

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
September 24, 2007 Session

LEE NORA HUNTER v. WILLIAMS-SONOMA DIRECT, INC. ET AL.

**Direct Appeal from the Chancery Court for Shelby County
No. CH-06-1582-3 Kenny W. Armstrong, Chancellor**

No. W2006-02590-SC-WCM-WC - Mailed January 15, 2008; Filed April 3, 2008

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 a hearing and a report of findings of fact and conclusions of law. The employee, Lee Nora Hunter, alleged that she sustained a compensable neck injury resulting in permanent disability. The employer, Williams-Sonoma Direct, Inc., admitted that an injury occurred, but denied that it caused permanent disability. Ms. Hunter represented herself at trial. She introduced no medical evidence. The trial court granted Williams-Sonoma's motion for involuntary dismissal. Ms. Hunter has appealed. We affirm the judgment.

Tenn. Code Ann. § 50-6-225(e) (Supp. 2007) Appeal as of Right; Judgment of the Chancery Court Affirmed

DONALD P. HARRIS, SR. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and D. J. ALISSANDRATOS, SP. J., joined.

Nora Lee Hunter, Memphis, Tennessee, *pro se*.

William B. Walk, Jr., Memphis, Tennessee for the appellees, Williams-Sonoma Direct, Inc. and Specialty Risk Services.

MEMORANDUM OPINION

Lee Nora Hunter filed suit against Williams-Sonoma Direct, Inc. ("Williams-Sonoma") seeking workers' compensation benefits. She alleged that she injured her neck in June 2004, when a forklift accidentally bumped into a pallet, or stack of pallets, which then struck her. In its answer, Williams-Sonoma admitted that the incident occurred and alleged that it had provided medical treatment to Ms. Hunter thereafter. Williams-Sonoma denied, however, that Ms. Hunter had

sustained any permanent disability as a result of the incident. Ms. Hunter represented herself at trial and represents herself on this appeal.

The proof at trial consisted of the testimony of Ms. Hunter and her daughter. Ms. Hunter testified that she had a ruptured disk in her neck and was unable to work as a result. Her daughter testified about the effects of the injury on her mother. No medical proof was introduced, although counsel for Williams-Sonoma stated that two medical depositions had been taken during a previous civil action concerning the same injury. That action had been nonsuited.

At the close of Ms. Hunter's proof, Williams-Sonoma made a motion for involuntary dismissal pursuant to Rule 41.02(2), Tennessee Rules of Civil Procedure. The trial court granted the motion, holding that Ms. Hunter had failed to sustain her burden of proving the injury caused permanent disability.

In order to be eligible for workers compensation benefits, an employee must suffer "an injury by accident arising out of and in the course of employment that causes either disablement or death." Tenn. Code Ann. § 50-6-102 (13). The phrase "arising out of" refers to causation. The causation requirement is satisfied if the injury has a rational, causal connection to the work. Reeser v. Yellow Freight Systems, Inc., 938 S.W.2d 690, 692 (Tenn. 1997). "It is well settled in [this state] that a plaintiff in a workers' compensation case has the burden of proving every element of the claim by a preponderance of the evidence." Elmore v. Travelers Ins. Co., 824 S.W.2d 541, 543 (Tenn. 1992). "Medical causation and permanency of an injury must be established in most cases by expert medical testimony." Thomas v. Aetna Life & Cas. Co., 812 S.W.2d 278, 283 (Tenn. 1991). "Except in an obvious case, such as the amputation of a limb . . . , the employee must establish by expert medical evidence that the injury and disability of which he or she complains was caused by an accident arising out of his or her employment." Masters v. Industrial Garments Mfg. Co., Inc. 595 S.W.2d 811, 812 (Tenn. 1980).

Ms. Hunter contends that she suffered a ruptured disk in her neck as a result of the June 2004 incident. She further contends that she has sustained a permanent partial disability as a result of that injury. The only evidence in this record to support those contentions is her own testimony.¹ The existence and cause of a ruptured cervical disk are not "obvious" matters that can be established by lay testimony alone. Therefore, it was necessary for Ms. Hunter to have presented the trial court with expert medical evidence, such as the testimony or deposition of a treating or examining physician or a written medical report prepared by such a physician on a form established by the commissioner of labor and workforce development, as permitted by Tennessee Code Annotated section 50-6-235(c).

¹After oral argument, Ms. Hunter lodged with the appellate court clerk a package of documents. This material consisted primarily of medical records, medical bills and correspondence from various attorneys to Ms. Hunter. Ms. Hunter did not file a motion to supplement the appellate record, nor does it appear that any of this material was offered into evidence in the trial court. In resolving this appeal, we have considered only the evidence contained in the record submitted to us by the trial court clerk.

It is evident from the record that Ms. Hunter did not understand the rules of evidence or the elements required to establish a workers' compensation claim. However, pro se litigants must comply with the same substantive and procedural requirements as represented parties. Whitaker v. Whirlpool Corp., 32 S.W.3d 222, 227 (Tenn. Ct. App. 2000). In the absence of any medical proof regarding the nature or effects of Ms. Hunter's injury, the trial court had no choice other than to grant Williams-Sonoma's motion for involuntary dismissal.

The judgment of the trial court is affirmed. Costs are taxed to Lee Nora Hunter and her surety, for which execution may issue if necessary.

DONALD P. HARRIS, SENIOR JUDGE

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ORDER

This case is before the Court upon the motion for review filed by Lee Nora Hunter pursuant to Tenn. Code Ann. § 50-6-225-(e)(5)(B), 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.

It appears to the Court that the motion for review is not well-taken and is therefore denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to Lee Nora Hunter, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

JANICE M. HOLDER, J., not participating.