

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT KNOXVILLE  
October 9, 2002 Session

**DEBBIE G. SCOTT v. FEDERAL EXPRESS CORPORATION, ET AL.**

**Direct Appeal from the Chancery Court for Hamilton County  
No. 00-1144    Howell N. Peoples, Chancellor**

**Filed January 16, 2003**

**No. E2002-00941-WC-R3-CV**

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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 plaintiff filed a petition seeking compensation for an ankle injury which occurred July 16, 1997 and for a back injury which occurred on May 11, 2000. The trial judge bifurcated the two claims and heard the back injury case. On April 15, 2002 the trial court entered a judgment which dismissed the portion of the complaint seeking compensation for the back injury. The plaintiff says the evidence preponderates against this finding. We affirm the judgment of the trial court.

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

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

Selma Cash Paty, Chattanooga, Tennessee, attorney for the appellant, Debbie G. Scott.

Kent E. Krause, Nashville, Tennessee, attorney for the appellees, Federal Express Corporation and Sentry Insurance.

**MEMORANDUM OPINION**

At the time of the trial, the plaintiff was forty-nine years of age. She began work for the defendant in 1986. Her duties were as a delivery person. This required her to load a truck with packages to be delivered to customers, to drive the truck to the location of customers, to unload packages at designated places and to pick up packages from customers.

In July 1998 the plaintiff had a two-level bone fusion at L4-L5 and L5-S1. The need for the

surgery was non-work related.

In December of 1998 the plaintiff fell at work and experienced some back pain through January 1999, for which she saw a doctor.

In July 1999 the plaintiff twisted her ankle and suffered a severe sprain. She was placed in a fracture boot as a result of this. The plaintiff testified that this caused her back and leg to hurt. The plaintiff conceded, however, she had reported to her doctor that she was having increased lower back pain radiating into her hip and down her leg on April 27, 2000.

### **Medical Treatment**

The pertinent medical evidence was given by Dr. Richard G. Pearce, an orthopedic surgeon, who treated the plaintiff for her previous back injury and also treated her in relation to her limb complaints.

Dr. Pearce testified the problem the plaintiff now suffers is as a result of degenerative changes at the L3-4 level which is above the vertebra that were fused in the 1998 surgery. He testified it is not unusual for this to occur above a fusion. Further, he testified the incident of May 11 [12] caused the plaintiff's symptoms from this disc level to get worse.

Dr. Pearce's testimony as it relates to whether the plaintiff is entitled to recover is better understood by setting out his testimony verbatim.

- Q. Would you go back, Doctor, now and compare those complaints with the complaints that she had on April 27<sup>th</sup> of 2000?
- A. They were similar complaints.
- Q. Virtually identical; aren't they, sir?
- A. Well, if you read the dictation, it would be very similar, yes, sir.
- Q. In fact, she told you on that day that she had some increasing lower back pain with some pain radiating into her hip and down into her right leg; correct?
- A. That's correct.
- Q. Doctor, is it – is it your opinion that the incident that she described to you in January 2001 relating to you for the first time an injury that she alleges occurred on May 11, 2000, and your opinion that that is the cause of her current problems, is that based on her telling you that there was an increase in her symptoms, in other words, an increase in her pain?
- A. Yes, sir.
- Q. Do you have any other source, study, history from her that

you would rely upon to base that opinion?

- A. No, sir.
- Q. You cannot, in fact, Doctor, testify to a reasonable degree of certainty that any incident on May 11, 2000, advanced the severity of the condition at the L3-4 level?
- A. Only the complaints.
- Q. You mean only based on the complaints?
- A. Only based on the complaints, yes, sir.
- Q. And those complaints being pain?
- A. Yes, sir.
- Q. She had pain before May of 2000 as evidenced by your record; correct?
- A. That's correct.
- Q. And the pain worsened, perhaps, after May of 2000; correct?
- A. That's correct.

Dr. Scott Hodges, an orthopedic surgeon, saw the plaintiff on May 11, 2001. She complained of back pain and right leg pain that began in May 2000 while she was unloading packages from a truck. Dr. Hodges testified the plaintiff had a pre-existing stenosis at the L3-4 which came about as a result of the surgery in 1998. He described the May 12, 2000 event as a new injury. Dr. Hodges when asked if the severity of the plaintiff's condition at the L3-4 level was advanced by the May 12, 2000 event said:

- A. I think the inflammation in the area temporarily was – and the swelling and even the pain was advanced, but I mean as far as radiologically advancing it, no, I don't think it did.
- Q. And so insofar as the inflammation and the swelling and the pain, that was on a temporary basis?
- A. That would have been a temporary – I mean that should be a temporary.

### Discussion

The trial judge reviewed the medical evidence in this case and concluded, correctly, that there was no medical evidence to support finding that there was any anatomical change to the plaintiff's pre-existing back condition as a result of the event of May 12, 2000, and dismissed the petition.

In cases involving a pre-existing condition, the employee is entitled to recover if the employment causes an actual progression or aggravation of a pre-existing condition which produces pain which is disabling. *Hill v. Eagle Bend Mfg. Inc.*, 942 S.W.2d 483 (Tenn. 1997). On the other hand, an employee cannot recover for a pre-existing condition if there is no anatomical change or progression of the underlying condition; such an injury is not compensable if it results only in increased pain or other symptoms.

There is no evidence to show the plaintiff suffered anything more than increased pain or swelling as a result of the May 12, 2000 injury and this appears to be temporary at most. The injury claimed here would require the testimony of an expert witness to establish causation, because the injury complained of is not obvious and determinable in the absence of such testimony. *Thomas v. Aetna Life & Casualty Co.*, 812 S.W.2d 278 (Tenn. 1991).

Based upon the evidence in this case we find the judgment of the trial court is correct and we affirm the judgment. Costs of this appeal are taxed to the plaintiff.

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JOHN K. BYERS, SENIOR JUDGE

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**JUDGMENT ORDER**

This case is before the Court upon the motion for review filed by the plaintiff-appellant 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.

It appears to the Court that the motion for review is not well-taken and is therefore denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to the plaintiff-appellant, Debbie G. Scott, and her surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

Barker, J., not participating