

IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE
WESTERN DIVISION

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DEMARIUS JONES

Claimant,

v.

CLAIM NO. T20120240

STATE OF TENNESSEE,

Defendant

JUDGMENT

I.

INTRODUCTION

THIS MATTER CAME TO BE HEARD before Nancy C. Miller-Herron, Commissioner of the Tennessee Claims Commission, Western Grand Division, on January 20, 2015, sitting in Henning, Tennessee. Mr. James E. Blount, Esq., appeared for the Claimant. Mr. Arthur Crownover, II, Esq., appeared for the State of Tennessee. Based upon the evidence presented at trial, the testimony of the parties, the statements of counsel and the record as a whole, the Commission **ORDERS** that a judgment be entered for Claimant.

On March 24, 2011, Claimant, who was incarcerated at West Tennessee State Prison, hereinafter referred to as W.T.S.P., was given the task of working with another inmate to help hook a trailer onto a truck being driven by prison employee Wren Stout. The tongue of the trailer was supported by a hydraulic

service jack. As Jones was moving the trailer onto the truck while it was jacked up, the trailer fell off the jack and came crashing down, severing the top of Mr. Jones' right index finger and injuring his middle finger as well.

Demarius Jones brings this claim against the State of Tennessee under Tenn. Code Ann. §9-8-307(a)(1)(A), relating to negligent operation of a motor vehicle; Tenn. Code Ann. §9-8-307(a)(1)(E), relating to negligent care, custody and control of persons; Tenn. Code Ann. §9-8-307(a)(1)(C), relating to negligently created or maintained dangerous conditions on state controlled real property and Tenn. Code Ann. §9-8-307(a)(1)(M), relating to negligent operation of machinery or equipment.

II.

ISSUES PRESENTED

The primary issues presented in this case are as follows: (1) whether Defendant was negligent in its "care, custody and control" of Claimant by allegedly failing to provide Claimant with a safe work environment, specifically employing an unsafe configuration of dump truck, trailer and the hydraulic jack and by failing to provide Claimant sufficient training and instruction on the use of the hydraulic jack; (3) whether the hydraulic jack constitutes a "dangerous condition on state controlled real property;" (4) whether Officer Wren Stout was negligent in his operation of the dump truck; (5) whether prison officials were negligent in their operation of the hydraulic jack; (6) whether the Claimant's negligence, if any, exceeded Defendant's negligence, if any; and (7) the amount

of damages, if any, suffered by Claimant as a result of Defendant's negligence, if any.

III.

SUMMARY OF TRIAL TESTIMONY

On March 24, 2011, the day Claimant was injured, Correctional Officer Wren Stout was in charge of the recycle crew at WTSP; he had been a correctional officer for almost thirty-eight years. (Tr., p. 9, line 14) Stout testified that the morning Claimant was injured Stout had backed up the truck he was driving, but he couldn't see anything behind him. He said he always told the inmates not to get behind the truck when he was backing up because he couldn't see. (Tr., p. 9, line 20- p. 10, line 2) Stout acknowledged that when he stopped the truck it wasn't lined up so that the inmates could hook the trailer to the truck. Stout insisted the inmates should have told him the truck was not lined up so he could have taken another run at it:

I would have moved the truck up, you know, if he had asked me to move it up. And then two moved that jack while it was back there, you know, and the jack fell off the trailer and his finger come off. (Tr., p. 10, lines 5-9)

Stout testified it was Correctional Officer Able who told Claimant and the other inmate what their jobs would be on the morning of March 24, 2011. (Tr., p. 11, lines 4-6) When asked whether he himself had spoken to Jones or the other inmate prior to the mishap, Stout insisted: "Just to get the jack—you know, they got the jack out and pulled it back there. And like I said, he's done it several times before, and nothing's ever happened." (Tr., p. 11, lines 13-19) Stout later

testified that Jones had done the hook up of the trailer “[m]any times before.” (Tr., p. 20, line 21)

Stout explained that the jack usually is stored in the front of the truck. (Tr., p. 11, lines 20-23) When asked whether he knows where the jack is now, Stout replied, “No, not really.” (Tr., p. 12, line 3)

Stout stated that the truck he was driving was a big, 2-ton dump truck. (Tr., p. 19, lines 16-18) Stout insisted the truck was empty at the time Claimant was hurt. (Tr., p. 20, line 24- p. 21, line 1) He acknowledged again that the window in the back was covered up, so the only way you could see anything when you backed up was with the help of the mirrors on the outside of the truck. (Tr., p. 20, lines 4-6)

Stout read aloud from the statement he made the day of the incident:

Demarius Jones, he was jacking up trailer, and the truck had stopped. And they were pushing the jack over, . . .the trailer fell on the inmate’s hand and cut his finger off. (Tr., p. 22, lines 15-19)

Stout further testified that there was a warning label on the jack itself. When asked about the content of the warning label, the following exchange took place:

Q. Do you remember anything about what the warning label said?

A. Not to push anything off there, not to push, you know, not to push over with that thing, you know.

Q. So when you say “push over”, do you mean that it says, don’t move the jack?

A. Don’t move the jack, yeah. (Tr., p. 26, lines 17-24)

Stout reiterated: "Like I say, I could have drove up and backed up, and it would have been lined up perfectly." (Tr., p. 27, lines 6-8)

Stout testified that he did not receive any disciplinary action from the Tennessee Department of Correction for the incident on March 24, 2011, and was not blamed for it. (Tr., p. 29, line 20- p. 30, line 1)

Stout acknowledged that the warning label on the photographs provided by the State was not legible, but he insisted you could read the one on the jack itself. (Tr., p. 30, lines 7-11) Stout testified that the prison acquired the jack about six months before Jones' accident. He acknowledged he never looked at its instruction manual. (Tr., p. 30, lines 16-21)

On cross-examination, Stout was asked whether he was familiar with the term "trailer jack." He said that he was and that he didn't know why the prison didn't use them. (Tr., p. 35, lines 14-19) When asked to explain the difference between a trailer jack and a hydraulic jack, Stout described a trailer jack as "a safer jack." (Tr., p. 35, line 22) He explained that the trailer jack is actually mounted on the trailer, so there is little risk of it falling off unless it breaks. (Tr., p. 36, lines 6-12) Stout then characterized trailer jacks as "99-percent safe." (Tr., p. 37, line 3) He said he would agree with the statement that "trailer jacks are designed to lift tongues for loading on the back of vehicles." (Tr., p. 37, lines 6-8)

On re-examination, Stout stated that trailer jack is actually part of the trailer whereas the prison was using an older trailer that did not have one installed by the manufacturer. (Tr., p. 37, line 16- p. 38, line 1) Stout

acknowledged that trailer jacks are not always put on by the manufacturer, but can be installed later. (Tr., p. 38, lines 12-14)

The only other live witness in this matter was the Claimant, Demarius Jones. Jones said Officer Ables asked him and an inmate named Oris Higgs to go hitch the trailer to the truck. (Tr., p. 40, lines 10-12) Jones said Officer Stout, who was driving the truck, backed up too fast and bumped the trailer. "And he came back again, and as I tried to unload it, it just collapsed." (Tr. P. 40, lines 17-18) Jones insisted that the trailer was already loaded with trash. (Tr., p. 40, lines 19-23) Jones conceded that he did have to move it some to get the trailer on the hitch and that is when it fell. (Tr., p. 45, lines 14-22)

Jones further insisted that he had never before hooked the trailer to the back of a truck. (Tr., p. 42, lines 9-11) He said prior to March 24, 2011, he had never had any experience with a lift jack. (Tr., p. 42, line 23- p. 43, line 7) Jones testified that he didn't get a chance to look at the jack at all, in part because it wasn't visible. (Tr., p. 43, line 18) Stout testified on redirect that Jones' assertion that he had never before been involved in jacking up a trailer with that jack was "not true." (Tr., p. 67, lines 18-23)

Jones testified that when a correctional officer directs you to do something, you must do it or face a reprimand. A reprimand might include losing privileges or going to the hole. (Tr., p. 44, lines 3-13)

With regard to his injuries, Jones testified that the front part of the trailer "caught me all the way to the ground." (Tr., p. 46, lines 9-10) It cut off the tip of

his right index finger (Tr., p. 46, lines 16-18) and “[m]y middle finger, it was flat.” (Tr., p. 47, line 2)

Jones testified that his middle finger was stitched up in Jackson, but the tip of his right index finger remained in a saline jar until he got to Meharry Hospital in Nashville. (Tr., p. 47, line 17- p. 48, line 23) Jones described the pain he felt that day as “[e]xcruciating.” (Tr., p. 48, line 9) Jones said he was taken to Meharry by prison transport, which he described as “a painful ride.” (Tr., p. 49, line 15) When asked whether the pain medication they gave him helped, Jones replied: “Not at all.” (Tr., p. 49, line 23)

When asked how long his finger hurt, Jones replied, “I’d say about three weeks it actually hurt, hurt.” (Tr., p. 51, lines 23-24) He said he continued to take medication during those three weeks. (Tr., p. 52, lines 1-3)

When asked what the surgeons did to his finger at Meharry, Jones replied: “cut the bone off my finger, trim the bone down, and overlap my finger.” (Tr., p. 50, lines 16-18) Jones said he spent three or four days at Meharry before being transferred to the Deberry Special Needs facility. He was there for the remainder of his sentence. (Tr., p. 51, lines 1-17)

Jones then testified about problems he has encountered because of his fingers since he was released from prison. He said after he was released, he continued to have pain “some days, some days not.” (Tr., p. 52, lines 15-16) Jones says his finger doesn’t hurt much now unless he bumps it, and then “it really hurts.” (Tr., p. 52, line 22) He explained, “It won’t hurt like a regular finger bump. It hurts a little more.” (Tr., p. 52, line 24- p. 53, line 1)

Jones stated that the injuries to his fingers also affect his ability to shoot basketball. And the amputation affects his nerves because “[l]ike, it’s disfigured.” (Tr., p. 53, lines 12) “And then I shake a lot too, like my nerves in my fingers—” (Tr., p. 53, lines 19-20)

Jones stated that he is pretty much able to do the things he could do before this happened, except shoot basketball. (Tr., p. 54, lines 2-6)

Jones testified that he has six children and he works in his own business, “Cash for junk cars.” (Tr., p. 54, line 23- 55, line 4) He said he pays people for their junk cars and then “scrap[s] them out.” (Tr., p. 55, line 17) When asked whether the condition with his hand affects his job, Jones said “I tend to have somebody help me with the tools and things of that nature.” (Tr., p. 56, lines 9-11)

Jones said since he has been out of prison he also has worked for McDonald’s and at temporary service jobs or working on an assembly line. (Tr., p. 56, lines 14-23) He said the condition of his hand did limit his ability to do the job at McDonald’s because he couldn’t work his hands as quickly. (Tr., p. 57, lines 4-10)

On cross-examination, Jones admitted he had been convicted of five felonies, not just aggravated robbery which he mentioned on direct. (Tr., p. 58, line 7- p. 59, line 4) Jones was asked if it was accurate that the Traumatic Injury Report prepared right after the incident says he told investigators: “My finger got caught in the trailer while I was moving.” (Tr., p. 61, lines 21-22) He acknowledged that is what the report says. (Tr., p. 61, line 24- p. 62, line 1)

Jones insisted again he had never used the jack before and didn't see a warning. (Tr., p. 62, lines 15-24)

Jones acknowledged that no physician has ever assigned him a permanent impairment rating as a result of the accident. (Tr., p. 65, lines 3-7)

IV.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commissioner has thoroughly reviewed the record in this case, including the testimony of the witnesses who appeared at the hearing of this cause, the arguments of counsel and, indeed, the entire record as a whole. After carefully weighing the credibility of each of the witnesses, the Commissioner makes the following findings of fact.

A. Whether Defendant was Negligent in its "care custody and control" of Claimant under §9-8-307(a)(1)(E), Tenn. Code. Ann.

With regard to Claimant's allegations of negligent care, custody and control of persons, Mr. Jones enumerates a number of alleged negligent acts by state employees. Those allegations include failure to properly train Claimant on the proper technique and/or precautions when attaching the trailer using the hydraulic lift; failure to warn Claimant with regard to the dangers of moving the jack; failure to operate the truck and other equipment in a safe manner. In sum, Claimant alleges the State was negligent in its care, custody and control of Claimant by failing to maintain a safe working environment.

There is no question that supervisors at WTSP owed Claimant and other inmates a duty of care to maintain safe conditions on the recycle crew and to

make reasonable efforts to protect inmates from harm. *Lewis v. State*, 73 S.W.3d, 88, 92 (Tenn. Ct. App. 2001). See, generally, *McCall v. Wilder*, 913 S.W.2d 150, 153 (Tenn.1995).

With regard to breach of that duty, Claimant alleges that he had not used that kind of jack before (Tr., p. 42, lines 9-11) and that he did not see any warning label on the jack. In fact, he said he didn't get a chance to look at the jack at all. (Tr., p. 43, line 18) Even if, as the State maintains, Claimant had used the jack before, there was no testimony that he had been given any training; Officer Able was not present to testify that he had given Claimant instructions on how to safely use the hydraulic jack the day of the accident—or any other day. The State did offer Officer Stout's testimony regarding the content of the warning on the jack; it was the only portion of his testimony that did not seem particularly straightforward or credible. (Tr., p. 26, lines 17-24) The State also presented photographs of the warning label, but the label itself was not visible in these photos and the jack itself was not produced for inspection. (Tr., p. 30, lines 7-11)

Finally, the State's own witness testified that he didn't know why the State didn't use a trailer jack instead of a hydraulic jack. (Tr., p. 35, lines 14-19) He explained that a trailer jack is actually mounted on a trailer and characterized it as ninety-nine percent safe. (Tr., p. 36, line 6- p. 37, line 3) Stout called the trailer jack the "safer jack." (Tr., p. 35, line 22)

As to legal cause and damages, it was clear that Claimant sustained injuries which occurred while Claimant was attaching a trailer to a dump truck.

Claimant was assigned to help attach the trailer by prison officials and clearly was doing his job.

The Commission **FINDS** that Defendant's decision to assign Claimant to attach the trailer to the dump truck using an hydraulic jack, apparently without offering any training or providing appropriate warnings regarding the dangers, was negligent under § 9-8-307(a)(1)(E).

B. Possible Liability Under §9-8-307(a)(1)(A), (C) & (M), Tenn. Code Ann.

Claimant also seeks damages under several other sections of the Claims Commission Act. However, the gravamen of Claimant's complaint seems to be that the State was negligent in its care, custody and control of him. Because the Commission already has found that Defendant is liable under § 9-8-307(a)(1)(E), the remaining issues are pretermitted.

C. Damages

In *McIntyre v. Ballentine*, 833 S.W.2d 52 (Tenn. 1992), the Tennessee Supreme Court adopted a modified system of comparative fault. Since *McIntyre*, the trial court must apportion fault to anyone having a degree of culpability. *Carroll v. Whitney*, 29 S.W.3d 14, 22 (Tenn. 2000); *Dotson v. Blake*, 29 S.W.3d 26 (Tenn. 2000); *Berocets v. Harde Ralls Pontiac-Olds, Inc.*, 891 S.W.2d 905 (Tenn. 1994). The trier of fact must first determine the total amount of Claimant's damages, then apportion the damages on the percentage of fault attributable to each tortfeasor. *Grandstaff v. Haws*, 36 S.W.3d 482, 494 (Tenn. Ct. App. 2000). In the case at bar, the record is replete with evidence of Claimant's pain and

suffering. The amputation of Claimant's right index finger is not disputed by Defendant. Claimant describes his pain immediately following the incident as "excruciating." (Tr. p. 48, line 9) His middle finger stitched up and otherwise treated at a Jackson, Tennessee Hospital, then transferred to Meharry Hospital in Nashville, Tennessee. (Tr., p. 47, line 17- p. 48, line 23) Jones said he underwent surgery at Meharry, to "cut the bone off my finger, trim the bone down, and overlap my finger." (Tr., p. 50, lines 16-18) Claimant testified that he was prescribed pain medications during his hospitalization and subsequent recuperation. (Tr., p. 52, lines 1-3)

Claimant testified that he still has some pain (Tr., 52, lines 15-16), but that he is now able to do most of what he could do prior to the accident at WTSP. He said his finger doesn't hurt much now unless he bumps it. (Tr., p. 52, line 22- p. 53, line 1) He does have to have some help using tools in his business which offers cash for junk cars and sells them for scrap. (Tr., p. 56, lines 9-11) Claimant further testified that he worked for a stint at McDonald's following his release from prison. He said the injuries to his hand limited his ability to do that job because he couldn't move his hands and fingers as quickly as he could before. (Tr., p. 57, line 4-10)

The Commission **FINDS** that the following amounts of damages have been proven by a preponderance of the evidence:

- | | |
|-----------------------------------|----------|
| 1. Pain and Suffering—past | \$15,000 |
| 2. Pain and Suffering—future | 2,500 |
| 3. Loss of Enjoyment of Life—past | 5,000 |

4. Loss of Enjoyment of Life—future 7,500

Based on pain and suffering, loss of enjoyment of life, and all other damages, the Commission **FINDS** the amount of damages sustained by Claimant, to be thirty thousand dollars (\$30,000).

D. Comparative Fault

There is a little evidence that Claimant's own negligence led to his injuries. The State insists that Claimant negligently moved the hydraulic jack instead of asking Officer Stout to move the truck and line it up in the proper position. However, no one testified that Jones had received instructions from Stout about this the day of the accident. Stout himself testified his only communication with the inmates was to direct them to get the jack out of the truck. (Tr., p. 11, lines 13-19) Although there is also evidence that the jack may have had a label warning users not to move it, there simply was no credible evidence Claimant saw this label or had it called to his attention by prison officials who had supervisory authority over him.

In addition, Claimant did not choose the task to be completed that day. Officer Stout testified that Officer Able assigned the task of dealing with the jack to Claimant and another inmate. (Tr., p. 11, lines 4-6) There was no evidence in the record whatsoever that he would have been free to decline. In fact, Claimant testified that if he had declined he would have been disciplined by the prison. He might have lost privileges or even been put in the hole. (Tr., p. 44, lines 3-13)

The Commission, therefore, **FINDS** that zero percent (0%) of the fault reasonably can be apportioned to the Claimant. The Commission further **FINDS**

that one hundred percent (100%) of the fault reasonably can be apportioned to the State of Tennessee.

VII.

CONCLUSION

It is **ORDERED, ADJUDGED and DECREED** that Claimant, Demarius Jones, is awarded a judgment against the Defendant, State of Tennessee, in the amount of thirty thousand dollars (\$30,000).

Costs of this cause are taxed pursuant to TCA §9-8-307 (d).

IT IS SO ORDERED.


NANCY C. MILLER-HERRON
COMMISSIONER

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has this date been forwarded by first class postage to:

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On this the 25th day of March, 2015.

Paula Merrifield

PAULA MERRIFIELD, CLERK
Tennessee Claims Commission