

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
(July 25, 2006 Session)

SANDRA J. SIMPSON v. CALSONIC KANSEI NORTH AMERICA

**Direct Appeal from the Chancery Court for Rutherford County
No. 04-8434 WC, Robert E. Corlew, III Chancellor**

**No. M2005-02238-WC-R3-CV - Mailed - January 2, 2007
Filed - February 12, 2007**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated §50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. The employer contends that the trial court erred by (1) finding that the Plaintiff suffered a compensable work-related injury and (2) finding that the Plaintiff was entitled to an award of 23% vocational disability apportioned to her two feet. We affirm the trial court in all respects. Finally, we conclude that the appeal is not frivolous.

Tenn. Code Ann. § 5-6-225(e) (1999) Appeal as of Right; Judgment of the Rutherford County Chancery Court Affirmed.

JEFFREY S. BIVINS, SP. J., delivered the opinion of the court, in which WILLIAM M. BARKER, CHIEF JUSTICE, and HOWELL N. PEOPLES, SP. J., joined.

John R. White, Bobo, Hunt, and White, Shelbyville, Tennessee, for the Appellant, Calsonic Kansei North America.

Phillip George, Smyrna, Tennessee, for the Appellee, Sandra J. Simpson.

MEMORANDUM OPINION

I. Facts

The Plaintiff, Sandra J. Simpson (“Simpson”), was 41 years of age at the time of the trial in this action. Simpson graduated from high school. She has had no other schooling or vocational training of any kind. She began working for the Defendant, Calsonic Kansei North America (“Calsonic”), in 1994. Prior to her employment at Calsonic, Simpson worked at National Pen from 1990-1994. At Calsonic, she started working on a heater line and later moved to a blower line on the third shift. She eventually moved to a heater coil line and then to an evaporator. In the summer of 2003, Simpson was running a large machine which was generally a three-person job. After her co-workers on this machine left for other jobs, Simpson operated the machine by herself. This required her to run back and forth to keep the machine from jamming. To get from one end of the machine to the other Simpson had to run or walk very fast on a concrete floor. During this time she was working 12 hour shifts five or six days a week. Over the course of time, Simpson began experiencing pain in her feet.¹

Simpson reported the problems with her feet to her supervisor, who sent Simpson to the company nurse. According to Simpson, the nurse authorized her to see Dr. Fred J. Marino, a podiatrist, for treatment. The record reflects that Simpson saw Dr. Marino on an occasional basis for foot-related ailments between 1997 and July 2002. As of July 2003, however, all of these prior issues had subsided. During these prior treatments, Dr. Marino had diagnosed Simpson with plantar fasciitis heel spur syndrome.

Dr. Marino examined Simpson on July 31, 2003. At that time, Simpson complained of pain in the arches and heels of both feet, as well as the balls of both feet. Dr. Marino conducted radiographs of her feet that showed mild progressive change from previous radiographs he had done. Specifically, Dr. Marino noted a breakdown in the arch and calcaneal spurring. Dr. Marino concluded that these problems were extensions of her previous complaints. As a result of the July 31, 2003 exam, Dr. Marino diagnosed her with chronic plantar fasciitis heel spur syndrome.²

Dr. Marino continued to treat Simpson for these ailments over the next few months. She ultimately took time off from work at Dr. Marino’s direction. She returned to work on January 22, 2004. Unfortunately, she returned to Dr. Marino on January 28, 2004 with a full return of her symptoms. She told Dr. Marino that it was hard for her to make it through her workday. Dr. Marino decided that Simpson needed surgery on her left foot. Dr. Marino performed plantar fasciitis surgery

¹ The parties have stipulated that, although Simpson’s injuries were gradual in nature, the injury date for purposes of this matter is July 31, 2003.

² Dr. Marino explained that a strong band in the arch of the foot is called the plantar fascia, which is the extension of the Achilles’ tendon into the foot. When the arch breaks down, it becomes tight and will tear. It can tear anywhere along the band, in the middle of the arch, or typically from the attachment at the heel bone. This tear causes hemorrhaging, which calcifies and creates the calcaneal spurring.

on Simpson's left foot on October 22, 2004. This surgery entailed separation of the attachment point of the plantar fascia from the heel bone, basically severing it. This procedure allows the plantar fascia to migrate forward until it is no longer under stress. Then, the normal healing process will reattach it to the calcaneus. This procedure ultimately results in the return of some function, but does decrease its primary function. Simpson obtained a good result from this surgery. After the surgery, Dr. Marino also noted improvement in the right foot. He attributed this right foot improvement to the fact that she had not been in a stressful work environment for a period of time and to the fact that the left foot was not demanding her to compensate for it any longer.

Dr. Marino opined that there was a causal relationship between Simpson's employment and her injury. Dr. Marino also assigned Simpson an anatomical impairment rating. Dr. Marino noted that the AMA Guides to Impairment do not specifically provide an anatomical impairment for plantar fasciitis. Dr. Marino felt that an appropriate analogy could be made under the guidelines to a moderate cavus foot or a moderate rocker bottom foot. Using this analogy, Dr. Marino assigned impairment ratings of 10% to each foot for a combination of 19% to both feet.

On July 14, 2004, Simpson saw Dr. Marion Harper, an orthopedic surgeon, for an independent medical examination. Dr. Harper met with Simpson for approximately 30 to 40 minutes and reviewed Dr. Marino's notes concerning his treatment of Simpson. Based upon this information, Dr. Harper opined that Simpson had not suffered a work-related injury. He further opined that she had not suffered any permanent injury.

The trial court conducted the final hearing in this matter on August 1, 2005. The trial court heard live testimony from Simpson and from Diane Christian, an occupational health nurse employed by Calsonic. In July 2003, Christian was the health services coordinator for Calsonic. The trial court also considered the deposition testimony of Dr. Marino and Dr. Harper. On August 3, 2005, the trial court advised the parties of its decision by letter. The letter decision made detailed findings of fact and conclusions of law. The trial court ultimately concluded that there was a causal relationship between Simpson's employment and her injury. The trial court also concluded that Simpson was entitled to an award of permanent partial disability benefits to the scheduled member of two feet pursuant to Tenn. Code Ann. § 50-6-207(3)(A)(ii)(z). The trial court awarded Simpson benefits based upon a vocational disability of 23% to both feet.

II. Issues

This case presents the following issues on appeal:

1. Whether the trial court erred in finding that Simpson's injury arose out of her employment?
2. Whether the trial court erred in finding that Simpson was entitled to an award of permanent partial disability benefits based upon a vocational disability of 23% to both feet?
3. Whether Calsonic's appeal is frivolous?

III. Standard of Review

The standard of review in a workers' compensation case is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e). *See also Layman v. Vanguard Contractors, Inc.*, 183 S.W.2d 310, 314 (Tenn. 2006). The application of this standard requires this Court to weigh in more depth the factual findings and conclusions of the trial courts in workers' compensation cases to determine whether the preponderance of the evidence lies. *Vinson v. United Parcel Service*, 92 S.W.3d 380, 383-84 (Tenn. 2002). When the trial court has seen the witnesses and heard the testimony, especially when issues of credibility and the weight of testimony are involved, the appellate court must extend considerable deference to the trial court's findings of fact. *Houser v. Bi-Lo, Inc.*, 36 S.W.3d 68, 71 (Tenn. 2001). This Court, however, is in the same position as the trial judge in evaluating medical proof that is submitted by deposition, and may assess independently the weight and credibility to be afforded to such expert testimony. *Richards v. Liberty Mut. Ins. Co.*, 70 S.W.3d 729, 732 (Tenn. 2002). Questions of law are reviewed *de novo* without a presumption of correctness. *Perrin v. Gaylord Entertainment Co.*, 120 S.W.3d 823, 826 (Tenn. 2003).

IV. Analysis

Calsonic first contends that the trial court erred in finding that Simpson established that her injuries arose out of her employment. To be eligible for workers' compensation benefits, an employee must suffer "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(13). The phrase "arising out of" refers to the cause or origin of the injury. *Hill v. Eagle Bend Mfg., Inc.*, 942 S.W.2d 483, 487 (Tenn.1997). An injury arises out of employment "where there is apparent to the rational mind upon consideration of all the circumstances, a causal connection" between the work and the injury for which benefits are sought. *Houser v. Bi-Lo, Inc.*, 36 S.W.3d 68, 71 (Tenn.2001). The employee has the burden of proving that the injury arose out of her employment by a preponderance of the evidence. *Tindall v. Waring Park Ass'n*, 725 S.W.2d 935 (Tenn.1987).

The causation requirement is satisfied if the injury has a rational, causal connection to the work. *Reeser v. Yellow Freight Sys., Inc.*, 938 S.W.2d 690, 692 (Tenn.1997). Additionally, Reeser provides as follows:

Although causation cannot be based upon merely speculative or conjectural proof, absolute certainty is not required. Any reasonable doubt in this regard is to be construed in favor of the employee. We have thus consistently held that an award may properly be based upon medical testimony to the effect that the given incident "could be" the cause of the employee's injury, where there is also lay testimony from which it reasonably may be inferred that the incident was, in fact, the cause of the injury.

Reeser, at 938 S.W.2d at 692. Moreover, in *Fritts v. Safety Nat. Cas. Corp.* 163 S.W.3d 678 (Tenn.2005), the Supreme Court reiterated this holding:

Acknowledging the imprecision and uncertainty of medical proof of causation, any reasonable doubt must be construed in favor of the employee. Benefits may properly be awarded upon medical testimony that shows the employment “could or might have been the cause” of the employee’s injury when there is lay testimony from which causation reasonably can be inferred.

Fritts, 163 S.W.3d 678.

In this case, the trial court considered expert testimony from Dr. Marino and Dr. Harper. Dr. Marino unequivocally testified that there was a causal relationship between Simpson’s employment and her injury. Dr. Harper, on the other hand, testified that Simpson’s injury was not work-related. The trial judge has the discretion to conclude that the opinion of one expert should be accepted over that of another expert. *Thomas v. Aetna Life & Cas. Co.*, 812 S.W.2d 278, 283 (Tenn.1991). Additionally, the uncontroverted lay testimony of Simpson clearly bolsters the proof of causation in this case. *See Reeser*, 938 S.W.2d at 692 Simpson testified that she had to move around constantly on a concrete floor while working twelve hour shifts.³ Based upon this evidence, the trial court expressly held that Simpson had suffered a compensable work related injury. Accordingly, we find no error in the trial court’s decision on this issue.

Calsonic also contends that the trial court erred in awarding Simpson permanent partial disability benefits based upon a 23% vocational disability apportioned to her two feet. Specifically, Calsonic takes issue with Dr. Marino’s assessment of a medical impairment rating based upon his analogy to cavus foot or rocker bottom foot in the AMA Guidelines. In its brief, Calsonic characterizes Dr. Marino’s assessment as a *diagnosis* that Simpson suffers from cavus foot or rocker bottom foot. A careful review of Dr. Marino’s testimony, however, demonstrates to the contrary. Dr. Marino clearly testified that his use of cavus foot and rocker bottom foot was to establish an analogy for purposes of assessing a medical impairment because the AMA Guidelines do not directly address plantar fasciitis. At no point did Dr. Marino diagnose Simpson with cavus foot or rocker foot. Again, Dr. Harper disagreed with the use of this analogy. Dr. Harper concluded that Simpson did not suffer any permanent injury. Therefore, he declined to assess any medical impairment rating.

In its letter decision, the trial court carefully considered the opinions of both experts. It also carefully considered the various statutory factors relevant to determining a percentage of vocational disability. The trial court specifically noted that Simpson was 41 years of age at the time of trial and had completed the twelfth grade. Furthermore, the trial court considered Simpson’s vocational career, the anatomical impairment rating as established by Dr. Marino, and other relevant factors. Based upon the totality of those factors, the trial court concluded that Simpson was entitled to an

³ Interestingly, even Dr. Harper concedes that working conditions such as those testified to by Simpson could be a factor in developing plantar fasciitis.

award of 23% vocational disability apportioned to her two feet in accordance with Tenn. Code. Ann. § 50-6-207(3)(A)(ii)(z). We find that the evidence does not preponderate against this finding by the trial court.

The final issue for us to resolve is Simpson's contention that Calsonic's appeal is frivolous. Simpson requests that we award sanctions to her pursuant to the frivolous appeal provisions of Tenn. Code .Ann.§ 27-1-122. Based upon a review of the entire record, we conclude that this appeal is not frivolous. Therefore, we decline to award any sanctions to Simpson.

V. Conclusion

For the foregoing reasons, the judgment of the trial court is affirmed. The case is remanded for any necessary proceedings. The costs of the appeal are taxed to the appellant, Calsonic Kansei North America.

JEFFREY S. BIVINS, SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
JULY 25, 2006 SESSION

SANDRA J. SIMPSON v. CALSONIC KANSEI NORTH AMERICA

Chancery Court for Rutherford County
No.04-8434

No. M2005-02238-WC-R3-CV - Filed - February 12, 2007

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 appeals 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 taxed to the Appellant, Calsonic Kansei North America, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM