IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE
MIDDLE DIVISION

FILED
MAY 26 2009
Tennessee Claims Commission
CLERK'S OFFICE

FRED NICHOLS,	)	
	)	
Claimant.	)	
v.	)	Claim No. T20060957
	)	
STATE OF TENNESSEE	)	
	)	
Defendant;	)	

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JUDGMENT

The claimant, Fred Nichols, seeks damages arising from an injury that he sustained to his finger while he was working on a compost machine at the Turney Center Industrial Prison ("Turney Center"), in Only, Tennessee, where he was incarcerated. Pursuant to Tenn. Code Ann. § 9-8-403(i), the Commission makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

I. NICHOLS' ACCIDENT

Fred James Nichols arrived at Turney Center in 2002. On June 26, 2005, Nichols started work in an inmate job as a "recycling sorter" at Turney Center. As a part of his job duties, Nichols and several other

inmates were required to operate a compost machine. The machine, which was used in the prison's composting program, utilized the institution's food garbage and sawdust produced at the wood plant manufacturing facility, which were broken down and processed together to make soil fertilizer. The composting program, which had been operating for approximately fifteen years, was begun as a cost saving measure to alleviate the need for the institution to pay to dispose of its waste.

The machine in question was built at the TRICOR[1] metal plant at Turney Center because no machine could be found on the market that would carry out the desired functions. The machine was used to sort out non-biodegradable material and to break up the remaining material into a finer, more finished product.

On July 19, 2005, after Mr. Nichols had been in the position as a recycling sorter for a little over two weeks, he and three other inmates assigned to operate the machine were dropped off at the compost pile to begin work. The men were equipped with shovels, water and gasoline to

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[1] TRICOR (Tennessee Rehabilitative Initiative in Correction (TRICOR) was created by the General Assembly in 1994 to provide occupational and life skills training for inmates.

put in the machine to operate it. Mr. Nichols testified that he took the gas top off, opened the safety guard or "cage" and inserted a funnel to pour in the gasoline. An inmate named Torres poured in the gas as Nichols tried to guide it in with the funnel. Inmate Torres then took the funnel out and let the safety guard down. The inmates then started the machine without the gas top.

Mr. Nichols picked up the gas top from the ground and tried to place it back on the machine, reaching in through the clearance between the top of the tank and the guard. As he did so, a steel counterweight that spun over the gas tank hit his hand, breaking his finger. Nichols testified that guard did not cover the gas tank completely and stopped approximately an inch from its top. Nichols testified that he did not know how the machine worked, only that it shook and they sometimes had to dig compost out from around the machine so that it could shake.

Mr. Nichols denied that he had ever operated a compost machine before and testified that he had not been warned about the fact that the counterweight moved over the gas tank. According to Nichols, although he had been on this job for approximately two weeks, the men had rotated

their responsibilities on the machine. One day a man would shovel compost into a trashcan and dump it into the compost shaker. When the compost came out of the machine and down a sled, the men had to scoop it up again and collect it for transport to the finished product pile. On the day in question, Nichols' job was to put gas into the machine. Another inmate helped hold the gas can. One of the other men would dump in the compost from the backside of the machine. The two other men would collect that processed material from the front with shovels.

Nichols testified that sometimes the machine would stall and cut off if the top was on the gas tank. The men did not know what was wrong, but noticed that if they did not put the gas top on all the way, or just left it off, the machine would work. When the machine had been operated previous times during the two weeks that Mr. Nichols had been on the job, they had either just put the top on half way or left it off completely. This was the first time that Nichols had worked putting the gas in the machine.

The counterweight was visible when the machine was off and the guard was lifted to pour in the gas, although Nichols testified that he did not know what it was. When the machine is turned on, the counterweight

rotates at a speed that causes it to be difficult to see, like the blades of a fan, but not entirely invisible. Mr. Nichols testified that he did not see the counterweight when he attempted to put the gas cap back on.

Bruce Phair is the facility manager at Turney Center and was responsible for the composting program. Phair testified that he was present when Mr. Nichols was trained and that he carried the men down to the site to begin their work. According to Phair, the men were instructed how to operate the composting machine. The men all had boots and two types of gloves were issued, leather and neoprene. They also had hearing protection and water. Mr. Phair testified that the area supervisor, George Robinson, repeatedly told the men not to run the machine with the guard off and to protect their fingers, toes and hands and not to "put [their] fingers in there with the guard." There was no way to fill the gas can without removing the metal hinged cover. Phair testified that he also heard Robinson chastise the men for opening the cover to clear out compost while the machine was working.

Phair testified that the cage was supposed to be closed if the machine was running. According to Phair, there was a gap between the

cage/guard and the counterweight. However, the gap was necessary so that the counterweight did not strike the guard. Phair testified that he personally told the men not to run the machine with the guard off. According to Phair, there had been no previous accidents involving the compost machine in the fifteen years that it had been in use.

Sometime after the accident, the motor to the compost machine "blew a rod" and it was replaced with one that was configured differently. Because of the new motor, the counterweight and the gas tank were repositioned.

II. Mr. Nichols' Injuries and Medical Treatment

After he was injured, Mr. Nichols was examined in the prison clinic and arrangements were made to take him to Nashville Memorial Hospital for treatment. According to Mr. Nichols, he had surgery to stitch up his finger, but it was not set.

Nichols testified that he experienced muscle spasms and pain. According to Nichols, the cast caused his thumb to be out of joint and no effort was made to set his finger because "that's all the State would pay for." Nichols testified that his range of motion in the finger is limited and

it will no longer straighten entirely. He still has pain. Although he has no medically imposed job limitations, he testified that he has difficulty performing tasks that require gripping.

Mr. Nichols also relies upon a certified copy of his TDOC medical records, which he introduced as an exhibit in this matter. The medical records show that on July 19, 2005, Mr. Nichols was taken to the clinic where the nurses noted that his right index finger was mangled and out of alignment and that he had a laceration across his second knuckle. His right middle finger also appeared to be out of alignment. Nurses applied a pressure bandage, gave Mr. Nichols Tylenol #3, and he was transported to Nashville General Hospital for further treatment. There, x-rays revealed that Mr. Nichols had a "comminuted fracture of the proximal second phalanx extending to the second metatarsophalangeal joint." The records also indicate that Mr. Nichols "had a second transverse comminuted fracture of the mid second phalanx with an overlay of fracture fragments." Nichols underwent open reduction internal fixation (ORIF) performed by William Bacon, M.D., an orthopedic surgeon. During the surgery, Dr.

Bacon repaired the fracture with a pin, debrided the wound, and sutured the laceration.

On August 25, 2005, Mr. Nichols saw Thomas J. Limbird, M.D. for an orthopedic consultation. The cast was removed and Mr. Nichols was directed to keep it clean, "buddy tape" it and to start range of motion exercises. Mr. Nichols returned to Dr. Limbird on September 22, 2005. At that time, Dr. Limbird noted that Mr. Nichols PIP joint was essentially fused due to scarring of the tendons and suggested surgery to remove the scarring to see if some movement in the finger could be regained. Mr. Nichols underwent surgery on November 21, 2005.

Mr. Limbird saw Mr. Nichols on January 12, 2006, at which time he noted that Nichols had not received the splint or physical therapy that was ordered. Dr. Limbird indicated that Mr. Nichols had been working on getting his range of motion back, however, and only lacked approximately 2cm until he could get his finger to the crease in his hand with almost 90 degrees of flexion in the PIP joint. Mr. Nichols had almost full extension of the finger. Dr. Limbird was concerned that Mr. Nichols had lost sensation at the tip of the finger, but hoped he would continue to improve.

When he returned to Dr. Limbird on March 9, 2006, Nichols had continued to improve. Dr. Limbird noted that he lacked about 5 degrees of extension and was about 1 cm from getting his fingertip to the crease in his palm. Dr. Limbird also thought that nerve return was continuing for Mr. Nichols and characterized his progress as excellent. Dr. Limbird anticipated that Mr. Nichols would have normal recovery within three to four months.

III. NICHOLS' EMPLOYMENT AND VOCATIONAL TRAINING.

Prior to his incarceration, Mr. Nichols attended the State Area Vocational-Technical School in Dickson, Tennessee and received a diploma as a Machinist I. Mr. Nichols' training involved tool and dye work and machine repair and maintenance. Mr. Nichols worked with sanders, grinders, drill presses, and electronic dispatch machines.

Nichols testified that he was aware that when operating machinery it is important to make sure that the hands are not being put in the way of a moving object. Nichols also acknowledged that he was aware when he saw the cage on the compost machine that it was there to provide protection from a moving part.

After the accident, Mr. Nichols worked on a baling machine, baling cardboard. While his injury had not prevented him from doing any prison jobs, he anticipated being released shortly and returning to the body shop where he worked prior to his incarceration. According to Nichols, because of his injury, he believed it would be necessary that he learn to spray paint with his left hand so as not to ruin expensive paint jobs.

CONCLUSIONS OF LAW

I. CLAIMS COMMISSION JURISDICTION

The Commission's jurisdiction over this action is proper under Tenn. Code Ann. § 9-8-307(a)(1), which states:

> 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:
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> * * *
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> (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;
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> * * *
>
> (E) Negligent care, custody and control of persons[.]

II. LIABILITY

A. Negligent Design/Condition of Compost Machine.

Mr. Nichols alleges that the compost machine was negligently designed and constructed and that he was not properly trained or supervised in its use. Tenn. Code Ann. § 9-8-307(c) provides that the State's liability "shall be based on the traditional tort concepts of duty and the reasonably prudent person's standard of care." Under these concepts, a plaintiff in a negligence action must prove (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). Mr. Nichols has the burden of proving all elements of his claim by a preponderance of the evidence.

Although the State is not an insurer of the safety of its prisoners, prison officials have a duty to exercise ordinary and reasonable care with respect to the persons in their custody. *See Cockrum v. State,* 843 S.W.2d 433, 436 (Tenn.App. 1992). This includes the duty to provide them with safe conditions under which to perform their assigned tasks and to take

reasonable steps to make sure that they are not injured. *See Baggett v. Bedford County,* 270 S.W.3d 550 (Tenn.Ct.App. 2008); *Lewis v. State,* 73 S.W.3d 88 (Tenn.Ct.App. 2001).

Mr. Nichols claims that the composting machine was negligently designed and constructed because the guard or cage did not come down far enough to completely cover the counterweight. As a result, it was possible for his finger to come into contact with the counterweight when he reached through a small space between the cage and the top of the gas can, where it was injured.

The proof necessary to support such a claim requires more than a showing that an injury occurred or that a safer machine could have been designed or built. To hold the state responsible for having negligently designed and constructed the compost machine, Mr. Nichols must demonstrate that the machine was unsafe, *Reece v. Lowe's of Boone, Inc.,* 754 S.W.2d 67 (Tenn.App. 1988), and that the unsafe or defective condition was the result of negligence in the manufacturing process or design process or that the State knew or should have known of the defective condition.

Benson v. Tennessee Valley Elec. Co-op., 868 S.W.2d 630, 636 (Tenn.App. 1993).

The proof demonstrated that Mr. Nichols and the other inmates assigned to operate it had the task of filling it with gasoline, which involved lifting the metal guard, removing the top of the gas can, inserting a funnel, and pouring in the gasoline. After the machine was turned on, the unprocessed compost material was dumped into it. The machine then agitated the material, breaking it up. The processed material then exited the machine, down a slide, where it was collected by the men.

The inmates, including Mr. Nichols, were instructed not to run the machine with the guard off and gas could only be put into the machine if the guard was off. According to Mr. Nichols, however, the guard was down when he attempted to replace the gas cap. He was nonetheless able to access the machine through a space that was uncovered where the guard ended. According to Mr. Phair, this space had been left so that the counterweight did not hit the guard.

Mr. Nichols testified that the men left the gas cap off or only partially on the machine to prevent it from cutting off. There was no proof

that they had been instructed to do so or that Mr. Phair or Mr. Robinson knew that they were doing so. According to Mr. Nichols, during the time that he had been present when the machine was in use, the gas cap was either only partially on or was off altogether. There was no testimony that anyone attempted to replace the gas cap while the machine was in operation during these previous occasions.

Based on the testimony it appears that the only time that Mr. Nichols was required to place his fingers near the counterweight was while the machine was being refilled with gas. This process was to be accomplished with the machine off and the guard lifted. There is no indication that there was any reason to anticipate either that the machine would be run without the gas cap on or that an attempt would be made to replace the gas cap while the machine was in operation.

There is no proof that the machine was broken or that it did not work as intended. The compost machine, however, like many other types of machines with working parts, had the capability to injure if used incorrectly. Having considered the evidence, the Commission finds that Mr. Nichols has failed to prove that the compost machine was

unreasonably dangerous or that defendant breached any duty owed to him regarding its design or condition.

B. Failure to Train and Supervise.

Mr. Nichols also contends that he was inadequately trained and supervised in the operation of the compost machine. Had he known or been instructed as to the existence and location of the counterweight, he contends, he would not have been injured.

The testimony did not reflect that operation of the compost machine was very complex. Although it had to be filled with gas and unprocessed compost material loaded into it, once turned on, the machine operated by itself. The only tasks required of the inmate workers was to occasionally clear compost from around the machine and to collect the processed material.

Mr. Nichols consistently testified that he received no training on the machine. Defendant offered the testimony of Mr. Phair that he did. It is clear from Mr. Nichols' testimony that he did know how to operate the machine, i.e., how to put gas in it, how to load it and how to collect the material that was produced in the process. In light of the proof, the

Commission cannot conclude that the training given to Mr. Nichols was inadequate to the task that was required of him or that it created an unreasonable risk that he would suffer harm. Similarly, while the testimony did not demonstrate that either Mr. Phair or Mr. Robinson was present and directly supervising the men at the time of Mr. Nichols' accident, the proof was that they had instructed them in the compost machine's operation and, based on the testimony, appear to have been present periodically, when the machine was operated. Given the relative simplicity to the machine's operation, the Commission cannot conclude that it was negligent to have allowed four adult men, one of whom was a machinist, to operate it without being directly supervised.

C. Nichols' Comparative Negligence.

Assuming, however, that defendant had breached a duty owed to Nichols by reason of the design of the compost machine or the training provided to him, the Commission concludes that Mr. Nichols would still not prevail. Mr. Nichols testified that he has a diploma as a Machinist I from the State Area Vocational-Technical School in Dickson, Tennessee,

where he trained in the repair and maintenance of several different types of machinery.

Nichols knew the importance of keeping his hands away from the moving parts of machinery from his vocational training. He had worked on the compost machine for roughly two weeks prior to his accident and testified that he was aware that the cage on the machine was there to provide protection from a moving part. It seems clear that had he given much thought to the wisdom of the act when he put his hand into the space where the guard ended while the machine was on, he would not have done so. Having considered the proof the Commission concludes that Mr. Nichols' failure to exercise due care for his own safety was a cause in fact and proximate cause of the accident. The Commission further finds that he was at least 50% at fault for his injuries and that, therefore, recovery is precluded on such basis. Accordingly, the claim is therefore dismissed.

It is so **ORDERED** this the 7th day of May, 2009.

STEPHANIE R. REEVERS
Claims Commissioner.

CERTIFICATE OF SERVICE

This is to certify that I have mailed a true and correct copy of the foregoing document to the following parties:

REBECCA LYFORD
Attorney General's Office
P. O. Box 20207
Nashville, TN 37202-0207
(615) 741-7226

R RAY GALBREATH
Attorney for Claimant
20 Music Circle E.
Nashville, TN 37203
(615) 244-0749

This 26 of May, 2009.

Marsha Richeson

Marsha Richeson, Administrative Clerk
Tennessee Claims Commission