IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS= COMPENSATION APPEALS PANEL
AT NASHVILLE
(July 2000 Session)

JAMES R. DAVIDSON v. MONTGOMERY COUNTY SCHOOL SYSTEM

Direct Appeal from the Chancery Court for Montgomery County
No. 96-03-0149 - Robert Wedemeyer, Circuit Court Judge

No. M1999-02066-WC-R3-CV - Mailed March 14, 2001
Filed - April 16, 2001

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated Section 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. The Appellant appeals from the dismissal of his claim and seeks an award for permanent partial disability benefits, temporary total disability benefits, and specified medical expenses. After a complete review of the entire record, the briefs of the parties, and the applicable law, we affirm the dismissal of the claim by the trial court.

Tenn. Code Ann. ' 50-6-225(e) (1999) Appeal as of Right; Judgment of the Circuit Court Affirmed

LEE RUSSELL, SP. J., delivered the opinion of the court, in which ADOLPHO A. BIRCH, J. and JAMES L. WEATHERFORD, SR.J., joined

Donald D. Zuccarello, Nashville, Tennessee, for the appellant, James R. Davidson

David J. Silvus, W. Timothy Harvey, Clarksville, Tennessee, for the appellee, Montgomery County School System

MEMORANDUM OPINION

James R. Davidson ("Claimant") filed a workers' compensation claim against his employer, the Montgomery County School System ("Employer"), for injuries allegedly received

in an incident that occurred on or about February 2, 1995. The trial judge dismissed the Complaint on the grounds that the Claimant had not suffered a compensable injury. The Claimant appealed the dismissal and seeks an award of permanent partial disability benefits for an alleged injury to his back, seeks an award of temporary total benefits for the two periods of convalescence following two separate surgical procedures performed by an unapproved surgeon, and seeks the payment of medical expenses related to the treatment provided by and surgery performed by an unapproved physician. We affirm the dismissal of the claim on the grounds that the evidence in the record does not preponderate against the trial judge's conclusion that there was no causal connection between any accident on the job and the condition of the Claimant's back.

FACTS

The Claimant was fifty-three years of age at the time of the trial in this case. He had a high school degree and some college credits and was a veteran of the United States Air Force, where he received some training. The Claimant worked for the Montgomery County School System from 1974 through 1995 as a vocational teacher. On February 2, 1995, the Claimant was moving a cabinet when he felt pain in his back. There is no evidence of the Claimant having previously experienced pain in his back, and several lay witnesses testified at trial that the Claimant had not manifested symptoms of any back injury prior to the date of this incident.

Four days after the incident, the Claimant consulted his personal physician, Dr. James Smith, and the Claimant gave the Employer due notice of the incident. According to Dr. Smith's medical records, the Claimant complained of constant lower back pain and pain in the right buttocks and left leg. Dr. Smith's initial impression was that the Claimant suffered acute lumbrosacral strain with radicular nerve root entrapment on the left. When the Claimant's symptoms did not improve,
Dr. Smith recommended further testing by an orthopedic surgeon. The Employer referred the Claimant to Dr. A. R. Boyd, who saw the Claimant on February 8, 1995, and again on February 15, 1995.

The Claimant was then referred to Dr. Stephen McLaughlin, an orthopedic surgeon, who first saw the patient on February 23, 1995. Dr. McLaughlin's initial impression was that the Claimant had spondylolysis with multiple sciatic complaints, which simply means that the Claimant had degenerative changes in the back with pain in the lower back and buttocks. Dr. McLaughlin's x-rays showed what the doctor described as "only mild degenerative changes in what appears to be a grade-1 spondylolysis at L5-S1." An MRI was ordered, and on March 16, 1995, Dr. McLaughlin noted that the report showed a "spondylolysis and a fairly moderate disc bulge at 4-5." He further noted, "I think this is causing impingement of the left L5 nerve root." The MRI report showed no

Significant abnormality and no evidence of disc bulging except at L4-5. Dr. McLaughlin found the Claimant to be doing much better on April 27, 1995, but the doctor referred the Claimant for a second opinion on his neurological condition and the need for surgery.

Dr. Ronald Zellem, a neurosurgeon, first saw the Claimant on May 12, 1995. This doctor initially diagnosed the Claimant as having "radiculitus (inflammation of the root of a spinal nerve) with spondylolisthesis secondary to spondylolysis." Dr. Zellem testified that this diagnosis was consistent with Dr. McLaughlin's conclusion that the Claimant had a preexisting, bilateral, congenital pars defect at L5. A lumbosacral myelogram was done, and it revealed a mild defect at the L5-S1 interspace. A CAT scan revealed an L5 fusion defect but confirmed the initial diagnosis of a pars defect. Dr. Zellem concluded that the Claimant was definitely not a surgical candidate.

Dr. Zellem sent the Claimant to Dr. Leon Ensalada for an evaluation and for management of the Claimant's pain. Dr. Ensalada concluded that the Claimant suffered from lumbar spondylolisthesis/spondylolysis which was "nonoccupationally related." This doctor found no objective signs of neurological or musculorskeletal impairment. Dr. Ensalada performed neural blockades on June 29, 1995, and on July 6, 1995. The Claimant initially told the doctor that he had received relief from the neural blockades, but later complained that he had received no relief on either occasion. Dr. Ensalada's diagnosis remained unchanged.

Dr. Phillip Rosenthal saw the Claimant on July 28, 1995, and then the Claimant saw Dr. Zellem again on August 7, 1995, who ordered additional testing. That testing revealed, according to Dr. Zellem, peripheral neuropathy which was "definitely not" related to the incident with the cabinet. X-rays on August 21, 1995, further confirmed a congenital defect on the fifth lumbar level. Dr. Zellem still believed that surgery was inappropriate. Dr. Zellem referred the Claimant to Dr. W. Garrison Strickland, an M.D./Ph.D. who is board certified in both neurology and psychiatry.

Dr. Strickland reviewed the results of the previously administered tests and concluded that the Claimant had a pars defect and mild spondylolysis with no significant nerve root impingement. This doctor conducted blood tests, and these tests failed to reveal any cause for the Claimant's peripheral neuropathy, but Dr. Strickland testified that he did believe that the Claimant suffered from "mild" peripheral neuropathy in addition to the congenital problem (pars defect) and the degenerative condition in the back. This doctor attributed the numbness, tingling, and weakness of the Claimant's feet and lower legs to peripheral neuropathy, a disease process "not caused by mechanical injury" according to Dr. Strickland. Dr. Strickland considered his diagnosis consistent with that of Dr. Zellem. The Claimant became hostile to Dr. Strickland and ceased to see him.

The Claimant went to see Dr. Robert Weiss, a neurosurgeon, on October 16, 1995, for a second opinion or an independent medical examination. The relationship between the Claimant and this doctor deteriorated quickly, and Dr. Weiss suggested that the Claimant see someone else other than Dr. Weiss, preferably an orthopedic. Dr. Weiss summarized his conclusions as follows:

> The long and short of this is that I have nothing to offer this man from a neuro-surgical perspective. I think [an] operation, either with diskectomy as

> [the patient] claims someone has proposed, or for fusion, is going to be doomed to failure. His wide ranging symptoms and paucity of focal findings suggest that he will not do well with surgery and that it would be ill advised. He also has a peripheral neuropathy documented by Dr. Strickland which I think is idiopathic, and has absolutely nothing to do with lifting a filing cabinet at work . . . .

Dr. Weiss gave the Claimant no impairment rating, but conceded that the *AMA Guidelines* could be interpreted to award an eight percent impairment, although no impairment was attributed by Dr. Weiss to an injury on the job.

The Claimant next saw Dr. G. William Davis, a spinal surgeon. Dr. Davis noted that his findings were "fairly negative." He had a myelogram CAT scan performed, and it revealed minimial disc bulges at L2-3 and L3-4 and an insensitive L5-S1 thecal sac. Dr. Davis read the myelogram CAT scan as "fairly normal." A discogram revealed that the discs at the L3-4, L4-5, and L5-S1 levels were painful and badly degenerated, but not leaking into the spinal canal. Dr. Davis sent the Claimant to Dr. Melvin Law, an orthopedic surgeon, for a second opinion.

Dr. Law first saw the Claimant on November 14, 1995. In his initial report, Dr. Law recommended that the patient have a triple fusion. This doctor felt that the spondylolysis at the L5-S1 level was unquestionably the cause of the radicular pain, and he opined that the Claimant had a nerve root impingement rather than peripheral neuropathy. The Employer would not approve the triple fusion, but Dr. Law performed the six hour operation anyway, at a total cost in excess of $110,000.00. Dr. Law's bill alone was $66,572.00, of which approximately $60,000.00 was for the surgery. Dr. Law did a subsequent surgery on June 9, 1997, to remove the hardware inserted in the Claimant's back in the first surgery.

Dr. Law rated the Claimant as retaining a twenty percent permanent impairment to the body as a whole, but he expected the Claimant to be able to perform his usual job activities as long as he uses "common sense." At a second deposition following the second surgery, Dr. Law reiterated that he "would not really expect [the Claimant] to have any significant future problems" as a result of the back surgeries. Dr. Law's bills and the other bills related to the two surgeries were not paid by the Employer, and the Claimant was paid no temporary total benefits for the periods of convalescence following each of the two surgeries.

There was testimony by the Claimant and by several other lay witnesses that the Claimant had experienced no back problems prior to February 2, 1995, and that since that date he had manifested a great deal of pain and had been restricted in his activities. The only testimony in the record is that the Claimant had never received treatment for his back from any source before the incident on February 2, 1995. The record supports the conclusion, and the trial court concluded, that the Claimant experienced some increase in pain after the incident with the cabinet, but there is disagreement about the amount of pain experienced.

The Claimant concedes that there were some congenital problems in his back and that there was a degenerative process at work in his back prior to the accident and not directly related to the accident. However, the Claimant argues that the accident at work aggravated the preexisting congenital and degenerative conditions, both by causing pain that did not exist

previously and by making mechanical, that is, anatomical changes, in the Claimant's back. The Employer concedes that the Claimant's pain may have been increased by the incident at work, but the Employer argues that the accident caused no mechanical changes in the back, that the amount of pain of which the Claimant complains is profoundly out of proportion to the amount of damage of any kind found in the Claimant's back, and that no impairment results from the condition in the Claimant's back.

SCOPE OF REVIEW

A party claiming benefits under the Tennessee Workers' Compensation Act has the burden of proof to establish his or her claim in the trial court by a preponderance of the evidence. *Roark v. Liberty Mutual Insurance Company,* 793 S.W.2d 932 (Tenn. 1990). Review on appeal of findings of fact by the trial court shall be *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise. Tennessee Code Annotated Section 50-6-225(e)(2). *Stone v. City of McMinnville,* 896 S.W.2d 548 (Tenn. 1999). The appellate court must perform an independent examination in depth of a trial court's factual findings in order to determine where the preponderance of the evidence lies. *Galloway v. Memphis Drum Serv.,* 822 S.W.2d 584 (Tenn. 1991).

ANALYSIS

The majority of the evidence in this case is expert medical evidence. The Claimant saw a total of ten doctors, including general practitioners, neurologists and neurosurgeons, and orthopedic surgeons, most approved by the Employer but some not. Several of the doctors testified by deposition, but some only through their medical records, and one, Dr. Law, gave two depositions. None of these doctors was seen only for an independent medical examination for the purpose of providing testimony at trial. Even the doctors who were initially only asked to render a second opinion, for example, Dr. Law, became treating physicians. One doctor, Dr. Ensalada, was essentially seen to provide a second opinion and to assist the Claimant in managing pain.

In addition to describing the tests performed on the Claimant and the results of those tests and in addition to describing their treatment of the Claimant, the various doctors from whom evidence was taken addressed these issues: whether and to what extent the Claimant's condition was the result of congenital defects, degenerative processes, or the injury on the job; whether and to what extent pre-existing conditions were aggravated by the incident on the job, and if so, whether the aggravation was simply an increase in pain or a demonstrable, mechanical, physical change in the Claimant's back; whether the Claimant has any permanent impairment; and whether the triple fusion surgery was necessary or even desirable. The opinions of the doctors other than Dr. Law are that the

Claimant's problems are congenital or degenerative, but in either case, not related to the injury on

the job; that no mechanical, physical change resulted from the incident on the job; that the Claimant has no permanent impairment from the injury on the job; and that the fusion should not have been performed. In opposition to this medical evidence, the Claimant cites the testimony of Dr. Law and
the lay testimony that the Claimant was asymptomatic prior to the incident at work and that he has had no serious problems with his back since that date.

When all of the medical evidence at trial was introduced by deposition or in documentary form, the reviewing court is in a position to and indeed must make an "independent assessment of the medical proof to determine where the preponderance of the evidence lies . . . ." *Henson v. City of Lawrenceburg*, 851 S.W.2d 809, 812 (Tenn. 1993). In evaluating the relative persuasiveness of the testimony of various doctors, both the trial and reviewing courts should consider the "qualifications of the experts, the circumstances of their examination, the information available to them, and the evaluation of the importance of that information by other experts." *Orman v. Williams Sonoma, Inc.*, 803 S.W.2d 672, 677 (Tenn. 1991).

Orthopedic surgeon Dr. McLaughlin was not deposed, but his records reveal that he found a degenerative process at work and that he wanted the second opinion of a neurosurgeon before deciding whether a fusion was appropriate. Dr. McLaughlin referred the Claimant to neurosurgeon Dr. Zellem, whose testimony on the relevant issues includes the following:

> Q: You do not relate that [pars] defect by definition to anything that occurred in this history of a lifting incident, do you?
>
> A. No, sir.
>
> Q. And at that time, did you detect any anatomical structural change that you could relate to the history of him having lifted or pulled or tugged a cabinet?
>
> A. No, sir.
>
> . . . .
>
> B. I did not believe that the patient was a good surgical candidate, owing to the lack of severity of these findings, and offered to refer the patient to a formal pain manager prior to considering surgery.
>
> . . . .
>
> Q. Why was this man not a surgical candidate?
>
> A. The anatomic deviation of the neural tissue appeared in my eye at that time. Apparently to be very minimal, and I thought, owing to my experience with mechanically altering anatomy through surgery, that this patient would not benefit from any invasive therapy.
> Q. So in his case, the severity level was so slight it did not warrant surgery?

A. Based on the diagnostic tests; that's correct.

Q. Now, you said that the myelogram revealed mild defects as well as confirmed the pars defect; is that correct?

A. Yes, sir.

. . . .

Q. Now, that diagnosed condition, do you believe it could possibly have its genesis from the lifting incident of which this man complains?

A. Definitely not.

Q. All right. And why would you believe so certainly that it is not related?

A. Polyneuropathies by their definition can be caused by a myriad of etiologies. Trauma would be a very, very unlikely reason.

Q. Based upon the testing results, therefore to a reasonable degree of medical certainty, you do not relate that to this lifting incident?

R. That's correct.

. . . .

S. You would not have anticipated that this man's condition or anything that occurred from this accident or lifting incident would have precipitated the need for a three-disc fusion, would you?

A. That is correct, as of my last evaluation.

. . . .

Q. At the point in time when [the Claimant] left your care, could you have. . .did you find any objective evidence of any physical anatomical change in his condition that you would relate to the occurrence of a lifting or tugging incident as he described?

A. No, sir.

Dr. Zellem persists in that opinion even when asked to assume that the Claimant's pain did not begin until the incident with the cabinet.

Dr. Zellem referred the Claimant to Dr. Ensalada for pain management, and although Dr. Ensalada did not testify by deposition, his records reflect his opinions on causation and the severity of the injury. He describes the Claimant's condition as "nonoccupationally related" and

found an absence of objective signs of neurological impairment and musculorskeletal impairment. Dr. Ensalada did not recommend surgery.

Dr. Strickland diagnosed peripheral neuropathy as the cause of the Claimant's symptoms in his feet and legs, and Dr. Strickland testified by deposition as follows on the issue of causation:

> B. Do you believe that the cause of [the Claimant's] symptoms or peripheral neuropathy were caused by this moving a storage cabinet at work in February of '95?
>
> A. No. Peripheral neuropathies are not caused by mechanical injury. Generalized peripheral neuropathies are not caused by mechanical injury.

Dr. Weis opined that the Claimant had no specific neurologic disease and was normal other than the pars defect, a congenital problem. He opined that none of the patient's problems were caused by moving the filing cabinet. Dr. Weiss felt that the Claimant could return to work with no restrictions. On the issue of whether the cabinet incident only caused pain and not any actual physical change in the Claimant, Dr. Weis testified by deposition as follows:

> Q. From the history of moving the filing cabinet or lifting the filing cabinet, did you find any physical change or problem that had developed that you relate to that?
>
> A. I could find no objective neurologic findings; no.
>
> . . . .
>
> B. . . . . Certainly [the MRI scan and myelogram-CT scan that the Claimant had] did not reveal a surgical problem in my opinion, and I believe in that I was at least somewhat in agreement with some of the other clinicians that had seen him up to that point in time.
>
> . . . .
>
> A. I informed [the Claimant] that I felt that his pars defect and minimal arteriolisthesis was probably there for many years and was indeed not due to moving the filing cabinet and that there was nothing that I felt that needed to be done about it and that his symptoms would not be relieved to any major or significant degree by fixing that pars defect, if you will, with a surgical procedure.

Dr. Law initially saw the Claimant to provide a second opinion to Dr. Davis, but Dr. Law ultimately performed two surgeries on the Claimant. The only medical evidence upon which the Claimant relies for the position that there was a physical, anatomical change in his back at the time of the cabinet incident is the following testimony by Dr. Law:

Q. I guess what you are doing for me is telling me what anatomical change, if any, occurred but you cannot know that to any degree of certainty.

A. Right. Because there can be some extravasation with degenerative change but it 's a quantitative thing. I mean, part of the degenerative process is that the disc does start to wear out but I would expect that it would have been more contained than what he had on his discographic studies.

. . . .

Q. Doctor, you were also asked about the anatomical changes as a result of the trauma and the bio-mechanical changes. Would you elaborate on the significance the bio-mechanical change?

A. Well, basically, in order to have a degeneration without pain, a person has to be in balance mechanically. Their disc collapses but then they have to restabilize things by compensatory mechanisms. If a patient is knocked out of that balance where those bone spurs and that ligament thickening is not enough to offset the lack of shock absorbing functioning in their disc, then that's the bio-mechanical change you all are referring to.

Q. But instead of having the opportunity to review any sort of previous diagnostic study, it is my understanding you base it on the history that the patient gives you?

A. Right; it's based on a history he gives me and his clinical picture. If someone has a fracture, then it's easy to assess an anatomic change or if they have a herniated disc where the nerve is getting compressed and those kinds of things are easy to relate anatomically but in this case we're talking about how dye spreads inside of a disc space and it's a little different.

Q. Now, doctor, assume the history that Mr. Davidson gave to you was accurate. And I want you to hypothetically assume that he did not have any previous back problems or had been treated by an orthopedic doctor or a chiropractor for any back problems or any radicular problems previous to the February 2, 1995, work incident.

I want you to assume that shortly after the February 2, 1995, incident, he developed the symptoms in his low back and his legs which progressively worsened until he saw you November 14, 1995.

What is your opinion as to whether the three-level fusion that you recommended to G. William Davis on November 14, 1995, was necessitated as a result of the February 2, 1995, work incident?

A. I believe that if all that's correct, then I think one would have to attribute

his symptoms to that injury he had. Certainly a significant number of people have degenerative changes and can be asymptomatic. Degenerative changes can be symptomatic as well.

But certainly someone who has an injury and has degenerative change and then has pain that continues despite adequate conservative treatment and basically it's a situation where something that was symptomatic has become symptomatic and requires surgical treatment. I think that's the best way to describe what's happened assuming that history to be correct.

Q. Is it your opinion that the trauma from February 2, 1995, made any sort of pre-existing conditions symptomatic?

A. That would be correct. You know, certainly – certainly.

However, Dr. Law also testified that the degenerative changes in the Claimant's back would have existed regardless of the cabinet incident, that the pars defect had existed at least since childhood, and that the bone spurring in the Claimant's back existed before the cabinet incident.
Dr. Law made a distinction between an anatomical change, which he concedes did not occur at the time of the cabinet incident, and a bio-mechanical change, which Dr. Law contends probably did occur at that time. Dr. Law concedes that the only way to be certain what changes occurred in the cabinet incident would have been to have tests performed on the affected area of the back immediately before the incident and again immediately after the incident, and no pre-incident tests were in fact performed.

The evidence from all of the doctors, including Dr. Law, is that the conditions in the Claimant's back were primarily either congenital or degenerative. The question for review is whether the evidence preponderates against the trial judge's conclusion that the cabinet incident only caused the Claimant to experience pain and did not cause a physical or anatomical problem.

In order to be recoverable under the Tennessee Workers' Compensation Act, an injury must both "arise out of" and be "in the course of " employment. The phrase "in the course of" employment merely refers to the time, place, and circumstances of the accident, but the expression "arising out of" the employment refers to the cause or origin of the injury. *Orman,* 803 S.W.2d at 676. In the case *sub judice*, there is no question that the accident occurred at school during school hours by a school system employee for a school purpose. The issue in the case is whether the injury "arises out of" the moving of the filing cabinet.

An employer takes his or her employees as the employer finds them. If an employee suffers a work related injury which causes a disability which is far greater in the employee than it would have been had the employee not had a pre-existing condition, the employee is entitled to benefits under the Tennessee Workers' Compensation Act. *Rogers v. Show,* 813 S.W.2d 397 (Tenn. 1991). However, if the employment merely aggravates a pre-existing condition by only increasing the employee's pain, there is no injury by accident. *Townsend v. State,* 826 S.W.2d

434 (Tenn. 1992); *Cunningham v. Goodyear Tire & Rubber Co.*, 811 S.W.2d 888, 891 (Tenn. 1991); *Boling v. Raytheon Co.*, 448 S.W.2d 405 (Tenn. 1969).

The testimony of Dr. Law, and that of the Claimant and his other lay witnesses to the effect that the Claimant's pain all began with the cabinet incident, do not preponderate against the extensive testimony of numerous other medical experts. The other experts have a wide variety of qualifications, in neurology, orthopedics, pain management, and psychiatry. The other experts saw the Claimant earlier in time and closer to the cabinet incident than Dr. Law saw the patient. On the issue of causation in general and the issue of anatomical change at the time of the cabinet incident, the other doctors express their opinions with greater certainty and less equivocation than does
Dr. Law. Dr. Law is the only one of the experts who makes a distinction between anatomical change, which Dr. Law says did not result from the cabinet incident, and bio-medical change, which he says did occur in the cabinet incident, although he concedes that he could not be certain of the occurrence without pre-incident testing of the back.

Tennessee Code Annotated Section 50-6-204(a)(4) requires an employer to provide a panel of three medical providers from whom to select, and the employer is held responsible to pay any provider selected from the list. An employer generally is not required to pay for unauthorized medical care if the employer has provided the employee with the required panel. The Claimant here was provided with numerous doctors, whose services were reimbursed by the Employer. The Claimant here went to a surgeon who was not approved, and the Claimant chose to have surgery in spite of the Employer's refusal to authorize the surgery ahead of time. The majority of the Claimant's earlier doctors opined that the surgery should not be performed. The approved doctors' explanations for refusing to recommend surgery, particularly the unfocused nature of the Claimant's complaints, are persuasive.

The evidence does not preponderate against the trial judge's conclusion that there is no causal connection between the Claimant's alleged accident on the job and any permanent, physical injury to his back, and that the Claimant is therefore not entitled to any permanent partial disability benefits. The evidence does not preponderate against the trial judge's conclusion that the two
surgeries performed by Dr. Melvin Law on the Claimant's back were not necessary for the treatment of any injury received on the job nor does the evidence preponderate against the trial judge's conclusion that the Claimant is not entitled to recovery temporary total benefits for his recovery periods following two surgeries that were not medically necessary and were not performed by approved physicians. The appeal will be dismissed and the dismissal of the Complaint will be affirmed, with costs assessed against the Appellant.

DISPOSITION

The judgment of the Chancery Court is affirmed, and the costs on appeal are assessed against the Appellant.

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LEE RUSSELL, SPECIAL JUDGE

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

JAMES R. DAVIDSON v. MONTGOMERY COUNTY SCHOOL SYSTEM

Chancery Court for Montgomery County
No. 96-03-0149

No. M1999-02066-WC-R3-CV - Filed - April 16, 2001

JUDGMENT

This case is before the Court upon 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 Memorandum Opinion of the Panel should be accepted and approved; 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 by the Appellant, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM