IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
(February 1999 Session)

DAVID COLEMAN,	)	
	)	
Plaintiff/Appellant,	)	**Shelby Chancery No. 107358-I**
	)	
v.	)	**No. W1998-00948-SC-WCM-CV**
	)	
LUMBERMAN'S MUTUAL CASUALTY COMPANY,	)	**Honorable Neal Small, Chancellor**
	)	
Defendant/Appellee.	)	

FOR THE APPELLANT:

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M E M O R A N D U M O P I N I O N

Members of Panel:

Justice Janice M. Holder
Senior Judge L. T. Lafferty
Special Judge J. Steven Stafford

AFFIRMED IN PART AND REVERSED IN PART

L. T. LAFFERTY, SENIOR JUDGE

OPINION

At issue in this case is the extent of disability resulting from an injury that occurred on July 7, 1995, when a 200-250 pound hide-a-bed sofa fell on the plaintiff. The trial court found that the plaintiff suffered a work-related injury to his right shoulder on July 7, 1995, and awarded the plaintiff 25 percent permanent partial disability to the body as a whole. However, the court found that the plaintiff did not sustain compensable injuries to his back, reflex sympathetic dystrophy ("RSD") to his right shoulder, or any psychiatric injury as a result of the accident on July 7, 1995. For the reasons below, we affirm the trial court's decision as to both the claims for injury to the shoulder and back but reverse the trial court's determination that the plaintiff suffered no psychiatric injury arising out of this incident.

This workers' compensation appeal was referred to the Special Workers' Compensation Appeals Panel of the Supreme Court pursuant to Tennessee Code Annotated § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

The standard of review of factual issues in workers' compensation cases is *de novo* upon the record of the trial court with a presumption of correctness, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2); *Henson v. City of Lawrenceburg*, 851 S.W.2d 809, 812 (Tenn. 1993). This Court now determines where the preponderance of the evidence lies. *King v. Jones Truck Lines*, 814 S.W.2d 23, 25 (Tenn. 1991). When the trial record contains oral testimony of witnesses, this Court must give considerable deference to the trial judge's findings regarding the weight and credibility of that testimony. *Townsend v. State*, 826 S.W.2d 434, 437 (Tenn. 1992). However, this Court is in the same position as the trial judge when reading deposition testimony and may draw its own conclusions about the weight, credibility, and significance to be given to such testimony. *Seiber v. Greenbrier Indus., Inc.*, 906 S.W.2d 444, 446 (Tenn. 1995). In this case, all of the medical and psychological proof was presented by deposition.

At the time of trial, the plaintiff was a 35-year-old high school graduate with a third grade reading level, who had some training in upholstery and a mechanic's certificate. His work history consisted mainly of manual labor positions, work as a security guard, a manager of a pizza restaurant, a talent scout, and an upholsterer. The plaintiff began working for the defendant's insured, Heilig-Meyers Furniture Company, as a minimum wage salesman in October of 1994, and later became a salaried warehouse manager. The plaintiff testified that a 200-250 pound hide-a-bed sofa fell on his right shoulder while he was at work on July 7, 1995, injuring his shoulder and back. The plaintiff was taken to the emergency room and was subsequently referred to Dr. Keener Blake Ragsdale, who fit him with a mobile shoulder brace and released him from work through the end of 1995. During the course of treatment, Dr. Ragsdale sent the plaintiff to three other physicians for various tests and studies in an attempt to find the source of his pain, as well as prescribing a course of physical therapy. Dr. Ragsdale prescribed nerve block treatments for reflex sympathetic dystrophy ("RSD"), which were not effective in relieving the plaintiff's pain.

After Dr. Ragsdale released the plaintiff in January of 1996, he returned to Heilig-Meyers in a lesser position as a minimum wage salesman but was sent home by his supervisor on his first day back when pain prevented him from performing his job. According to the plaintiff, he made another attempt to return to work the next day, but pain again prevented him from working. His supervisor called Dr. Ragsdale, but the doctor refused to see the plaintiff. Heilig-Meyers terminated all pay and benefits after the plaintiff was released by Dr. Ragsdale.

PLAINTIFF'S BACK INJURY

The plaintiff argues that the medical testimony offered at trial proved that his back injury was work-related. In reviewing the mountain of medical testimony found in the record, we find that the evidence does not preponderate against the findings of the trial court that the back injury was not work-related. Dr. Keener Blake Ragsdale, the treating physician, could not find any evidence to support his claims of low back pain. During the course of treatment, a number of diagnostic tests were performed in an unsuccessful effort to pinpoint the source of the plaintiff's back pain. Dr. Kaplan, who did a neurological evaluation of the plaintiff's lumbar spine, did not find any significant problems. Furthermore, the plaintiff never mentioned any back problems to Dr. Ragsdale until his fourth visit on August 10, over a month after the accident, although he claimed it had been hurting since the accident.

The only medical finding of any significance was a small central disc protrusion that was found on the plaintiff's MRI, but the evidence shows that this was likely an incidental

finding and not the source of the plaintiff's problems. Both Drs. Ragsdale and Robert Miller, III, felt that the plaintiff was exaggerating his symptoms and stated the opinion that the plaintiff did not suffer any permanent impairment from a back injury. The plaintiff did not mention any back pain to Dr. Cooper Terry on February 4, 1997, but only complained of pain in his neck, right shoulder, and right arm.

The only doctor who connected the back pain to the incident at work was Dr. Joseph C. Boals, III, who evaluated the plaintiff at nine and nineteen months post-accident; however, his testimony on causation was equivocal at best. He stated that a sofa falling on the plaintiff "could cause" a central disc rupture, but it could have been pre-existing or caused by other events or degenerative changes. Dr. Boals's impairment rating was based on his findings that the plaintiff had a soft tissue injury from lumbar strain, which he admitted would have been healed long before his examination of the plaintiff in April of 1996. Dr. Boals also noted psychological overlay of the plaintiff's symptoms in both 1996 and 1997.

Upon our *de novo* review, we find that the evidence does not preponderate against the findings of the trial court that the plaintiff did not sustain a work-related injury to his back on July 7, 1995, and this portion of the trial court's ruling is affirmed.

PLAINTIFF'S SHOULDER

We find the trial court's assignment of 25 percent permanent partial disability to the body as a whole for the shoulder injury is reasonable in light of the medical testimony, the plaintiff's age, skills, education, and ability to work with his disability. We further agree with the trial court's determination that the plaintiff's RSD was resolved during the course of treatment and that he suffered no permanent disability from the RSD.

Dr. Ragsdale referred the plaintiff to Dr. Mark L. Cunnigham for an EMG and nerve conduction study of the right shoulder and cervical paraspinal musculature. The EMG and nerve conduction studies were normal. Dr. Ragsdale released the plaintiff with work restrictions on lifting twenty-five (25) pounds occasionally, fifteen (15) pounds frequently, and no overhead lifting with the right arm. Dr. Ragsdale rated the plaintiff with a 5 percent impairment rating to the right upper extremity (3 percent rating to the body as a whole) under the AMA Guidelines. He later reduced that to 2 percent impairment (1 percent to the body as a whole) based on the fact that a 5 percent rating requires more loss of range of motion under the 4th edition of the Guidelines than the plaintiff exhibited. Dr. Ragsdale opined that the plaintiff was not permanently disabled and was capable of full-time work with his restrictions.

Dr. Boals, an orthopedic surgeon, evaluated the plaintiff on April 4, 1996, with

complaints of right shoulder and back pain from the July 7, 1995, incident at Heilig-Meyers. The plaintiff also complained of numbness and coldness in his right arm. Dr. Boals noticed that the plaintiff held his right arm in an alienated position, and there was increased perspiration in his right palm. X-rays revealed a narrowing of the AC joint with arthritic changes. Dr. Boals diagnosed the plaintiff with degenerative arthritis of the right AC joint, suspected soft tissue injury with aggravation of the AC joint and possible RSD.

Dr. Boals gave his opinion that the plaintiff's shoulder injury and the RSD were causally related to his work. He stated that the plaintiff had a 10 percent impairment rating to the upper right extremity and an additional 10 percent impairment rating for the RSD. He stated that the plaintiff would need further treatment for his shoulder, including a resection of the outer end of the clavicle, and should restrict lifting to twenty-five (25) pounds, depending on the type of employment and the plaintiff's ability to tolerate the weight. At the time of his first deposition, some thirteen months after the accident, Dr. Boals felt that the plaintiff could work at a number of full-time jobs with these restrictions.

Dr. Miller, another orthopedic surgeon, took x-rays of the plaintiff's right shoulder, which were all normal. Dr. Miller diagnosed the plaintiff with a healed right distal clavicle fracture and mild secondary degenerative osteoarthritis of the right AC joint. Dr. Miller gave the plaintiff a 5 percent impairment rating to the upper extremity (3 percent to the body as a whole) based on Table 3 of the AMA Guidelines. He gave plaintiff a twenty-five (25) pound lifting restriction for his right upper extremity, with fifteen (15) pounds infrequently, and no overhead lifting with the right arm. Dr. Miller stated that excision of the distal clavicle might provide the plaintiff with significant pain relief but felt that he was a poor candidate at the time. He also did not see any signs of RSD during his examination of the plaintiff.

Dr. Terry, an orthopedic surgeon, first saw the plaintiff on February 4, 1997, on referral from the plaintiff's physician, Dr. Mike Havens. The plaintiff told Dr. Terry that he had been injured in the accident at Heilig-Meyers and had been diagnosed with RSD by Dr. Boals. Dr. Terry examined the plaintiff but was unable to get a reliable result, due to the plaintiff's lack of cooperation, embellishment, and symptom magnification. Dr. Terry stated that the plaintiff appeared to be acting and complained of pain whenever Dr. Terry touched him anywhere on the right upper extremity. The physical exam and x-rays taken were normal, and there were no objective findings to substantiate the plaintiff's claims of neck, right shoulder, and upper extremity pain. Upon reexamination of the plaintiff, Dr. Terry stated that he could not recommend distal clavicle resection at that time, because there was no way to locate the plaintiff's symptoms in the distal clavicle and AC joint.

As to the plaintiff's RSD claim, there does not seem to be much doubt that the plaintiff had developed RSD during the course of his treatment by Dr. Ragsdale in November of 1995; however, Dr. Ragsdale felt that the RSD was resolved by January, 1996, when he released the plaintiff. In April, 1996, Dr. Boals thought that the plaintiff might have possible RSD but felt that it was not "full-blown dystrophy" and should improve. Dr. Boals also saw some symptom magnification by the plaintiff in this visit. However, he assigned a 10 percent impairment rating for the condition. One month later, Dr. Miller examined the plaintiff and found no signs of RSD and felt that he was magnifying his symptoms. In February, 1997, approximately one year after his release by Dr. Ragsdale, Dr. Terry examined the plaintiff on two occasions and found no evidence of RSD but felt that he was embellishing and magnifying his symptoms. Dr. Boals re-evaluated the plaintiff a week later and found him overreacting to his injury to the point that Dr. Boals recommended psychological therapy. Likewise, in November 1997, Dr. Reisman saw no signs of RSD when he evaluated the plaintiff and felt that the plaintiff was deliberately trying to deceive him about the condition. It appears from the medical proof that any permanent disability due to the plaintiff's RSD is questionable at best. Three doctors and one psychiatrist saw no signs of RSD after the plaintiff was released by Dr. Ragsdale in January of 1996. Only one doctor, Dr. Boals, gave the plaintiff a disability rating for the RSD, and even he felt that the plaintiff was overreacting to his injury. Viewing the medical testimony as a whole, we find that the evidence does not preponderate against the trial court's finding that the plaintiff did not suffer a permanent disability from the RSD. We affirm that portion of the trial court's ruling.

PSYCHIATRIC INJURY

The plaintiff testified that he had never been hospitalized or missed work due to depression prior to the incident relevant to this claim. He stated that he had previously received psychotherapy for depression on three occasions in early 1994 after the deaths of his long-time companion, Bruce Jaco, and Mr. Jaco's mother. He admitted that he sought psychiatric treatment in August of 1996, but explained that he was not suicidal until after he was injured. Because his injuries left him unable to work, the plaintiff testified that he felt like less of a man and became depressed and suicidal. In the six to eight months following the loss of his job and benefits at Heilig-Meyers, the plaintiff testified that his weight dropped from 150-160 pounds down to 95 pounds. At the urging of friends, he finally sought help from a mental health facility in the summer of 1996 and was prescribed anti-depressants. The plaintiff connected his psychological problems with the accident at work. He testified that Heilig-Meyers refused to provide him with psychiatric or orthopedic

care after January, 1996; however, the plaintiff stipulated that he never made a demand on the defendant for psychiatric treatment until his attorneys' request on January 16, 1997.

The plaintiff was not working at the time of trial and did not feel anyone would hire him, because his right arm hurts when he uses it more than five to ten minutes, and his reading abilities are limited; however, he had not looked for a job since the accident. The plaintiff stated that he was still having problems with his back and was still undergoing treatments.

Joy Parker, the niece of the plaintiff's male companion, testified at trial that she had known the plaintiff approximately sixteen years and considered him to be a workaholic. She stated that her uncle and the plaintiff had been lovers for ten or eleven years and that the plaintiff was distraught after her uncle and his mother died within a week of one another in early 1994. He received therapy shortly afterward to help him cope with the event. She denied any alcohol or drug abuse by the plaintiff prior to his injuries at work; nor had the plaintiff ever received psychiatric care for his homosexuality, been suicidal, or appeared depressed prior to July 1995. She noticed changes in the plaintiff's personality after he moved in with her in November 1995, in that he no longer cared about his physical appearance, had lost a substantial amount of weight, was in severe pain, and was suicidal. Ms. Parker and some family members were finally able to get the plaintiff to a mental health facility for treatment. According to Ms. Parker, the plaintiff still had emotional and psychological problems at the time of trial, and his activities were restricted due to pain in his shoulder and arm.

Lavon Harris[1], a therapist at the mental health facility where the plaintiff was treated from August 7, 1996, through March 25, 1997, testified that the plaintiff first came to the center with complaints of severe pain, depression, anxiety, appetite disturbance, and thoughts of suicide as a result of the job injury and loss of independence. The plaintiff also had difficulty dealing with the deaths of his two friends and was frustrated and angry because his lawsuit was taking so much time; however, Ms. Harris felt that the plaintiff's primary complaints were related to the July 1995, accident. She concluded that the plaintiff was depressed, which was confirmed by psychiatrist Dr. Jorge Leal in September of 1996. Ms. Harris testified that the director of the center finally terminated services for the plaintiff in February 1997, because no payments were ever made on his bill. She stated that the plaintiff was doing very poorly at that time and needed further treatment to prevent his condition from deteriorating further and becoming suicidal.

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[1]The parties stipulated in a pretrial consent order that use of the deposition of Lavon Harris would be limited to that of a fact witness and not an expert witness.

Psychiatric testimony was received at trial through the depositions of two experts.[2] Dr. Jorge Leal, a psychiatrist working part-time at the mental health facility, saw the plaintiff on two occasions, once about two and one-half months after the accident and again almost two years later. In his deposition, Dr. Leal stated that the plaintiff was also treated by two other doctors at the center, and he agreed with the statements in Lavon Harris's deposition.

Dr. Leal first saw the plaintiff on September 26, 1996, with symptoms of depression. The plaintiff told Dr. Leal that his appetite was not good and that he was 195 pounds but now weighed 148 pounds. During the initial examination, Dr. Leal diagnosed the plaintiff with "depression NOS"[3] and ordered a medical work-up. Dr. Leal noted that the plaintiff initially grimaced with pain during the interview but, after about five minutes, showed no signs of pain. Although Dr. Leal did not think the plaintiff was necessarily fabricating his symptoms, he did question some of what the plaintiff was saying and found it necessary to rule out factitious disorder[4] with further assessments. No specific diagnostic tests were given to the plaintiff. The plaintiff was treated with psychiatric medications, but, due to his inability to pay, the facility released him in February of 1997.

At the request of plaintiff's attorney, Dr. Leal saw the plaintiff again for about an hour on the day of the doctor's deposition, September 18, 1997, and noted that he was markedly depressed, had lost more weight, was consuming large amounts of alcohol, and was having panic attacks. Dr. Leal diagnosed the plaintiff as suffering from "depression NOS by history" and alcohol dependency. It was Dr. Leal's opinion that the primary contributing factor to the plaintiff's depression was the pain from the injury at work, which resulted in the plaintiff's inability to earn a living and other stressors, such as lack of income and insurance. Dr. Leal did not believe the loss of the plaintiff's loved ones in 1994 was a contributing factor to his mental condition after the injury. During this visit, the plaintiff told Dr. Leal that he was using alcohol to self-medicate for the pain and to sleep.

It was Dr. Leal's opinion that the plaintiff suffered from a Category IV permanent

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[2]In addition to the psychiatric testimony, Dr. Boals testified that, during plaintiff's evaluation on February 13, 1997, the plaintiff was "in a dither" and exhibited increased symptoms of psychological overlay, an over-reaction to injury. Dr. Boals had observed some of these symptoms when he first evaluated the plaintiff in April of 1996 and, at the time of the evaluation, he believed that the plaintiff needed psychological help. Dr. Boals agreed that the plaintiff's psychological overlay could be related to things other than his injury at work. It was Dr. Boals's opinion that the plaintiff could not work at any job in February of 1997, primarily due to his psychological problems.

[3]Dr. Leal explained that this means "depression not otherwise stated" and is a "catch-all" diagnosis for depression that requires further tests to fully classify it.

[4]Dr. Leal explained that factitious disorder is "when someone fakes symptoms for psychological reasons."

impairment for depression and alcoholism as a result of the work-related injury, based on the AMA Guidelines, and needed continuing treatment. However, Dr. Leal failed to assess an impairment rating to the body as a whole. Dr. Leal admitted that he spent only a total of one and one-half to two hours with the plaintiff during the entire eighteen months of treatment and that he reviewed Dr. Boals's medical records, but not those of Drs. Ragsdale or Miller, in making his assessments.

Two months later, at the defendant's request, the plaintiff was referred to Dr. Joel A. Reisman for an independent psychiatric evaluation. On November 17, 1997, Dr. Reisman reviewed the plaintiff's medical and psychiatric records and conducted a two and one-half hour examination of the plaintiff. The plaintiff indicated that he was depressed, had severe pain centered in his AC joint, and was entertaining suicidal thoughts. He related his depression to his inability to work, due to the pain in his shoulder and back, and indicated to Dr. Reisman that his depression began approximately three months after the accident at work in 1995. He denied taking any prescription medications at that time but was drinking alcohol regularly. His daily activities were minimal, and he relied on family members to take care of him. Dr. Reisman also interviewed the plaintiff's niece, who told him that the plaintiff did not have an alcohol problem prior to his work injury.

During the mental status examination, Dr. Reisman did not notice any signs of RSD and felt that the plaintiff's complaints of pain were exaggerated. Dr. Reisman watched the plaintiff from his office window as he walked to his car and observed that he did not walk with a gait disturbance and held his right arm in a normal position, rather than across his upper abdomen as he had done throughout his entire interview with Dr. Reisman. When the plaintiff saw Dr. Reisman in the window, he put his right arm back across his abdomen. To Dr. Reisman, this behavior indicated an intent to deceive.

In December 1997, Dr. Reisman administered the Minnesota Multiphasic Personality Inventory II test (MMPI) orally to the plaintiff, due to his impaired reading level. The plaintiff failed to answer 153 of the simple true/false questions and failed to return Dr. Reisman's phone calls for an explanation. Dr. Reisman felt that the plaintiff was trying to invalidate the test or was intentionally not cooperating. He diagnosed the plaintiff with alcohol dependency and possible dysthymic disorder (chronic depression) and opined that the plaintiff's symptoms were attributed to the loss of his companion, the loss of work, and excessive alcohol. He further concluded that the plaintiff was a malingerer and had a Class I impairment under the table on page 301 of the AMA Guidelines, which means there is no permanent impairment rating as a result of any psychiatric injury.

Disability from a mental illness is compensable when it is shown to be caused or

aggravated by a compensable work-related accident. *See Batson v. Cigna Property & Cas. Companies*, 874 S.W.2d 566, 570 (Tenn. 1994); *Gentry v. E.I. DuPont De Nemours and Co.*, 733 S.W.2d 71, 73 (Tenn. 1987). Permanency of a mental illness must be established by a preponderance of the expert medical testimony to support an award of a permanent disability based on such an illness. *See Hill v. Eagle Bend Mfg., Inc.*, 942 S.W.2d 483, 487 (Tenn. 1997); *Wade v. Aetna Cas. & Sur. Co.*, 735 S.W.2d 215, 217 (Tenn. 1987).

Our Supreme Court has recognized two factual situations in which employees may recover compensation benefits for mental disorders. First, recovery is appropriate for a mental injury by accident or occupational disease, standing alone, if the mental disorder is caused by an "identifiable, stressful, work-related event producing a sudden mental stimulus such as fright, shock, or excessive unexpected anxiety." *Hill*, 942 S.W.2d at 488 (quoting *Gatlin v. City of Knoxville*, 822 S.W.2d 587, 591-92 (Tenn. 1991)). Secondly, compensation for psychological disorders has been allowed when an employee sustains a compensable work-related injury by accident and, thereafter, experiences a mental disorder from the original injury. *Batson*, 874 S.W.2d at 570. It is the burden of the plaintiff to establish by a preponderance of the evidence that his depression was caused by a work-related injury. *See Talley v. Virginia Ins. Reciprocal*, 775 S.W.2d 587, 591 (Tenn. 1989).

It is well established that the plaintiff in a workers' compensation case must prove causation and permanency of his injury by a preponderance of the evidence using expert testimony. *See Hill v. Eagle Bend Mfg., Inc.*, 942 S.W.2d 483, 487 (Tenn. 1997); *Thomas v. Aetna Life & Cas. Co.,* 812 S.W.2d 278, 283 (Tenn. 1991)*; Roark v. Liberty Mutual Ins. Co.,* 793 S.W.2d 932, 934 (Tenn. 1990). However, expert testimony must be considered in conjunction with the employee's testimony as to how his injury occurred and his subsequent physical condition. *Thomas*, 812 S.W.2d at 283. When there are differing opinions among the experts, this Court may choose which view to believe and may consider other factors in making such a determination, such as the experts' qualifications, the circumstances of their examination, what information was available to them, and the importance of that information to other experts. *See Orman v. Williams Sonoma, Inc.*, 803 S.W.2d 672, 676 (Tenn. 1991).

To be compensable under workers' compensation law, an injury must both "arise out of" as well as be "in the course of" employment. *Id.* Although absolute certainty is not required to prove causation, the medical testimony connecting the injury with the work-related activity must not be so uncertain or speculative that assigning liability to the

employer would be arbitrary or only a mere possibility. *Livingston v. Shelby Williams Indus., Inc.*, 811 S.W.2d 511, 515 (Tenn. 1991) (quoting *Tindall v. Waring Park Ass'n.*, 725 S.W.2d 935, 937 (Tenn. 1987)). Reasonable doubt of causation is to be construed in the employee's favor. *Hill*, 942 S.W.2d at 487.

After a careful review of the psychiatric testimony in this case, we find that the evidence preponderates against the trial court's finding that the plaintiff did not suffer a psychiatric injury as a result of the accident at Heilig-Meyers.

The expert testimony on this issue comes primarily from the depositions of two psychiatrists, Drs. Leal and Reisman. Dr. Leal was the treating psychiatrist at the mental health facility and saw the plaintiff on two occasions, September 1996, and September 1997. Dr. Leal connected the plaintiff's depression and alcoholism to the work injury and apparently agreed with statements made in Ms. Harris's deposition that attributed the plaintiff's depression to what the plaintiff perceived to be his inability to work and loss of independence due to the shoulder injury at Heilig-Meyers.

Although his diagnosis was essentially the same as Dr. Leal's, chronic depression and alcoholism, Dr. Reisman assigned no permanent impairment rating for a psychiatric injury. Dr. Reisman watched the plaintiff's behavior change when he thought the doctor was unable to see him. Dr. Reisman was convinced the plaintiff was malingering. The doctor's attempt to administer the MMPI test was apparently frustrated by the plaintiff's lack of cooperation.

In denying the plaintiff an award for a psychiatric injury, the trial court stated:

> The psychological problems, in the Court's view, are not definitely connected with this work-related injury. *There may be some connection there partially. It appears, though, from Mr. Coleman's testimony, he described this problem as being -- as developing from the time that his friend and mother died, and I just don't think there's enough connection between the psychological problems and this incident to justify an award*.
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> ***
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> After all -- there may be a fine line between thinking you are hurt and being hurt. If you think you're hurt, you know, you can suffer some of the same results that you would if you were actually hurt, and I don't mean intentionally faking; I mean, you sincerely believe you are hurt.

(emphasis added). A careful review of the evidence in this case provides no basis for the trial court's conclusion that the plaintiff described his current problem as developing from the time that his friend and his friend's mother died. The plaintiff's testimony, to the contrary, was that he sought help for a brief period of time after these events but that he was working full time with no psychological difficulties at the time of his work-related injury. The plaintiff testified that his injury left him unable to work, which made him feel like less than a man and left him depressed and suicidal. Ms. Joy Parker testified to the changes

in the plaintiff's physical appearance and personality after the accident and, along with friends, helped him seek mental health treatment in 1996. Both Drs. Leal and Reisman came to the conclusion that the plaintiff was suffering from depression and alcoholism. As usual, in cases such as this one, the doctors disagree as to whether the injury of July 1995, caused the depression. We would note, however, that Dr. Reisman's belief that the plaintiff was malingering is not necessarily inconsistent with a finding that the plaintiff suffered a psychological disorder as a result of the original injury.

We conclude that the evidence preponderates against the trial court's finding that the plaintiff's mental disorder did not arise out of the injury of July 7,1995. Having concluded that the evidence supports a finding of permanent partial disability for a psychiatric injury, we are constrained to remand this case to the trial court for a determination as to the percentage of permanent partial disability to the body as a whole attributable to this injury. The trial court, giving due consideration to the award to the shoulder, should make one award for concurrent injuries pursuant to Tennessee Code Annotated § 50-6-207(3)(C); *see also Crump v. B & P. Constr. Co.*, 703 S.W.2d 140 (Tenn. 1986).

The trial court's judgment is affirmed in part and reversed in part. The case is remanded to the trial court for findings consistent with this opinion. Costs of this appeal are to be divided equally between the parties.

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L. T. LAFFERTY, SENIOR JUDGE

CONCUR:

_____
JANICE M. HOLDER, JUSTICE

_____
J. STEVEN STAFFORD, SPECIAL JUDGE

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

DAVID COLEMAN,	)	Shelby County Chancery
	)	No. 107358-1
Plaintiff/Appellant,	)	
	)	S. Ct. No. W1998-00948-SC-WCM-CV
v.	)	
	)	Hon. Neal Small, Chancellor
LUMBERMAN'S MUTUAL CASUALTY COMPANY,	)	
	)	Affirmed in part,
	)	reversed in part.
Defendant/Appellee.	)	

JUDGMENT ORDER

This case is before the Court upon defendants' motion for review pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), 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 motion for review is not well-taken and should be denied; 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 equally between the parties, for which execution may issue if necessary.

PER CURIAM

Holder, J., not participating