

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
July 2001 Session

LISA ANNETTE BARLAR v. JOHNSON CONTROL

**Direct Appeal from the Circuit Court for Giles County
No. 10071, Hon. Stella L. Hargrove, Judge**

**No. M2000-02423-WC-R3-CV - Mailed - October 15, 2001
Filed - November 19, 2001**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. In determining whether the employee's asthma was an occupational disease, the trial court considered conflicting medical testimony, the employee's workplace conditions, and the employee's history of smoking. The employer contends the trial court erred (1) when it held that the plaintiff's asthma arose out of and in the scope of her employment, (2) in finding that the plaintiff's asthma is permanent, and (3) in awarding the employee 45% permanent partial disability to the whole body. The Panel has concluded that the judgment of the trial court should be affirmed.

Tenn. Code Ann. § 50-6-225(e)(3) Appeal as of Right; Judgment of the Circuit Court Affirmed.

GAYDEN, SP. J. delivered the opinion of the court, in which DROWOTA, J., and LOSER, SP. J. joined.

Joseph Ward Henry, Jr., Henry, Henry & Speer, Pulaski, TN, for the appellant, Johnson Control.

Richard Thomas Matthews, Matthews & Tisher, Columbia, TN, for the appellee, Lisa Annette Barlar.

MEMORANDUM OPINION

The employee/appellee, Lisa Annette Barlar, was employed with Johnson Control, from 1991 until February 2001. Ms. Barlar is thirty-five years old, has a ninth grade education, has not obtained a GED, and has no special training or skills. She also smoked approximately a pack and a half of cigarettes a day from the ages of fifteen to thirty-two, quitting in November 1998. Her positions with Johnson Control involved various aspects of the production of foam automobile seats and headrests, which exposed her to foam dust, chemicals, and fumes. Ms. Barlar began experiencing respiratory problems in 1994 while using a "hot knife" to cut through

fabric covering the seats. In that process, black smoke was emitted making it difficult for her to breathe and causing her heart to race. Ms. Barlar was hospitalized for approximately one week and missed work for about three months due to this incident. After 1994, she continually experienced difficulty breathing while exposed to the foam dust, chemicals, and fumes at work and was hospitalized on three other occasions; the last hospitalization leading to her decision to stop working. The trial court found that Ms. Barlar had a compensable occupational disease with a forty-five percent permanent partial disability.

Appellate review is de novo upon the record of the trial court but there is a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). Pursuant to Tenn. Code Ann. § 50-6-301, an occupational disease is a disease that “arises out of and in the course of employment.” The causation of a disease must be established by expert medical testimony in all but the most obvious cases. Thomas v. Aetna Life & Cas. Ins. Co., 812 S.W.2d 278, 282 (Tenn. 1991). In this case, however, there is conflicting medical testimony about the existence and cause of the employee’s disease.

Prior to her employment, Ms. Barlar was in good health with no respiratory or pulmonary problems. She began visiting Drs. Haney and Heflin for her respiratory problems in 1994 after her first hospitalization. In 1998, Dr. Heflin prescribed medications and an inhaler for a diagnosis of “asthmatic bronchitis secondary to smoking and pollution exposure.” He stated that her condition probably had multiple causes including her workplace and her smoking. In 1999, Dr. Haney formally diagnosed occupational asthma and opined that her condition “more probably than not” arose out of her employment. He gave her permanent restrictions of working in a clean air environment. In 2000, however, Ms. Barlar saw Dr. Bluhm at the request of Johnson Control. Dr. Bluhm examined Ms. Barlar, reviewed her medical records, and stated that she had no evidence of lung disease and did not have occupational asthma even though she may have some form of asthma.

Trial judges have discretion in the weight in which they consider conflicting medical testimony. Orman v. Williams-Sonoma, Inc., 803 S.W.2d 672, 676 (Tenn. 1996). In doing so, the judge is to consider the “qualifications of the experts, the circumstances of their examination, the information available to them, and the evaluation of the importance of that information by other experts.” Id. Absolute medical certainty is not required for an employee to establish medical causation. Tindall v. Waring Park Ass’n, 725 S.W.2d 935, 937 (Tenn. 1987). Additionally, any reasonable doubt as to causation is to be construed in favor of the employee. Hall v. Auburntown Indus., 684 S.W.2d 614, 617 (Tenn. 1985). In this case, the trial judge gave more weight to the testimony of Dr. Heflin, which is supported by the fact that he examined the employee on several occasions and had knowledge of the chemicals and pollutants present in the production of foam seats. Furthermore, the Material Safety Data Sheets indicate that Ms. Barlar was exposed to substances during her employment, such as Aromatic Isocyanate, that can cause asthma. In light of these reasons and in the presumption of correctness of the trial court, we affirm the finding that the employee’s disease is compensable.

The Panel also affirms the trial court’s finding of forty-five percent permanent partial disability to the body as a whole. Although, as the employer indicates, Ms. Barlar’s condition

improves when she remains away from work, Dr. Heflin testified that her condition would be permanent as long as she was exposed to aggravating substances. His testimony is supported by Ms. Barlar's testimony that she must avoid strong odors and chemicals such as perfumes, air fresheners, and cleaning products. Moreover, the Material Safety Data Sheets indicate that chronic exposure to isocyanates, present during Ms. Barlar's employment, can lead to permanent chemical asthma.

Once the cause and permanency of a disease have been established, courts may consider many pertinent factors, including "job skills, education, age, training, duration of disabilities, anatomical disabilities established by medical experts, and local job opportunities for the disabled" for the purpose of evaluating the extent of an employee's disability. Crossno v. Publix Shirt Factory, 814 S.W.2d 730, 732 (Tenn. 1991). In the present case, Dr. Heflin, following the American Medical Association Guidelines, found that the employee had an impairment rating of twenty-five percent. This rating, combined with the facts that Ms. Barlar is thirty-five years old, has only a ninth grade education, has not obtained a GED, and has no special skills or training, support the trial court's finding of a forty-five percent permanent partial disability.

Therefore, after careful review of the record, this Panel affirms the holdings of the trial court. Costs of appeal are taxed to the appellant, Johnson Control.

HAMILTON V. GAYDEN, JR., JUDGE

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL

LISA ANNETTE BARLAR v. JOHNSON CONTROL

**Circuit Court for Giles County
No. 10071**

No. M2000-02423-WC-R3-CV - Filed - November 19, 2001

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 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 paid by the appellant, Johnson Control, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM