

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
June 1, 2001 Session

BRIDGESTONE/FIRESTONE, INC. v. PHILLIP GOINS

**Appeal from the Circuit Court for Davidson County
No. 96C-1583 Walter C. Kurtz, Judge**

**No. M2000-01379-WC-R3-CV- Mailed - July 17, 2001
Filed - August 20, 2001**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with the Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. In this case, the employer contends the trial court erred in (1) finding that the gradual aggravation of a claimant's pre-existing arthritic condition over the course of twenty-one years is a compensable accident under the Workers' Compensation Act and (2) assessing a 75% vocational disability for an injury not wholly attributable to employment. As discussed below, the panel has concluded that the judgment of the trial court should be affirmed on both issues.

**Tenn. Code Ann. § 50-6-225(e)(3) Appeal as of Right; Judgment of the
Circuit Court Affirmed**

BEN H. CANTRELL, SP. J., delivered the opinion of the court, in which FRANK F. DROWOTA, III, J., and FRANK G. CLEMENT, JR., SP. J. joined.

Katherine Dent Boyte, Nashville, Tennessee, for the appellant, Bridgestone/Firestone, Inc.

Scott Daniel, Murfreesboro, Tennessee, for the appellee, Phillip Goins.

MEMORANDUM OPINION

The claimant worked for Bridgestone/Firestone, Inc. as a tire-builder, production supervisor, stock prep worker, and project supervisor from 1975 until 1996. During his tenure as an employee, he developed knee problems from working long shifts which required standing on concrete floors, walking up and down stairs, moving heavy materials, kneeling, and climbing. Before his employment with Bridgestone, he had never experienced problems with his knees.

The claimant first sought treatment for pain in his right knee when he reported to Bridgestone's health clinic in 1993. He did not indicate that he had suffered a specific injury, but did state that he had had this pain for several months. An orthopedic surgeon examined the claimant and gave him a corticosteroid injection in his right knee. He returned to work without restrictions.

This knee pain resurfaced in May 1995. Bridgestone's medical records reveal that the claimant had puffiness around the knee and walked with an obvious limp. These symptoms were again not attributed to any specific trauma. He was seen by another physician who diagnosed a probable meniscal cartilage tear and restricted his work activities.

On June 6, 1995 a second orthopedic surgeon determined that the claimant had "some fragmentation of the lateral aspect of his kneecap with a spur present." He further stated that such a condition is often the result of a congenital situation in the knee which may not be symptomatic but can become so via everyday wear and tear that accrues from stair climbing, squatting, kneeling, and other activities the claimant participated in through his employment. The frequency that the claimant performed these activities increased the likelihood that this pre-existing condition would become symptomatic.

This same physician performed arthroscopic surgery on the right knee in June 1995. During the surgery he observed wear and tear on the surface of the kneecap and he removed a bone fragment from the knee.

After the operation, the claimant began complaining of discomfort in his left knee. His surgeon attributed this pain to "daily living activities" and the fact that the left knee was overcompensating for the limitations imposed on the right knee following the procedure. On September 21, 1995, that same doctor performed arthroscopic surgery on the left knee and made a final diagnosis of "chondromalacia, patella and a medial femoral conyole." He assessed a permanent impairment of 10% to the claimant's lower right extremity and no impairment to the left knee. He then released his patient to return to limited duties at Bridgestone before resuming regular work on November 6, 1995.

The claimant again complained of bilateral knee pain in February 1996. He consulted a third orthopedic surgeon, who diagnosed him with degenerative arthritis of both knees and chondromalacia of the patella with patellar tendonitis. The claimant was treated with cortisone injections and restricted to no more than three hours of standing on the concrete per day. This physician assessed a permanent impairment rating of 10% in the right knee and 5% in the left knee for a combined 15% impairment rating to the lower extremities, or 7% to the body as a whole. This doctor also stated that the claimant's injury more probably than not arose out of his employment.

The claimant continued to work for Bridgestone until he was advised in April 1996 that no work was available for him with his restrictions. His arthritis had hindered his mobility to the extent that he could not stand for long periods, walk, lift, or bend without

pain. At trial he testified that he has not worked since that time and is no longer able to work at manual labor positions, as he had for his entire career. He is a fifty-two-year-old man with two years of college and minimal computer skills. He spent four years in the Navy for which he received an honorable discharge.

The trial judge found that the claimant had suffered a compensable injury based on the aggravation of a pre-existing arthritic condition through his employment with Bridgestone. He assessed a vocational disability of 75% to both legs.

Appellate review is de novo upon the record of the trial court, accompanied by a presumption of the correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). This Court has previously held that a condition which develops gradually over a period of time resulting in a work-connected injury is compensable under the Workers' Compensation Act. *Conroy v. Carter Automotive Prod. Corp.*, 640 S.W.2d 831, 832 (Tenn. 1982). The applicable law governing the gradual aggravation of a pre-existing condition is set forth in *Sweat v. Superior Indus.*, 966 S.W.2d 31 (Tenn. 1998). In *Sweat*, the Court upheld a 70% vocational disability based on the work-related exacerbation of an employee's degenerative arthritis. *Id.* at 32. That employee's injuries were attributed to "prolonged standing on concrete" and "repetitive, strenuous weight-bearing activities" performed over an eighteen-month period. *Id.* In this case the Court also stated that a mere increase in the pain of a pre-existing condition is not sufficient; to be compensable a person's employment must cause an actual progression of the claimant's ailment. *Id.* at 33.

The claimant in the present case incurred his injuries in a similar fashion. According to two of the claimant's physicians, his work which included standing, bending, squatting, lifting, and kneeling on concrete floors for long hours over a twenty-one year period caused his degenerative arthritis to advance significantly. His condition worsened to the extent that it required two surgeries, extensive workload limitations, and treatment with cortisone injections. This injury amounted to more than a mere increase in the pain of an underlying malady. Therefore, regardless of the time period over which his condition developed, the claimant is entitled to benefits under the Workers' Compensation Act.

Bridgestone argues that the claimant should have received less benefits, if any at all, because his injuries resulted from conduct which mirrors his everyday activities of life. Noting that one physician cited bending, kneeling, squatting, climbing, and other routine household activities as causes of the claimant's condition, it contends that the injury is not compensable because it is not wholly attributable to work.

A reduction of the trial court's award is not appropriate because vocational disability cannot be apportioned based on causation. *Bennett v. Howard Johnsons Motor Lodge*, 714 S.W.2d 273, 277 (Tenn. 1986). An employer assumes the risk that an employee's work may make a weakened condition worse. *Fink v. Caudle*, 856 S.W.2d 952, 958 (Tenn. 1993). It is liable for an employee's entire resulting disability, even where the work injury merely aggravates or combines with a previous injury or condition. *Bennett*, 714 S.W.2d at 277.

Hence, despite the presence of causal elements in the claimant's everyday life, his work triggered the aggravation of his arthritis and the employer should bear complete responsibility for that injury. The trial court's assessment of a 75% vocational disability must stand.

Furthermore, any reasonable doubt as to causation must be construed in favor of the claimant. *Hall v. Auburntown Indus.*, 684 S.W.2d 614, 617 (Tenn. 1985). In this case, one physician has stated that the claimant's injuries more probably than not arose from his employment. Another doctor has testified that the frequency the claimant performed certain activities, which was greater at work, hastened the rate of his arthritis' development. We cannot say that this evidence preponderates against the trial court's finding that the claimant's injury was work-related.

Therefore, the judgment below should be affirmed. Tax the costs on appeal to the appellant, Bridgestone/Firestone, Inc.

BEN H. CANTRELL, SPECIAL JUDGE

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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, Bridgestone/Firestone, Inc., for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM