

IN THE SUPREME COURT FOR TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS JUDGE  
AT JACKSON

December 9, 2004 Session

**HENRY L. CAGE v. YASUDA FIRE & MARINE INSURANCE COMPANY  
OF AMERICA, et al.**

**Direct Appeal from the Circuit Court for Shelby County  
Docket No. CT-005830-00, Division 8      D'Army Bailey, Circuit Judge**

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**W2004-01669-SC-WCM-CV - Mailed March 7, 2005; Filed June 16, 2005**

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This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with Tennessee Code Annotated section 50-6-225(e)(3) for hearing and reporting findings of fact and conclusions of law. In this appeal, the employer contends that the trial court erred by finding that the employee's lung condition was causally related to his employment, by ignoring evidence that the employee omitted his pre-existing condition on his employment application and failed to give proper notice of his work related injury, and by finding that the employee was permanently and totally disabled and holding that the employer was liable for both the employee's pre-existing sarcoidosis and aggravated asthmatic condition. For the reasons set out below, the Panel has concluded that the judgment of the trial court is affirmed, with costs assessed against the employer.

**Tenn. Code Ann. § 50-6-225(e) (2002 Supp.) Appeal as of Right;  
Judgment of the Circuit Court Affirmed, as Modified**

CAROL L. MCCOY, SP. J. delivered the opinion of the court, in which JANICE M. HOLDER, J., and MARTHA B. BRASFIELD, SP. J., joined.

Ronald L. Harper and Alicia Y. Cox, Memphis, Tennessee, for the appellants, Yasuda Fire & Marine Insurance Company and Sharp Manufacturing of America

Richard Click, Memphis, Tennessee, for the appellee, Henry Cage

**MEMORANDUM OPINION**

This workers' compensation case involves the award of permanent and total disability benefits to the employee for an aggravation of his respiratory ailment and the determination that the employer shall provide medical coverage for both the employee's job-induced asthma and the pre-existing sarcoidosis.

## Background

Mr. Henry L. Cage, an employee of Sharp Manufacturing of America, filed a complaint on February 26, 2000, alleging that he sustained an injury by accident, or an occupational disease, or an aggravation of a pre-existing condition at work. The employer responded that the employee should be denied benefits because the filing of the lawsuit was the first notice that it had received from Mr. Cage that he had a work related injury; the employer also alleged that the employee had made material misrepresentations regarding his health on his employment application and also that the employee failed to prove a causal relationship between his respiratory ailment and his employment. After a trial on the merits, the trial court found Mr. Cage 100% percent permanently impaired.<sup>1</sup> The employer disputes the trial court's findings that a direct causal connection existed between the work environment and the employee's respiratory ailment, that the employee gave proper notice, that the employee did not make a false representation on his employment application, that the employee is 100% permanently impaired, and that the employer should be liable for all of the employee's medical expenses, including treatment for his pre-existing sarcoidosis.

The claimant, Henry Cage, born April 11, 1943, was sixty-one years old at the time of trial. He graduated from Hamilton High School in 1961, attended Memphis State University for eight months and received a certificate in computer studies from Memphis Institute of Technology in 1989. Mr. Cage is divorced, has three adult children and one deceased son, and lives alone in Memphis, Tennessee.

After high school graduation, Mr. Cage worked for Aelorian Pianos in quality control, tuning pianos for nineteen years, from 1966 to 1985. He then drove a truck for Miller Beer for a couple of weeks and left Miller Beer to drive a forklift and load trucks for Consolidated Freight for approximately six months. He left Consolidated to begin his studies at the Institute for a year and three months.

In 1989, he started with Sharp as a factory employee working in the microwave department. When he applied with Sharp, Mr. Cage completed a pre-employment physical form. On that form, he responded that he had no history of allergy, hay fever, chest disease, shortness of breath, and asthma. Although the form requested him to list if he had any health condition not listed on the form, he did not disclose that he had been diagnosed with sarcoidosis, an inflammation of the lymph nodes, in 1975 when he was thirty-five years old. He checked that he was in "excellent" health. Mr. Cage stated that he never missed time from work because of his lung condition prior to working for Sharp.

In July, 1996, Mr. Cage provided the employer with a letter from the company physician, Dr. Samuel Tickle, advising that Mr. Cage's asthma had been bothered while he was making cardboard boxes at work. Mr. Cage experienced his first asthma attack while leaving work. A security employee at Sharp helped him into a wheelchair. He was taken to Eastwood Hospital where he

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<sup>1</sup> The Order of Judgment states that the judgment represents "100% *impairment*." A properly worded Order would recite "100 % *disability*" rather than "impairment" since a physician is the individual who determines the degree of medical *impairment* while the courts determine the degree of *disability*. See Tenn. Code Ann. § 50-6-242.

stayed for three days. According to Mr. Cage, this was the first time that a doctor diagnosed him with asthma. He returned to work, but his condition worsened. He had a second attack at work and was taken to Germantown Methodist Hospital where he spent fourteen days. Upon his return to work, his condition became increasingly worse. Between November 1998 and February 2000, Mr. Cage requested leave seven times because of his asthmatic condition.<sup>2</sup> Each request was approved by Mr. Daniel Wilburn, safety and environmental department manager. When Mr. Cage had problems at work, Mr. Wilburn attempted to accommodate Mr. Cage's requests and moved him to different departments. Mr. Wilburn recalled only one time that Mr. Cage complained about dust; Mr. Cage testified that he had repeated problems with smells, that particles from cardboard boxes and styrofoam, metal flakes or particles that came from the machinery and soldering smoke and electrical smells made him ill. Nevertheless, he worked with the sarcoidosis and chronic asthma until he left Sharp in 1999. Mr. Cage requested an extended leave of absence in February 2000. He retired seven months later. Mr. Cage stated that Darrell Smith<sup>3</sup>, his department manager, was the individual to whom he reported when he had to leave work and that Mr. Smith knew Mr. Cage had asthma.

Mr. Cage was declared 100% disabled by the Social Security Administration and began receiving \$1176 in social security disability benefits in 2000. He receives \$27.92 in pension benefits from the piano company. For approximately the last year, his pastor has paid him \$215 per week as the church music minister. Even though Mr. Cage plays piano for his church on Sunday, he cannot do so for more than ten minutes at a time. He cannot sing because of his asthmatic condition.

He is not looking for employment and reports that he cannot work. He cannot go outside because he experiences breathing problems. He cannot be around people who wear cologne or perfume, or people who smoke. Dust and carpet residue irritate his breathing, and walking ten feet exhausts him. He cannot cut his grass. His daughter cleans his house and cooks his food for him since he cannot tolerate odors and strong smells without triggering an asthmatic attack. He cannot play sports nor can he shop at the grocery store unless he rides in a little cart. On a daily basis, he tries to walk on a treadmill for exercise; if able, he will go to a gym to follow the treatment prescribed for him. At home, he eats his meals, showers, watches television, uses a nebulizer machine four times a day to help him breathe, takes medicines, follows the prescribed medical treatments, and naps. In addition to sarcoidosis and asthma, he suffers from bronchitis and hypertension.

Dr. Richard Boswell, a board certified internist with a subspecialty certification in pulmonary disease and critical care medicine, examined Mr. Cage and assigned him a 90% to 95% permanent impairment rating due to his poor lung function. Dr. Boswell stated that Mr. Cage's shortness of breath would not allow him to perform manual labor. According to Dr. Boswell, if Mr. Cage can

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<sup>2</sup> Mr. Cage was required to complete the employer's Leave Request Form for Personal Serious Health Conditions to be approved for leave. The dates that he completed the forms are: November 8, 1998; February 4, 1999; April 30, 1999; June 14, 1999; August 5, 1999; September 27, 1999; and March 17, 2000. All of his requests were approved by Mr. Wilburn.

<sup>3</sup> Mr. Cage initially stated that the supervisor was Darrell Gray, but corrected his testimony to clarify that Darrell Smith was his department manager and the individual to whom he reported when he had to leave work.

smell any substance in the environment, he needs to avoid it; any kind of odor can cause Mr. Cage to experience shortness of breath.<sup>4</sup> Dr. Boswell was provided with copies of Material Safety Sheets that indicated various substances, materials, fumes, and chemicals that were located at Sharp Manufacturing. Dr. Boswell opined that any number of them would cause Mr. Cage significant problems. Dr. Boswell, in explaining the causal relationship between Mr. Cage's employment at Sharp and an aggravation or exacerbation of Mr. Cage's underlying lung condition, stated

. . . when he was at Sharp he missed a lot of work, would come in to work, work for a while, get symptomatic, have to go home, stay home for one, two, three days, come back, work for a while and then have to go back out again. Later in the '90's this got worse and worse. So there is no doubt that his problem was aggravated by things there at work, and the ones . . . he was exposed to are ones that are known to cause respiratory symptoms.

Dr. Paul R. Deaton, board certified in internal medicine, pulmonary diseases and critical care medicine, treated Mr. Cage for sarcoidosis and asthma. He explained that sarcoidosis is an inflammatory condition that usually involves the lungs, but can also involve other organs in the body. According to Dr. Deaton, the etiology for sarcoidosis is unknown at the present time. He stated that asthma is a more reversible disorder, as the airways are sometimes obstructed, but such obstruction can be relieved. He stated that classic symptoms of asthma include shortness of breath, coughing and wheezing. Dr. Deaton further explained that some severe viral infections can cause asthmatic-like conditions. He also opined that environmental exposures are thought to contribute to asthma and some occupational exposures can induce asthma.

In treating Mr. Cage, Dr. Deaton recommended that he be evaluated for a lung transplant because of the severity of his lung impairment and the possibility that it might affect his heart function. Dr. Deaton opined that Mr. Cage is restricted in employment due to the severe impairment in his lung function. Dr. Deaton said that Mr. Cage should avoid an environment that includes irritants to the lungs, such as smoke, odors, chemicals and dust, and that Mr. Cage would obviously have to avoid exertion because it would be very difficult for him to perform tasks where he exerted himself. Dr. Deaton found Mr. Cage to be severely impaired and assigned 90% of the impairment to the sarcoidosis and 10% to the asthma.<sup>5</sup>

Dr. Deaton further opined that Mr. Cage's employment at Sharp aggravated his asthma, but probably did not aggravate his sarcoidosis. However, Dr. Deaton was not in a position to determine what percent of the impairment could be attributed strictly to the aggravation of the asthma.<sup>6</sup> Dr. Deaton did indicate that exposure to chemicals and vapors could cause Mr. Cage's asthma to be aggravated. According to Dr. Deaton, Mr. Cage "was exposed to agents that are known to aggravate asthma, and that is usually good enough to say that it contributed to the asthmatic type condition."

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<sup>4</sup> Dr. Boswell stated as an example that cleaning supplies such as ammonia would be one of the worst triggers.

<sup>5</sup> Dr. Deaton did not state precisely that Mr. Cage is 100% impaired, but a thorough review of Dr. Deaton's deposition leaves the reader with the definite conclusion that Dr. Deaton is of that opinion.

<sup>6</sup> Dr. Deaton testified that "[i]t's very difficult to sort out his sarcoidosis from the asthma."

Dr. Deaton did agree that he did not know what level of exposure Mr. Cage had to various chemicals at Sharp, or even if Mr. Cage had any exposure to a list of chemicals set forth on numerous MSDS<sup>7</sup> data sheets. Dr. Deaton further clarified that a person does not get evaluated for a lung transplant “except for conditions like sarcoidosis or emphysema.” Dr. Deaton agreed that it was difficult to determine if Mr. Cage could not work because of the asthma or the sarcoidosis.

### **Standard of Review**

Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). The reviewing court is required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. *Wingert v. Gov’t. of Sumner County*, 908 S.W.2d 921, 922 (Tenn. 1995). Conclusions of law are subject to de novo review on appeal without any presumption of correctness. *Hill v. Wilson Sporting Goods Co.*, 104 S.W.3d 844, 846 (Tenn. 2002).

### **Causation**

The employer argued that the medical proof submitted by the employee was speculative as to causation and based solely upon assumptions. Although causation cannot be based upon merely speculative or conjectural proof, absolute certainty is not required. *Reeser v. Yellow Freight Sys., Inc.*, 938 S.W.2d 690, 692 (Tenn.1997). Any reasonable doubt in this regard is to be construed in favor of the employee. *Id.* The courts have thus consistently held that an award may properly be based upon medical testimony to the effect that a given incident "could be" the cause of the employee's injury, when there is also lay testimony from which it reasonably may be inferred that the incident was in fact the cause of the injury. *Id.*

Here, the record reflects that the employer had reason to believe the employees might be overexposed to silicate dust; metal fumes [in combinations such as cobalt, nickel, lead, beryllium, and cadmium]; toner dust; and chemicals such as naphtha, xylene, and toluene. As a result, the employer regularly monitored all areas of the plant. While Mr. Wilburn stated that many of the chemicals had not been used at the plant for a number of years, he characterized some of the odors as ordinary smells, “like cookies baking in the oven.” He stated that employees are required to wear moon suits and respiratory masks and go into a totally enclosed booth when using spray paints. Mr. Wilburn said that he did not think that Mr. Cage worked in any areas where he would have been exposed to such chemicals or dust. He acknowledged that Mr. Cage may have walked through those areas of the plant as the union representative. According to Dr. Deaton, a one-time exposure could have caused Mr. Cage’s condition, depending upon the degree of that one-time exposure. Mr. Cage testified that dust, smoke and odors repeatedly caused him to become ill.

In this case, as in all workers' compensation cases, the claimant's own assessment of his

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<sup>7</sup> Both in the deposition and at trial, the employer introduced material safety data sheets (MSDS) that were prepared over the years by an industrial hygiene group that monitored the plant environment for silicate dust, and chemicals in alcohol, paints, metal, and welding materials to which employees might be exposed.

physical condition and resulting disabilities is competent testimony and cannot be disregarded. *Tom Still Transfer Co. v. Way*, 482 S.W.2d 775, 777 (Tenn. 1972). Mr. Cage testified as to the effects of the odors, smoke and smells on his breathing and general health. The employer did not provide any medical proof to rebut the depositions of Drs. Deaton and Boswell. When medical proof is presented by deposition, the trial court has the discretion to accept the opinion of one medical expert over another medical expert. *Krick v. City of Lawrenceburg*, 945 S.W.2d 709, 712 (Tenn.1997). In this instance, the trial court was not faced with selecting one physician's opinion over another. Both physicians were consistent in finding Mr. Cage severely impaired due to his lung condition, and both physicians opined that his asthmatic condition was aggravated by his work environment. Mr. Cage has adequately carried his burden of proving causation by a preponderance of the evidence. The trial court's findings in this regard will not be disturbed.

### **Permanent Total Disability**

The employer challenges the trial court's ruling that Mr. Cage is permanently and totally disabled because he received \$215 per week as music director for his church. According to the employer, Mr. Cage is engaging in an activity from which he receives regular monetary compensation and as such, cannot be considered permanently and totally disabled. The employer relies upon the language of the workers' compensation statute. The statute defines "permanent total disability" as follows:

When an injury not otherwise specifically provided for in this chapter, as amended, *totally incapacitates the employee from working at an occupation which brings the employee an income*, such employee shall be considered "totally disabled," and for such disability compensation shall be paid as provided in subdivision (4)(A). . . .

Tenn. Code Ann. § 50-6-207(4)(B) (Supp. 2004) (emphasis added).

As a basic rule, any award of permanent total disability must be made in compliance with the statutory definition of total disability. Tenn. Code Ann. § 50-6-207(4) (Supp. 2004); *Vinson v. United Parcel Serv.*, 92 S.W.3d 380, 386 (Tenn. 2002). This conforms with the purpose of the Worker's Compensation Act, which is "to provide compensation for loss of earning power or capacity sustained by work[ers] through injuries in industry." *Mathis v. J.L. Forrest & Sons*, 216 S.W.2d 967 (Tenn. 1949). It is contrary to the remedial purpose of the act to allow an employee both to earn a regular income and to collect for permanent total disability at the same time. *Rhodes v. Capital City Ins. Co.*, \_\_\_ S.W.3d \_\_\_, \_\_\_ (Tenn. 2004).

In *Rhodes*, the Tennessee Supreme Court revisited its earlier decision in *Skipper v. Great Central Ins. Co.*, 474 S.W.2d 420 (Tenn.1971).<sup>8</sup> In *Skipper*, the Court held that in determining

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<sup>8</sup> In *Skipper*, the Court held that the

fact an employee is employed after the injury in the same type of employment and at the same wages does not per se preclude the court from finding he is totally disabled as the words are used in Tennessee Code Annotated section 50-1007(e) [now 50-6-207(4)(B) ]. To hold otherwise would have the result of discouraging

permanent total disability as defined in Tennessee Code Annotated section 50-1007(e) [now 50-6-207(4)(B)], a person's employment after injury was a factor to be considered along with all other factors involved when applying the test, which is whether an employee, in light of his education, abilities, physical and/or mental infirmities, is employable in the open labor market. 474 S.W.2d at 424. The evidence must demonstrate that the combination of the employee's limitations and the other factors rendered the employee unemployable in the open market and therefore totally disabled. In order for such a situation to occur, the evidence would have to show that the only reason that the employee was currently working was through the magnanimity of his or her employer. *Rhodes*, \_\_ S.W.3d at \_\_.

In this instance, Mr. Cage's lung condition is so severe that he cannot engage in any manual labor and he must avoid environments that expose him to dust, smoke, smells or other irritants that will trigger asthmatic attacks. He receives social security disability for a 100% disability. While Mr. Cage has skills as a musician, his own pastor, Mr. Rogers, testified that when the weather is bad, Mr. Cage cannot come to church or rehearsals because he becomes congestive and that "it seem like he go in some type of semi-spell, gagging at the breath and even to the state where he cannot even come to church and play the keyboards for the church." Mr. Rogers testified that such events occur "often, very often." Nevertheless, the church pays Mr. Cage \$215 for working "twice a week, Tuesday and Sundays."

Dr. Boswell stated that with Mr. Cage's shortness of breath, there was no manual labor job that Mr. Cage could do, and if he were able to have a job that did not require manual labor, Mr. Cage would only be able to work in short spells, probably not more than three or four hours at a time. Dr. Deaton opined that employment for Mr. Cage is very limited due to his shortness of breath, secondary to his severely impaired lung function. Dr. Deaton said that Mr. Cage would not able to perform tasks where he had to exert himself and that Mr. Cage should avoid all environments that include irritants to his lungs, such as smoke, dust, smells and chemicals. Dr. Deaton said that even if Mr. Cage tuned pianos, going into other people's homes could be a limitation for him, depending upon the environment in those locations. The only reason that Mr. Cage had income<sup>9</sup> was due to the generosity of his church, not because he was employable in the open labor market. Like the extremely rare situation in *Skipper* where an injured employee could, at the same time both work and be found permanently and totally disabled, the evidence in this record supports a finding that the combination of limitations and other factors rendered Mr. Cage unemployable in the open market and therefore totally disabled. The trial court is affirmed as to this issue.

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those few hardy individuals who try to work under great physical handicap, by the threat of denying them compensation which they might otherwise be entitled to if they did not work. We do not think it was the intent of the Legislature that the Workmen's Compensation Statutes be so construed.

474 S.W. 2d at 424.

<sup>9</sup> Mr. Cage receives social security disability and a small pension, but these do not qualify as income under the workers' compensation statute.

