that prolonged standing can potentially aggravate varicosities and lead to thrombophlebitis.

In our opinion, the evidence preponderates against the trial court's finding that Employee's injury did not arise out of his employment with Employer. Employee was required to stand for several hours a day for five or six days a week to perform his job with Employer. These extended periods of standing exposed Employee to the danger of developing thrombophlebitis, a risk which was inherent in the nature of his work and a danger peculiar to his work. We therefore find that Employer's thrombophlebitis did arise out of his employment, and his injury on June 4, 2002 constitutes a compensable injury under Tennessee workers' compensation law. Because the trial judge's ruling did not reach the determination of the extent of Employee's vocational disability, we remand this case for hearing on this issue.

### **Conclusion**

The judgment of the trial court is reversed and this case is remanded for hearing to determine the extent of Employee's vocational disability. The costs of this appeal are taxed to the Appellee.

---

LARRY B. STANLEY, JR., SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT JACKSON  
April 5, 2004 Session

**RANDY HOLLINGSWORTH v. MAYTAG CORPORATION**

**Chancery Court for Madison County  
No. 60060**

---

**No. W2003-02407-WC-R3-CV - Filed July 7, 2004**

---

**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 Appellee, Maytag Corporation, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM