

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

February 7, 2003 Session

WALTER H. DENTON v. LIBERTY MUTUAL INSURANCE COMPANY

**Direct Appeal from the Circuit Court for Hamilton County
No. 91CV0811 Jacqueline F. Schulten, Circuit Judge**

Filed May 2, 2003

No. E2002-00872-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 defendant appeals from a judgment in favor of the plaintiff which found the plaintiff's present medical condition and injury to his foot and ankle was a continuation of his original injury which occurred while working for Liberty Mutual's insured, McKeehan Chair Company, and not a new injury within the meaning of the workers' compensation laws of the State of Tennessee. The defendant contends the injury in this case was a new injury or the aggravation of an old injury which occurred as a result of an on the job accident the plaintiff suffered in 1999 while working for Bishop Baking Company, the plaintiff's present employer. The trial judge found the plaintiff's problem was a continuation of the injury received while working for the defendant and ordered the defendant to pay for treatment of the plaintiff's foot. We affirm the judgment of the trial court.

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

BYERS, SR. J., delivered the opinion of the court, in which ANDERSON, J., and THAYER, SP. J., joined.

Ewing Strang, Chattanooga, Tennessee, for the appellant, Liberty Mutual Insurance Company.

J. Taylor Walker, Chattanooga, Tennessee, for the appellee, Walter H. Denton.

MEMORANDUM OPINION

The plaintiff was previously employed by McKeehan Chair Company, whom the defendant insured. On November 21, 1989, the plaintiff was injured in the course of this employment. The plaintiff underwent surgery to his back and left ankle as a result of the injuries he sustained in the

accident. The plaintiff and defendant entered into a settlement of the case, which required the defendant to pay medical bills for treatment of these injuries for life. The plaintiff suffered foot drop as a result of the injury and the surgery was to relieve this problem

The plaintiff testified that he had had continuing problems with his left foot and ankle from the time of the original injury until and after the accident at Bishop Baking Company, that his left foot had been turning inward during the time between the injury of 1989 and the injury of 1999, and that he did not seek medical care for the problem but coped with it himself.

The plaintiff related a history of the left ankle giving way over the years which caused him to fall on many occasions. He testified the accident at Bishop Bakery Company was caused because his foot gave way.

The medical evidence in this case was submitted by various medical reports and records and by the testimony of Dr. John Henry Chrostowski, an orthopaedic surgeon.

Dr. Chrostowski testified this concerning the plaintiff's foot problem:

I think the neuropathy of the loss of sensation including protective sense laterally has led to this problem. The gross deformity is clearly a result of neurologic injury or back problems from the past.

* * *

It seems fairly straight forward to me that his injury is clearly neurogenic in origin at this point. He has had ankle sprains in the past, but that the reason his foot has progressively deformed and basically rotated off with the inversion is because of the neurologic injury and loss of function of the evertors of the foot and ankle. If the damage to his spine which led him to have a permanent nerve injury was part of his injury in 1989, I believe that to be the most causative factor today. Certainly, the ankle sprains that he has had in the past play a role in this, but also that he was likely to be prone to those ankle sprains or predisposed to them by the loss of the muscular evertor function, which are the dynamic stabilizers of the ankle.

Dr. Chrostowski testified the accident at Bishop Baking Company made the previous injury worse.

The defendant asserts that the medical records of doctors who previously treated the plaintiff showed that the plaintiff had no problem with his foot and ankle for some eight or nine years prior to the accident at Bishop Baking Company. The plaintiff testified that he continued to have difficulty with his ankle and foot from the date of the original injury until the event at the baking company.

The resolution of this matter rested upon all of the evidence - medical and lay, oral and by

deposition - as well as properly admitted records, and the trial judge was the final arbiter of the facts.

The opinion of the trial judge shows she reviewed all the records and all the evidence. Based upon this she found the testimony of Dr. Chrostowski along with the other evidence showed the plaintiff's foot and ankle problems were a continuation of the previous injury. The evidence supports this finding and we affirm the judgment of the trial court.

The costs of this appeal are taxed to the defendant.

JOHN K. BYERS, SENIOR 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 facts and conclusions of law are adopted and affirmed and the decision of the Panel is made the Judgment of the Court.

The costs on appeal are taxed to the appellant, Liberty Mutual Insurance Company, for which execution may issue if necessary.