

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2006 CA 0568

AW
Jmm
by Jmm **JACQUELINE GHOLAR PETERS**

VERSUS

WASHINGTON-ST. TAMMANY HOSPITAL

Judgment Rendered: February 9, 2007

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**Appealed from
The Office of Workers' Compensation Administration
District 6**

**Docket Number 04-08283
Honorable Robert Varnado, Judge Presiding**

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BEFORE: CARTER, C.J., WHIPPLE AND McDONALD, JJ.

WHIPPLE, J.

On November 9, 2004, Jacqueline Gholar Peters, the wife of the deceased employee-claimant, Charles R. Peters, filed a disputed claim for compensation on behalf of her deceased husband alleging therein that on November 7, 2003, Charles Peters crushed his finger while in the process of setting heavy boxes on a desk at his place of employment, Washington-St. Tammany Hospital, which ultimately resulted in a staph infection that caused or contributed to his death. Accordingly, Mrs. Peters sought death benefits.

On October 25, 2005, after trial of the matter, the Office of Workers' Compensation ("OWC") rendered judgment finding that Mrs. Peters failed to carry her burden of proving that her husband suffered a work-related accident with injury. Accordingly, the OWC dismissed her claim against his employer, Washington-St. Tammany Hospital, with prejudice. Mrs. Peters appeals, challenging the OWC's findings and resulting denial of death benefits.

In its reasons for judgment, the OWC stated as follows:

Mr. Peters, according to the testimony, was a long-term reliable employee of Washington-St. Tammany Hospital. It was alleged by Mr. Peters' surviving spouse that he sustained an unreported smashing-of-the-middle finger accident while working.

Several witnesses testified on behalf of Mrs. Peters including herself. Each testified Mr. Peters either told them he got hurt at work or they observed him without injury prior to work and with injury thereafter or both. Witnesses for the hospital testified no such finger injury was reported and that Mr. Peters was aware of the accident reporting procedures.

Initially the Claimant has the burden of establishing by a preponderance of evidence that the accident on the job occurred with injury. And the Court cites *Clausen vs. Dagg Construction* which is a First Circuit case in 2002. Given the burden of proof, using the Claimant's testimony alone may be sufficient to discharge this burden provided two elements are satisfied. No. 1, no other evidence discredits or casts serious doubt upon the worker's version of the accident; and, No. 2, the worker's testimony is corroborated by the circumstances following the alleged incident.

And the Court cites [Jackson vs. Savant Insurance Company] which is a 1997 First Circuit case. Also the [Bruno vs. Harbert International] case, Louisiana Supreme Court 1992.

In the case at hand, Mr. Peters died November 21st, 2003, 14 days after the alleged November 7th accident date. Thus obviously there exists no record of his version of events on November 7th, only that of family and friends who recounted what they were told by the decedent prior to death and/or what they observed before and after November the 7th..

Without apparent bias was the testimony of Debbie Williams, Mr. Peters' supervisor, and Jennifer McNutt, coworker. Mrs. McNutt worked with Mr. Peters the week of the alleged accident. She and Mrs. Williams testify [sic] he did not report an injury or accident sustained at work. As his supervisor Mrs. Williams testified, he – being Mr. Peters – helped others in the past filling out accident reports. Thus, Mr. Peters was aware of the procedure.

Although Mr. Peters did mention a finger injury to Ms. Williams, he did not report that this injury took place on the job. Given the apparent severity of the injury, it is concluded that Mr. Peters had [the] opportunity to report a work-related accident.

Further, given the totality of evidence, the Court concludes the survivors failed to meet their burden of proof that an accident occurred while at work. Therefore, the claim is dismissed with prejudice at the Plaintiff's expense.

The employee who claims a right to collect workers' compensation benefits has the burden of proving a work-related accident by a preponderance of the evidence. Guidry v. Brewer, 2002-2693 (La. App. 1st Cir. 9/26/03), 857 So. 2d 623, 625, writ denied, 2003-2958 (La. 1/9/04), 862 So. 2d 993. Whether a claimant has carried his burden of proving a work-related accident and whether testimony is credible are questions of fact to be determined by the trier of fact. McCoy v. The City of Hammond, 2004-0410 (La. App. 1st Cir. 5/6/05), 915 So. 2d 849, 850.

Factual findings in a workers' compensation case are subject to the manifest error or clearly wrong standard of review. Clausen v. D.A.G.G. Construction, 2001-0077 (La. App. 1st Cir. 2/15/02), 807 So. 2d 1199, 1202,

writ denied, 2002-0824 (La. 5/24/02), 816 So. 2d 851. Under the manifest error rule, the reviewing court does not decide whether the factual findings are right or wrong, but whether they are reasonable. Lizana v. Gulf Coast Pain Institute, 2003-1672 (La. App. 1st Cir. 5/14/04), 879 So. 2d 763, 765. “If the [fact finder's] findings are reasonable in light of the record reviewed in its entirety, the court of appeal may not reverse, even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently.” Sistler v. Liberty Mutual Insurance Company, 558 So. 2d 1106, 1112 (La. 1990). Where there is conflict in the testimony, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review, even though the appellate court may feel that its own evaluations and inferences are as reasonable. Rosell v. ESCO, 549 So. 2d 840, 844 (La. 1989).

Mr. Peters’ co-worker, Jennifer McNutt, and supervisor, Debbie Williams, testified that Mr. Peters never reported that he injured his finger on the job. They testified that he stated only that he “smashed it the other day.” Other hospital employees and family members testified that Mr. Peters had told them that he had smashed his finger on the job or at work. Moreover, Jacqueline Peters testified that Mr. Peters told her that he did not report the injury to his supervisor on Friday, the day it occurred, because she had left for the day, but that he was going to report it to his supervisor on Tuesday, the day he was next scheduled to report to work. Jacqueline Peters further testified that Mr. Peters told her that when he reported it to his supervisor, she sent him to the hospital, but all they did was put a couple of band-aids on his finger and send him back to work. She testified that her husband also told her that he had requested a couple of days off because his finger was hurting really bad, and that his supervisor had denied his request

because she was short-staffed at the time. Mr. Peters' daughter, Rhonda Cotton, also testified that her father had told her that he had requested time off from his supervisor, which was denied because she had no one to replace him. Both Mrs. Peters and Ms. Cotton testified that when Ms. Williams, Mr. Peters' supervisor, came to see him at the hospital, she apologized to the family for not allowing him the time-off that he had requested. However, when questioned, Ms. Williams specifically denied making any such apology. Further, Ms. Williams reiterated her testimony that Mr. Peters had never reported a work-related injury to her concerning his finger prior to his death, and that she was only made aware that there was an allegation that he injured his hand at work when she was contacted by the safety supervisor of the hospital and advised that an allegation had been made that Mr. Peters had sustained his injury during work hours and while acting in the course and scope of his employment.¹

The testimony of Jacqueline Peters and Rhonda Cotton that Mr. Peters had reported the injury, requested time off from work, and that Ms. Williams apologized to his family at the hospital for failing to grant his request directly conflicted with the testimony of Ms. Williams, Mr. Peters' supervisor.² Clearly, this led to a credibility determination by the trier of fact as to whether to accept the testimony of Mr. Peters' wife and daughter, or that of his supervisor, who, as noted by the trial court, was expressly deemed to be unbiased. Moreover, we note that the remaining witnesses who testified that Mr. Peters reported to them that he injured his finger at work consisted of family members and co-workers of Mr. Peters who

¹At that time, Ms. Williams was unable to question Mr. Peters about his injury because he was in the ICU on a respirator.

²Moreover, Ms. Williams' testimony concerning Mr. Peters' failure to report the injury is corroborated by Jennifer McNutt, Mr. Peters' co-worker.

testified they were personal friends of Mr. Peters through work or church. Accordingly, as the OWC acknowledged in its reasons for judgment, it was faced with conflicting testimonial evidence herein. Hence, because there are conflicting views of the evidence, we cannot say that the factfinder's choice between them is manifestly erroneous or clearly wrong. See Rosell v. ESCO, 549 So. 2d at 844. Accordingly, the OWC's finding that the testimony of Ms. Williams and Ms. McNutt was more credible than that of the other witnesses in this case is not clearly wrong and we see no legal error in the judgment of dismissal.

After a thorough review of the record and evidence in this matter and considering the credibility determinations made by the OWC, we conclude that the record reasonably supports the OWC's finding that Mrs. Peters failed to establish by a preponderance of the evidence that Mr. Peters suffered an injury in a work-related accident. Because we find that the record establishes that OWC had a reasonable basis upon which to make its determinations, we cannot say that the judgment of the OWC dismissing Mrs. Peter's petition was manifestly erroneous.

For the reasons stated above, and for those set forth in the OWC's reasons for judgment, the October 25, 2005 judgment is affirmed. Costs of this appeal are assessed to Jacqueline Gholar Peters. This summary disposition is issued in accordance with the Uniform Rules -- Courts of Appeal, Rule 2-16.2A(5), (6), (7) and (8), and published in accordance with LSA-R.S. 23:1310.5F.

AFFIRMED.