

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT JACKSON  
April 23, 2007 Session

**CHRISTIN PICKENS v. DELTA FAUCET**

**Direct Appeal from the Chancery Court for Madison County  
No. 63415 James F. Butler, Chancellor**

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**No. W2006-02174-WC-R3-WC - Mailed September 26, 2007; Filed October 29, 2007**

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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 of findings of fact and conclusions of law. In this appeal, the employer, Delta Faucet, argues that the trial court erred in finding that the date of injury was prior to July 1, 2004, and that the award was therefore not subject to the "cap" of 1.5 times the anatomical impairment pursuant to Tennessee Code Annotated 50-6-241(d)(1)(a) (Supp. 2004). The employee argues that the award of 25% permanent partial disability to both arms is inadequate. We conclude that the injury occurred after July 1, 2004, and modify the award to 15% permanent partial disability to both arms.

**Tenn. Code Ann. § 50-6-225(e) (2005) Appeal as of Right; Judgment of the Chancery Court Modified**

ALLEN WALLACE, SR. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and DONALD P. HARRIS, SR. J., joined.

P. Allen Phillips, Jackson, Tennessee for Appellant, Delta Faucet.

James R. Krenis, Jackson, Tennessee for Appellee, Christin Pickens.

**MEMORANDUM OPINION**

**FACTS**

This action arises from a bilateral carpal tunnel syndrome. Compensability is not disputed. Christin Pickens ("Employee") was twenty-five years old on the day of trial. She was a high school graduate. She had worked at McDonald's for three years before being hired by Delta Faucet ("Employer") in 2000. She initially worked as a "front end loader," which involved placing parts on a rack at the beginning of the chrome plating process. As part of the hiring process, she had a pre-employment physical, which was negative for carpal tunnel syndrome.

In October 2001, she began to have pain in her hands. She reported this to her employer and was referred to a Dr. Warren, a general practitioner. He prescribed medication. She was placed in a different job that involved less intensive use of her hands. Her symptoms abated. At a later date, she was moved to a different department as a result of a reduction in the size of Employer's workforce. Her new job required her to fold boxes. She began to have pain in her hands again.

In November 2003, her symptoms increased to the point that she again reported them to her employer. She returned to Dr. Warren. In February 2004, he ordered a nerve conduction study, which was positive for bilateral carpal tunnel syndrome. She was then referred to Dr. David Johnson, an orthopaedic surgeon. Dr. Johnson ordered a second nerve conduction study, which confirmed the diagnosis. He performed carpal tunnel release surgery on Employee's right arm on October 4, 2004, and on her left arm on January 21, 2005. Employee did not miss any work due to this condition until the surgery of October 4, 2004. She missed one day of work for each surgery, and returned in a light duty capacity thereafter. Dr. Johnson testified by deposition that she reached maximum medical improvement on July 13, 2005. He placed no permanent restrictions on her activities and assigned a 0% permanent impairment.

Dr. Joseph Boals performed an independent medical examination at the request of Employee's counsel in November 2005. He assigned a 10% permanent impairment to each arm. He recommended that she avoid repetitive work and heavy gripping. Dr. Boals' opinions were presented by C-32 report, pursuant to Tennessee Code Annotated section 50-6-235(c) (2005).

At the time of trial, Employee continued to work for Employer. She was earning slightly more than she had before her injury arose. She occasionally worked overtime. She testified that there were jobs in the plant that she could no longer perform due to pain in her hands. She had difficulty bowling, but was able to play volleyball. She had dropped heavy objects because of weakness in her hands.

The complaint was filed on October 4, 2005. The case was tried on August 29, 2006. At trial, Employer contended that the suit was barred by the statute of limitations based upon the date that Employee first gave notice of her injury, October 2001. Employee argued that date of injury was in February 2004, based upon the nerve conduction study and resulting diagnosis of carpal tunnel syndrome at that time. The trial court issued its findings in a letter to counsel dated September 1, 2006. That letter states that the statute of limitations began to run on the date of the second surgery, January 21, 2005, and the claim was, therefore, not barred. However, the judgment entered by the Court recites an injury date of February 4, 2004. The trial court awarded Employee 25% permanent partial disability to both arms.

## ISSUES

On appeal, Employer concedes the statute of limitations issue, but argues that the correct date of injury was October 4, 2004, and that the award should therefore be capped at 1.5 times the impairment pursuant to Tenn. Code Ann. § 50-6-241(d)(1)(A). Employee contends that the award of permanent partial disability is inadequate.

## 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 evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2005). When credibility and weight to be given testimony are involved, considerable deference is given the trial court when the trial judge had the opportunity to observe the witness' demeanor and to hear in-court testimony. Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 167 (Tenn. 2002). When the issues involve expert medical testimony that is contained in the record by deposition, determination of the weight and credibility of the evidence necessarily must be drawn from the contents of the depositions, and the reviewing court may draw its own conclusions with regard to those issues. Bohanan v. City of Knoxville, 136 S.W.3d 621, 624 (Tenn. 2004); Krick v. City of Lawrenceburg, 945 S.W.2d 709, 712 (Tenn. 1997). A trial court's conclusions of law are reviewed de novo upon the record with no presumption of correctness. Ganzevoort v. Russell, 949 S.W.2d 293, 296 (Tenn. 1997).

## ANALYSIS

In Barker v. Home-Crest Corp., 805 S.W.2d 373 (Tenn. 1991), the Court cited medical testimony to the effect that, for a condition caused by repetitive stress, such as carpal tunnel syndrome, each day of work constitutes a new injury. In that circumstance, the injury date was held to be the last day worked, which was defined as "the date the employee's condition was sufficiently severe to prevent her from working." Id. at 374. See also Lawson v. Lear Seating Corp., 944 S.W.2d 340 (Tenn. 1997).

While this case was in the briefing stage, the Court released its decision in Bldg. Materials Corp. v. Britt, 211 S.W.3d 706 (Tenn. 2007). Britt overruled Bone v. Saturn Corp., 148 S.W.3d 69 (Tenn. 2004), and subsequent cases which based the date of a gradual injury upon the date the employee gave notice to the employer. Britt, 211 S.W.3d at 713. The Court re-emphasized the application and importance of the last-day worked rule, stating: "We now hold that the better-reasoned view is that the date of an employee's gradually occurring injury should be determined using the last-day worked rule." Id. In this case, Employee was not "prevented from working" by her injury, until her two surgeries. The first of these occurred on October 4, 2004.

Employee argues that, under these circumstances, the appropriate injury date is February 4, 2004, the date of the nerve conduction study that confirmed the diagnosis of carpal tunnel syndrome. We consider this approach to be a "retreat from the bright line last-day-worked rule" similar to that followed in Bone and explicitly overruled in Britt. We therefore apply the last day worked rule, adopted in Barker and re-affirmed in Britt and conclude that the date of injury in this case is October 4, 2004.

Tennessee Code Annotated section 50-6-241(d)(1)(A) applies to injuries which occur on or after July 1, 2004. It limits permanent partial disability awards for injuries to the "body as a whole" and injuries to scheduled members with a value of 200 weeks or more to 1.5 times the impairment rating. Employee's injury in this case is assigned to the scheduled member "two arms", which is assigned a value of 400 weeks of benefits. Tenn. Code Ann. § 50-6-207(3)(A)(ii)(w) (2005).

Therefore, the "cap" of 1.5 times the impairment is applicable. The treating physician assigned 0% impairment as a result of Employee's carpal tunnel syndrome and surgery. The evaluating physician assigned 10% impairment. Application of Tennessee Code Annotated section 241(d)(1)(A) therefore requires a reduction of the award to a maximum of 15% permanent partial disability to both arms. Based upon our review of the evidence in the record, as set out above, we conclude that an award in that amount is appropriate in this case. Employee's contention that the award is inadequate is rendered moot by our ruling on the date of injury issue.

#### CONCLUSION

We hold that Employee's injury occurred on October 4, 2004. The judgment is modified to award 15% permanent partial disability to both arms to Employee. Costs are taxed to Christin Pickens and her surety, for which execution may issue if necessary.

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ALLEN WALLACE, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT JACKSON  
April 22, 2007 Session

**CHRISTIN PICKENS v. DELTA FAUCET**

**Chancery Court for Madison County  
No. 63415**

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**No. W2006-02174-WC-R3-CV - Filed October 29, 2007**

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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 Appellee, Christin Pickens, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM