IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
February 28, 2002 Session

WILLIAM M. CRISP v. DEL-AIR SERVICE COMPANY, INC. ET AL.

Direct Appeal from the Chancery Court for Knox County
No. 140296-3 Sharon Bell, Chancellor

Filed July 30, 2002

No. E2001-00378-WC-R3-CV

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The trial judge found the plaintiff had failed to show he suffered a compensable work injury. We reverse the judgment of the trial court.

Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Chancery Court is Reversed and Remanded

JOHN K. BYERS, SR. J., delivered the opinion of the court, in which WILLIAM M. BARKER, J. and HOWELL N. PEOPLES, SP. J., joined.

H. Allen Bray, Maryville, Tennessee, for the appellant, William. M. Crisp.

Paul D. Hogan, Jr., Knoxville, Tennessee, for the appellee, Del-Air Service Company, Inc.

MEMORANDUM OPINION

Facts

The plaintiff was 34 years of age at the time of the injury in this case. He had a high school education, two years of technical school, and was certified as a heating and air-conditioning mechanic. The plaintiff was not married at the time of the injury or at the time of trial.

On June 20, 1997, the plaintiff was fitting a pipe into an opening in a wall when he twisted and felt a popping in his back. The plaintiff reported this to his employer but did not seek medical care until some two or three months later when he saw Dr. Robert B. Haralson, III, an orthopedic surgeon. He was subsequently seen by Dr. Roland E. Finelli, a neurosurgeon.

Medical Evidence

Dr. Haralson testified the plaintiff had a pre-existing spondylolisthesis. He further testified the plaintiff suffered a 5 percent medical impairment as a result of the work injury. In describing the finding, Dr. Haralson said, "[h]e had a preexisting condition. It was made worse by his injury, heralded by objective findings, so he's a Category 2, five percent."

Dr. Finelli saw the plaintiff first on December 12, 1997 and confirmed he had spondylolisthesis. Dr. Finelli did surgery on the plaintiff's back and inserted what is described as a "cage" on both sides of the plaintiff's spine in order to stabilize the plaintiff's back.

Dr. Finellis' testimony indicates the plaintiff had suffered pain and radiculopathy since the injury and will continue to do so. When asked if this was connected to the injury, he replied, "[t]he real question is is it an aggravation of a pre-existing condition, ant that's what happened to him. The fall did not cause the spondylolisthesis."

Upon further questioning about the effect of the industrial injury the following exchange occurred:

> Q. Okay, And then what we have is just pain alone that may or may not have increased after the work event; correct, as opposed to anatomical change?
> A. Well, he became symptomatic after the June '97 with chronic back pain.
> Q. So it would be pain as opposed to an anatomical change or advancement?
> A. That's correct.

Dr. Finelli found the plaintiff had sustained a 25 percent medical impairment. He was of the opinion the plaintiff would be limited in his ability to do physical labor.

Discussion

The determining issue in the case is whether the injury to the plaintiff is compensable within the parameter of various issues dealing with the aggravation of a pre-existing condition which results in pain.

The general rule is that aggravation of a pre-existing condition may be compensable but not if it results only in increased pain or other symptoms caused by the underlying condition as the employment must cause an advancement or anatomical change. *Cunningham v. Goodyear*, 811 S.W.2d 888 (Tenn. 1991).

In *Hill v. Eagle Bend Manufacturing Inc.*, 942 S.W.2d 483 (Tenn. 1997), the Supreme Court,

dealing with a case with various medical indications, cited *Talley v. Virginia Ins. Reciprocal*, 775 S.W.2d 587 (Tenn. 1989) to reinterate the rule that "[t]here is no doubt that pain is considered a disabling injury, compensable when occurring as a result of a work injury." The plaintiff in *Eagle Bend* had suffered a previous back injury and the issue of a pre-existing condition was raised.

In this case, Dr. Haralson was of the opinion the plaintiff suffered a 5 percent medical impairment as a result of the work injury. The finding was based upon objective findings. Dr. Finelli testified the plaintiff became symptomatic with chronic back pain after the injury which he found to be permanent and disabling. He found the plaintiff has sustained a 25 percent medical impairment as a result of the injury.

The trial judge made no finding of fact upon the evidence. The judgment merely mentioned that witnesses were heard and judgment was entered for the defendant.

This is not a case where we must determine from the medical depositions which of the physicians testimony is the most credible. We find both are, and we find that the testimony supports an award for the plaintiff.

Dr. Haralson testified the plaintiff sustained medical impairment as a result of the injury of 5 percent to the body as a whole. He found objective manifestation of the injury [muscle spasms, etc.] and was of the opinion the injury was permanent. Dr. Finelli found the plaintiff's previous condition was not advanced nor was there any anatomical change as a result of the injury. However, he testified the plaintiff was pain free prior to the injury and that as a result of the injury he is now suffering from chronic pain which is disabling. We conclude this is sufficient as a matter of law to support a finding that the plaintiff has sustained a compensable injury, and we enter judgment accordingly.

We remand the case to the trial court for determination of the extent of the plaintiff's vocational disability as a result of the injury and for a determination al all the rights the plaintiff has under the Workers' Compensation Act.

The cost of the appeal is taxed to the defendant.

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JOHN K. BYERS, SENIOR JUDGE

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JUDGMENT

This case is before the Court upon Del-Air Service Company, Inc.'s motion of 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 by Del-Air Service Company, Inc., for which execution may issue if necessary.

IT IS SO ORDERED.

BARKER, J., NOT PARTICIPATING