IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS COMPENSATION PANEL
AT NASHVILLE
July 2001 Session

HARRISON DRIVER v. BRIDGESTONE/FIRESTONE, INC.

Direct Appeal from the Circuit Court for Rutherford County
No. 40902, Hon. Don R. Ash, Judge

No. M2000-02944-WC-R3-CV - Mailed - October 15, 2001
Filed - December 27, 2001

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. The employer argues that the employee's pre-existing condition was not advanced, progressed, or anatomically changed during his employment at Bridgestone. In the face of conflicting medical testimony, the trial court found in favor of the employee, awarding $13,766 for a 7% permanent disability to his body as a whole. Relying on the employee's own medical testimony as well as an opinion of one of the testifying physicians, concluding that the employee's injury more probably than not was a result of his employment, the Panel affirms the trial court's finding that the employee suffered a compensable injury while at work.

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

GAYDEN, SP. J., delivered the opinion of the court, in which DROWOTA, J., and LOSER, SP. J. joined.

Katherine D. Boyte, Ruth, Howard, Tate & Sowell, Nashville, Tennessee, for the appellant, Bridgestone/Firestone, Inc.

Wm. Kennerly Burger, Burger, Whately, Siskin, Scott & Goad, Murfreesboro, Tennessee, for the appellee, Harrison Driver.

MEMORANDUM OPINION

The employee/appellee, Harrison Driver, has worked for Bridgestone/Firestone, Inc., the employer/appellant, since 1988. At Bridgestone, Mr. Driver has held the positions of procureman, tire builder for passenger tires, final specialist inspector, warehouse worker, big

truck and bus tire builder, and big truck and bus final inspector. In November 1997, the employee claims that he experienced a sharp pain in his back after he "put a tread up" while on the job at Bridgestone. Although he had experienced another back-related incident at Bridgestone in 1994, as well as day-to-day aches and pains while on the job, he asserts the November 1997 incident was unlike any other pain he had experienced on the job. Before working at Bridgestone, the employee had never injured his back, nor had he experienced any back pains. Since November 1997, Mr. Driver has been moved to a less strenuous position at Bridgestone, where he continues to have pain but has not missed work. He continues to work overtime, and the medical testimony regarding his restrictions is conflicting.

However, Mr. Driver has great difficulty running or playing sports and is unable to ride the attractions when his family visits amusement parks.

On November 20, 1997, the employee sought medical attention with Dr. Flynn in the employer's health unit. At that time, Mr. Driver requested heat and electric stimulation treatment for his back ailment. In his medical notation dated December 23, 1997, Dr. Flynn wrote that the employee was "positive for some low back pain...has had this [pain] for a little over a month now." Dr. Flynn also noted that the pain "waxes and wanes" and arose from "no specific injury...just gradual onset of the pain."

Dr. Flynn referred the employee to Dr. Thomas O'Brien, a board-certified orthopedic surgeon. On February 18, 1998, during his first visit with Dr. O'Brien, Mr. Driver stated that his symptoms had started in 1994 with "gradual dull pain to numbness and sharp pain" in November of 1997. Dr. O'Brien noted that no event in particular had caused the back pain, explaining its onset was age-related. He diagnosed the employee as suffering from degenerative disk disease, which was consistent with previous MRI results. However, Dr. O'Brien declined to conclude that the severity of the employee's degenerative disk disease had been advanced by his work at Bridgestone. He opined the disease was not work-related and concluded no objective findings warranted a bodily impairment rating.

On October 8, 1998, at the request of his attorney, Mr. Driver visited Dr. Lloyd Walwyn, a board-certified orthopedic surgeon, in order to get a second opinion about his back pain. Dr. Walwyn filled out his report on a Standard Form Medical Report for Industrial Injuries (C-32 Form) and diagnosed the employee with degenerative disk disease according to an analysis of the same MRI results used by Dr. O'Brien. Consequently, Dr. Walwyn assessed a 7% whole body impairment, set the employee's lifting limit at forty pounds, and placed restrictions on his standing, sitting, kneeling, crouching and crawling while at work. In the C-32 Form, Dr. Walwyn indicated that he believed it was more probable than not the employee's injury arose out of his employment at Bridgestone.

The trial court found a 7% permanent disability to the body as a whole relying on the persuasiveness of Dr. Walwyn's C-32 Form over Dr. O'Brien's evaluation, which resulted in a judgment against Bridgestone in the amount of $13,776. Bridgestone was also found to be

responsible for providing medical treatment pursuant to Tenn. Code Ann. § 50-6-204 (2000).

This is a case of conflicting medical testimony. When examining the issues raised on appeal, the Panel shall review the findings of fact by the trial court "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." Tenn. Code Ann. § 50-6-225(e)(2) (2000). The employer contends the employee is not entitled to workers' compensation benefits because he has failed to carry the burden of proving he suffered a compensable injury at Bridgestone. Relying on Dr. O'Brien's deposition, the employer asserts that nothing indicates the employee suffered a specific injury while working at Bridgestone even though he suffers from degenerative disk disease.

Although new injuries by accident arising out of and in the course of employment are compensable under Tennessee law, aggravation of a pre-existing condition may only be compensable if the condition is advanced, if an anatomical change occurred, or if the employment caused "an actual progression of the underlying disease. Sweat v. Superior Ind., 966 S.W.2d 31, 32 (Tenn. 1998). Additionally, if work only increases the pain related to a pre-existing condition, a compensable injury by accident has not occurred. Townsend v. State, 826 S.W.2d 434, 436 (Tenn. 1992).

While both parties agree the employee's back ailment was a pre-existing condition, the employer argues neither Dr. O'Brien's medical report and deposition nor Dr. Walwyn's medical report offer proof that the employee suffered an injury by accident that would have caused the pre-existing condition to progress, change anatomically, or advance while working at Bridgestone. Dr. O'Brien dismissed the ailment as age-related, and Bridgestone argues the employee is simply experiencing a non-compensable increase in pain; however, Dr. Walwyn reported it was more probable than not that the injury arose out of work at Bridgestone. As long as medical testimony suggests an alleged accident "could be" the cause of the claimant's injury and the lay testimony bolsters this position, it may be reasonably inferred the accident was the cause of the injury. Chapman v. Employer's Ins. Co., 627 S.W.2d 122, 123 (Tenn. 1981). Consequently, it can be inferred, based on Dr. Walwyn's report and the employee's testimony, that the employee's pre-existing condition may have been advanced or progressed after the incident in November 1997.

The employer further contends causation could not be established between the alleged accident in November 1997 and the employee's ailment because Dr. O'Brien declined to conclude that the severity of the employee's degenerative disk disease had been advanced by his work at Bridgestone. The employer relies on the holding in Thomas v. Aetna Life & Cas. Ins. Co., 812 S.W.2d 278 (Tenn. 1991), stating causation and permanency may only be established through expert medical testimony. Id. at 283. However, Bridgestone's flawed interpretation of the rule stated in Thomas is incomplete. While it is true that causation and permanency may only be established through expert medical testimony, Thomas also holds that "such testimony must be considered in conjunction with the lay testimony of the employee as to how the injury

occurred and the employee's subsequent condition." Id. The employee testified that in November of 1997, he felt a pain in his back when he "put a tread up" while building tires. He further testified the pain was impairing and was worse than any customary ache or pain he had felt on the job. Generally, any reasonable doubt whether an injury arose out of an individual's employment is to be construed in the employee's favor. Hall v. Auburntown Indus., 684 S.W.2d 614, 617 (Tenn. 1985).

Dr. Walwyn's report suggests Mr. Driver's back condition more probably than not arose out of his employment. This suggestion coupled with the employee's own testimony satisfies the holding in Thomas. 812 S.W.2d at 283. However, Dr. O'Brien's deposition refutes any causal connection between the alleged injury of November 1997 and the advancement of the employee's pre-existing condition. When faced with conflicting medical testimony, the trial court may accept the opinion of one expert over that of another, concluding it contains the more probable explanation. Id. Furthermore, the trial court's decision carries with it a presumption of correctness. Thomas, 812 S.W.2d at 283; McCaleb v. Saturn Corp., 910 S.W.2d 412, 415 (Tenn. Sp. Workers Comp., Nov. 2, 1995). The trial court found a 7% whole body impairment and awarded benefits in a lump sum for the employee's injury; this finding suggests that the court chose to accept Dr. Walwyn's report as well as the employee's testimony.

Thus after careful review of the record, this Panel finds that the evidence does not preponderate against the trial court's decision. Thus, we affirm the holding of the trial court. Costs of appeal are taxed to the appellant, Bridgestone/Firestone, Inc..

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HAMILTON V. GAYDEN, JUDGE

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JUDGMENT

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 taxed to the appellant, Bridgestone/Firestone, Inc., for which execution may issue if necessary.

PER CURIAM

Drowota, C.J., not participating