IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
February 26, 2007 Session

PATSY D. OWNBY v. MARRIOT HOTEL SERVICES, INC., d/b/a MARRIOT BUSINESS SERVICES, ET AL.

Direct Appeal from the Circuit Court for Blount County
No. L-14620 W. Dale Young, Judge

Filed May 3, 2007

No. E2006-01901-WC-R3-WC - Mailed April 3, 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 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, the employer asserts that the trial court erred in finding that the employee's injury, caused by a fall in the workplace, arose from her employment. We agree with the findings of the trial court and in accordance with Tennessee Code Annotated section 50-6-225(e)(2) 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

JON KERRY BLACKWOOD, SR. J., delivered the opinion of the court, in which WILLIAM M. BARKER, C.J., and J. S. (STEVE) DANIEL, Sr. J.,joined.

Daniel T. Swanson, Knoxville, TN, for the Appellant, Patsy Diane Ownby.

John P. Dreiser, Knoxville, TN, for the Appellee, Marriott Hotel Services, Inc., d/b/a Marriott Business Services.

MEMORANDUM OPINION

I. FACTUAL BACKGROUND

Patsy D. Ownby [hereinafter "the employee"] was employed as a billing specialist for Marriot Hotel Services [hereinafter "the employer"]. She began her employment with the employer in 2000.

She had an associate's degree in accounting and was 53 years old at the time of trial.

On August 15, 2003, the employee was attending a daily "stand-up meeting" within her department. As the meeting was concluding, she testified that she walked down an aisle and "her feet caught on the carpet" causing her to fall. She described the fall as "being shot out of a rocket." She further testified that she was wearing non-skid office type shoes, that she had previously stumbled on the carpet, and that she was aware that other employees had stumbled. As a result of the fall, the employee suffered carpet burns on both hands and knees, broke her glasses and watch, and sustained injuries to her right arm, cervical spine and left knee.

After the accident, the employee saw Dr. Basile, who was a physician offered to her as a part of a panel of physicians provided by the employer. Dr. Basile referred the employee to several physicians to treat her for her injuries. She was treated by Dr. Finelli with therapy and medication for her cervical spine injury. Dr. Finelli referred her to Dr. Bellner, a physiatrist. Dr. Koenig performed surgery on employee's left knee. She was also seen by Dr. Killeffer for a cervical spine evaluation and Dr. Burns for an arm evaluation.

Dr. William E. Kennedy saw the employee for an independent medical evaluation and agreed with Dr. Finelli's assessment that the employee had suffered a 7% impairment of the cervical spine. In addition, Dr. Kennedy, who testified by deposition, further opined that the employee's left knee had a 2% whole body impairment rating, for a combined rating of 9%.

II. RULING OF THE TRIAL COURT

The trial court found the injury to be compensable, and awarded 22.5% permanent partial disability to the body as a whole.

III. STANDARD OF REVIEW

The standard of review of issues of fact is 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); Lollar v. Wal-Mart Stores, Inc., 767 S.W.2d 143, 149 (Tenn. 1989). 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 afforded those circumstances on review since the trial court had the opportunity to observe the witness's demeanor and to hear in-court testimony. Long v. Tri-Con Industries, Ltd., 996 S.W.2d 173, 178 (Tenn. 1999).

IV. ANALYSIS

The only issue raised by the employer is whether the trial court erred in finding that the injury arose out of employee's employment. The employer contends that the employee's injuries were caused by an idiopathic fall, and thus not compensable.

An injury must arise out of and be in the course of employment to be compensable under the Workers' Compensation Act. Tenn. Code Ann. § 50-6-103(a) (1999); Loy v. N. Bros. Co., 787 S.W.2d 916, 918 (Tenn. 1990). "Arising out of" refers to the origin of the incident in terms of causation. McCurry v. Container Corp. of Am., 982 S.W.2d 841, 843 (Tenn. 1998). An accidental injury arises out of employment when there is a causal connection between the conditions under which the work is required to be performed and the resulting injury. GAF Bldg. Materials v. George, 47 S.W.3d 430, 432 (Tenn. Workers' Comp. Panel 2001). Any reasonable doubt as to whether or not an injury arose out of employment is to be resolved in favor of employee. White v. Werthan Indus., 824 S.W.2d 158, 159 (Tenn. 1992). "In the course of" relates to time, place and circumstance. McCurry, 982 S.W.2d at 843. An accident occurs in the course of employment if it occurs while an employee is performing a duty he was employed to do. Fink v. Caudle, 856 S.W.2d 952, 958 (Tenn. Workers' Comp. Panel 1993). When the cause of a fall is due to some condition personal to the employee, and is not causally related to some hazard incident to the condition of the employment, injury resulting therefrom is not compensable under our Workmen Compensation statutes. Sudduth v. Williams, 517, 577 S.W.2d 520 (Tenn. 1974).

The trial court specifically found that the condition of the carpet, which was incidental to her employment, caused the fall. The employee testified that her rubber soled shoes caught on the carpet causing the fall. The employee walked in other areas of the building with rubber soled shoes without difficulty. She, as well as another employee, had stumbled previously on the carpet. There is no other evidence in the record to suggest that the fall occurred for some other reason. The record does not preponderate against the trial court's findings. After a review of the record, we find that the trial court did not err in finding that the fall arose out of the employment as the record supports a conclusion that "there is a causal connection between the conditions under which the work is required to be performed and the resulting injury." GAF v. Bldg. Materials, 475 S.W.3d at 432.

V. CONCLUSION

The judgment of the trial court is affirmed. The cost of this cause shall be taxed against appellant-employer.

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JON KERRY BLACKWOOD, SENIOR JUDGE

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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 facts and conclusions of law are adopted and affirmed and the decision of the Panel is made the Judgment of the Court.

The costs on appeal are taxed to the appellant, Marriott Hotel Services, Inc., d/b/a Marriott Business Services, for which execution may issue if necessary.