

IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE
MIDDLE DIVISION

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CHARLES OWENS #380242,)
) Claim No. T20120828
 Claimant.)
v.)
)
STATE OF TENNESSEE)
) Regular Docket
 Defendant;)

JUDGMENT FOR CLAIMANT

This claim came for trial on the merits before Robert N. Hibbett, Commissioner and Trial Judge of the facts and law, on June 18, 2014 in the Rachel Jackson State Office Building by video conference. Claimant, Charles Owens, seeks compensation for injury to his abdomen caused when a shaper blade shattered sending shards into his abdomen. Assistant Attorney General Lee Pope represented the State of Tennessee. The Claimant was self-represented. The Trial Transcript was filed on June 27, 2014.

JURISDICTION

The authority of the Claims Commission to render damages is set forth by statute. If a claim falls outside of the categories specified in Tenn. Code Ann. § 9-

8-307(a), then the State retains its immunity from suit, and a claimant may not seek relief from the State. *Stewart v. State*, 33 S.W.3d 785, 790 (Tenn. 2000).

Tenn.Code.Ann. § 9-8-307 defines the jurisdiction of the Claims

Commission:

(a)(1) The commission or each commissioner sitting individually has exclusive jurisdiction to determine all monetary claims against the state based on the acts or omissions of “state employees,” as defined in § 8-42-101(3), falling within one (1) or more of the following categories:

...

(C) Negligently created or maintained dangerous conditions on state controlled real property. The claimant under this subsection must establish the foreseeability of the risks and notice given to the proper state officials at a time sufficiently prior to the injury for the state to have taken appropriate measures;

...

(E) Negligent care, custody and control of persons.

FINDINGS OF FACT

State’s Admissions from Answer

The State has admitted the Claimant was operating a table router in the mill area of the TRICOR Wood Plant at Turney Center Industrial Complex (TCIX) on January 19, 2011. The table router broke causing pieces of the router bit to strike Claimant in the abdomen and forearm. Dr. Otis Campbell and Tim Hansche examined Claimant immediately after the accident and the Claimant

was transferred to Metro General Hospital for further treatment. The State avers that the Claimant had a small puncture wound and a CT scan revealed a small foreign body in the Claimant's abdomen not penetrating the abdominal wall. Claimant received follow-up care at the TCIX clinic and received pain medication and antibiotics on January 21, 2011. Furthermore, the State has admitted a small foreign object was removed from Claimant's abdomen on March 23, 2011, and the Claimant received five sutures that were removed on March 30, 2011.

Testimony of Claimant

The Claimant, Charles Owens, is an inmate of the Tennessee Department of Correction. On the day of the accident, he was working in the laminate department of the wood plant. He and another inmate were asked to run shaper machines to shape table and desktops. There were no safety guards on the shaper machine he was operating that day. They ran a few boards through the machine but they were wavy and were not cut correctly. Two people with no experience changed the heads (blades) on the machines. The shaper machines had "suicide" blades attached and the Claimant had not been trained on

“suicide” blades. They are called “suicide” blades because they are screwed in place, instead of welded, and they are dangerous to operate.

Mr. Owens and the other inmate ran the first board through and after the first couple of inches, the blades shattered and threw pieces of metal everywhere. The Claimant was hurt and has to live with the pain and suffering from this injury the rest of his life. He experiences sharp pain occasionally in the morning or while exercising. He testified that he still has a piece of metal permanently embedded in the wall of his abdomen.

The Claimant admitted that he had signed an Inmate Worker Machine Safety Statement stating he had been trained on the shaper machine in question. He had also signed the TCIX Safety Rules and Regulations with the statement, “Do not operate any machines without safety guards on them.”

Testimony of Steve Deskins

Steve Deskins is an inmate at TCIX and had worked in the wood plant for approximately six years. He explained how to set a shaper machine for operation. On the day of the accident, he put the “suicide” blade on the shaper machine operated by the Claimant. He told the supervisor of the mill department that they normally do not use the suicide blade but he was

instructed to install it anyway. He had only installed a “suicide” blade once before and was shown how to do it by a maintenance man named Freddie Couples. Mr. Deskins stated that if one used too much force or took too much off the wood at one time then the blades would shatter. The only safety guard on the machine was the shield that protected the face.

Testimony of James Register

James Register is an inmate at TCIX and had worked at the wood plant for approximately 15 years. He was a mill operator but had become the QA.¹ He was not working at the wood plant at the time of the accident. He explained how to install blades on shaper machines and was familiar with “suicide” blades. He explained that the wood plant stopped using “suicide” blades because they would break and come apart. Usually, blades that were already fixed to a head were used on shaper machines, as opposed to “suicide” blades, which were attached by screws to the head.

According to Mr. Register, no inmate had been trained to install “suicide” blades. The last time he could remember, it had been six to ten years since the wood plant had used “suicide” blades. There were no safety shields or guards on the shaper machines.

¹ Quality Control.

Testimony of George Putt

Mr. Putt is an inmate at TCIX and had been the QA at the wood plant for seventeen years. Mr. Putt was at the wood plant on the day of the accident and observed that all gauges were set correctly on the shaper machine operated by the Claimant. There were no safety shields on the shaper machine. He testified that several years ago, the plant had changed from using "suicide" blades to a single blade.

After he observed the test piece run through the shaper machine, he left the area. He testified you could not push the piece too hard because a fence would not allow you to push it too hard or far. However, he was not there to observe the changing of the blades.

Testimony of William Wells

William Wells is an inmate at TCIX and has worked in the wood plant for approximately six years. On the day of the accident, he was shaping tabletops with the Claimant. They were instructed to operate a shaper machine and after running two pieces through, they found the blade was dull. They were instructed to change the blades but the only replacement blades on hand were "suicide" blades. Steve Deskins and another inmate installed the "suicide"

blade. Mr. Wells had never worked or been trained on a shaper machine with “suicide” blades on it. There were no safety guards or shields on the machine. He thought the blades were dangerous but he used them anyway. When the accident took place, he was hit with fragments of the broken blades.

Testimony of Officer Steve Durham

Officer Durham, at the time of trial, was the Sanitation Officer at TCIX. At the time of the accident in question, he was the plant manager of the wood plant where Claimant was working. Officer Durham was familiar with the shaper machine being used by the Claimant. He testified that if any machine did not have a safety guard or device, it should have been reported to him or a supervisor. The machine would have been locked out until it had a safety guard or device. He was not familiar with the term, “suicide” blade and he would not have used them. A supervisor usually issued the blades. The company from which the blades were purchased would have recommended the kind of blades to be used. The blades that were purchased always arrived in a sharpened condition. Usually, the inmate operating the machine would install the blades. He testified that if you applied too much pressure to the fences, it could cause the blades to break.

Officer Durham investigated the accident and determined that too much wood was being removed at one time. In addition, the inmates were applying too much pressure to the wood going through the shaper. He has observed the Claimant since the accident and he did not appear to be in any discomfort. He testified that there were no safety devices or guards attached to the machine the Claimant was using.

Testimony of Nicky Wright

Mr. Wright is the CT instructor at TCIX and has been working since January 1, 2011. However, he was not working at the wood plant on the day of the accident, January 19, 2011. Mr. Wright also did not know which shaper machine was being used on that day. The Tribunal accredits the testimony of all the witnesses and believes their testimony to be sincere. However, this does not mean the Tribunal accepts all their conclusions.

CONCLUSIONS OF LAW

In order to establish a claim under Tenn. Code Ann. § 9-8-307(a)(1)(C) and (E), Mr. Owens must prove the elements of common law negligence: (1) a duty owed to the plaintiff; (2) conduct below the applicable standard of care that amounts to a breach of that duty; (3) injury or loss; (4) cause in fact; and (5)

proximate cause. *Kilpatrick v. Bryant*, 868 S.W.2d 594 (Tenn.1993); *Lewis v. State*, 73 S.W.3d 88, 92 (Tenn.Ct.App. 2001). Furthermore, the Claimant must prove that the State or its employees were negligent.

The State owed the Claimant a duty of providing a reasonably safe working environment and equipment in performing a foreseeably hazardous operation. The State has centered its defense on three points: 1. The Claimant has not proved the accident caused him injury. 2. The Claimant's own negligence cause the accident and 3. The Claimant has provided no medical evidence to prove damages.

The State has already admitted, in its Answer, that there was an accident with injury to the Claimant. The testimony at trial confirms this. It was apparent to all concerned that there was an accident. Officer Durham even came to conclusion about the causes of the accident. The State admitted that the bit broke and pieces went into Claimant's abdomen and arm for which he was given medical treatment. The Claimant testified he was injured by the broken blade. The defense that the accident did not cause injury simply has no merit.

The State also maintains that the Claimant's own negligence precludes recovery. The State makes much of the fact the Claimant signed a statement that

he would not operate a machine that did not have safety guards. This begs the question of why the State would provide equipment that did not have safety equipment already attached. The safety statement may lessen the State's negligence, but it does not abrogate it. The State also contends that the Claimant was pressing too hard on the wood being shaped. There is conflicting testimony on this issue. Although the plant manager, Officer Durham, concluded that pressure caused the breakage, this does not explain why the blade was prone to break anyway. In addition, the plant manager should not have investigated an accident that happened under his watch and in his own plant. An independent investigator should have been assigned to investigate the accident.

Clearly, every inmate was familiar with the "suicide" blade and its dangerous properties including the quality control inmates. Only the state employees appeared not to be aware of the danger. The questions of proximate and comparative fault were discussed by our Court of Appeals in a case involving an inmate operating manufacturing equipment in a state prison.

Proximate causation is a mixed question of law and fact. *Wyatt v. Winnebago Industries, Inc.*, 566 S.W.2d 276 (Tenn.Ct.App.1977). It is to be decided "upon mixed considerations of logic, common sense, justice, policy and precedent." *Mullins v. Seaboard Coastline Railway Co.*, 517 S.W.2d 198 (Tenn.Ct.App.1974). But, procedurally, the issue is one for the trier of fact. *Wyatt v. Winnebago Industries, Inc.*, 566

S.W.2d at 281. "The asserted level of fault of a party is a circumstance for the finder of fact to consider when determining the percentage of fault of each party in producing the injury." *Prince v. St. Thomas Hospital*, 945 S.W.2d 731 at 736 (Tenn.Ct.App.1996).

Lewis v. State, 73 S.W.3d 88, 94-95 (Tenn. Ct. App. 2001)

The Tribunal finds that the State's purchase and use of the "suicide" blades in addition to having no safety guards on the shaping machine were the major proximate and legal causes of this accident. However, it appears the Claimant is comparatively at fault for operating the equipment without safety guards. The Tribunal concludes the Claimant's comparative negligence in this matter is calculated at 30 percent and the State is 70 percent at fault.

Lastly, the State argues there is no medical evidence to prove damages. It is settled law that no medical proof is necessary to prove pain and suffering from a physical injury. In fact, T.P.I Civil 14.01 (2011) states:

No definite standard or method of calculation is prescribed by law by which to fix reasonable compensation for pain and suffering, permanent injury, disfigurement and loss of enjoyment of life. Nor is the opinion of any witness required as to the amount of such reasonable compensation.

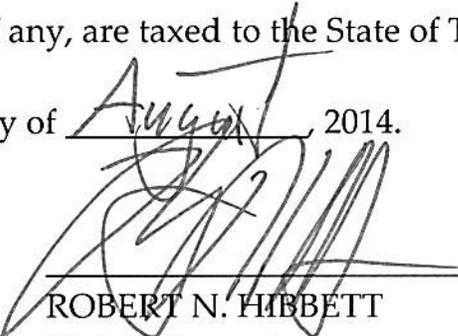
In this claim, there was a clear manifestation of physical injury and treatment. The real problem for the Tribunal is in determining the amount of damages. There is no medical proof offered as to permanent disability or

impairment. Also, there is no proof of economic damages. The Tribunal can only calculate the pain and suffering involved in this incident, his subsequent treatment and his daily activities up to the time of trial. Therefore, the Tribunal accesses damages of \$12,000 to the Claimant for past pain and suffering. Because the Claimant is 30 percent negligent, said amount is reduced to \$8,400.00 as an award to the Claimant.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. That the State of Tennessee is found to be the legal and proximate cause of the incident involving the Claimant, Charles Owens, and the cause of his injuries and damages. The State bears 70% of the culpability because of the Claimant's comparative fault of 30%.
2. That the Claimant, Charles Owens, is awarded the sum of \$8,400.00 in compensable damages pursuant to T.C.A. § 9- 8-307(a)(1)(E).
3. That the court costs, if any, are taxed to the State of Tennessee.

ENTERED this 5 day of August, 2014.



ROBERT N. HIBBETT
Claims Commissioner
Sitting as Trial Judge

CERTIFICATE OF SERVICE

This is to certify that a true and exact copy of the foregoing document has been served upon the following parties of record:

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This 7th day of August, 2014.

Paula Swanson

PAULA SWANSON
Administrative Clerk
Tennessee Claims Commission