## Notice

The employer contends that Mr. Cage did not give notice of his injury within the required thirty day period, asserting that the first time the employer was aware of Mr. Cage's workers' compensation claim was when he filed his lawsuit. The trial court found no evidence that Mr. Cage was aware of the causal relationship between his job exposures and his respiratory disability until his physicians testified in this proceeding. The record reflects that Mr. Cage provided his employer with proper written notice each time he completed a "Leave Request Form for Personal Serious Health Conditions." The employer provided Mr. Cage with seven months of approved medical leave before he retired from the company. The employer provided him with medical treatment for his lung condition through Dr. Tickle and Dr. Fountain, two company physicians who treated him during his employment. Mr. Cage submits that an employee cannot give notice of an injury until he in fact knows the cause, the nature of the illness and the extent of the impairment. This is not an accurate statement of existing law regarding notice.

The case law is clear that immediately upon the occurrence of an injury, or as soon thereafter as is reasonable and practicable, an injured employee must, unless the employer has actual knowledge of the accident, give written notice of the injury to her employer. Tenn. Code Ann. § 50-6-201. Where the employer denies that a claimant has given the required written notice, the claimant has the burden of showing that the employer had actual notice, that the employer had waived written notice, or that the claimant had either complied with the requirement or had a reasonable excuse for her failure to do so, as notice is an essential element of the claim. *McCreary v. Yasuda Fire and Marine Insurance Company of America*, No. 01S01-9507-CH-00106, 1996 WL 73830 at \*2 (Tenn. Sp. Workers' Comp. Panel February 20, 1996). In *McCreary*, the Special Workers' Compensation Panel stated that a delay in asserting a compensable claim is reasonable if the employee has a limited understanding of her condition and her rights and duties under the Workers' Compensation Act. *Id.* In this case, the employer had as much knowledge of the nature of the injury as did the employee. In 1996, Mr. Cage provided the employer with a letter from Dr. Tickle regarding his asthma and attacks at work. Mr. Cage submitted proper written requests for medical leave. Medical records were provided to the employer. The employer took steps to accommodate Mr. Cage's asthma at work. The record reflects that both parties had limited knowledge of the injured worker's condition. The two pulmonary specialists explained the difference between sarcoidosis and asthma but did not clearly explain how to separate the effect of the sarcoidosis and the asthma on Mr. Cage's lungs. They did indicate that the asthma had become progressively worse to the point of disabling Mr. Cage, but neither physician was his treating physician during the time that he worked at the plant. Dr. Tickle and Dr. Fountain, the physicians who treated Mr. Cage before he retired, also retired close to the same time as Mr. Cage. The panel finds that the notice requirement should have been excused. The trial court is affirmed as regards this issue.

## False Representation on Pre-Employment Physical

The employer contends that Mr. Cage falsely represented his medical condition when he failed to disclose his sarcoidosis on his pre-employment medical history form. The employer asserts that it relied upon Mr. Cage's false misrepresentation and that its reliance was substantial because



such knowledge would have impacted Mr. Cage's job assignment. The employer did not provide any evidence as to how Mr. Cage's job assignment would have been affected.

Given that the two physicians who testified in this cause both agreed that the sarcoidosis was not aggravated by the work environment,<sup>10</sup> the record is void of any support for the proposition that Mr. Cage's sarcoidosis would have necessitated any specific job assignment. The exposures at Sharp aggravated Mr. Cage's asthma, not his sarcoidosis. Indeed, Mr. Wilburn testified that "[the sarcoidosis] would not have affected how we would have hired him. We have employees regularly who come in and have asthma or something on their medical history. However, it would affect their job assignment." It was not asthma that Mr. Cage failed to disclose. The record reflects that Mr. Cage was not diagnosed with asthma until after he was employed by Sharp. The employer's assertion that Mr. Cage's failure to disclose his sarcoidosis on his pre-employment medical history form is somehow prejudicial and bars Mr. Cage from recovering benefits is without merit. The trial court is affirmed as it relates to this issue.

### **Medical Benefits**

The employer takes issue with the trial court's ruling that it should be liable for Mr. Cage's medical treatment, including treatment for his sarcoidosis. In *Hill v. Eagle Bend Mfg., Inc.* 942 S.W.2d 483 (Tenn. 1997), the Tennessee Supreme Court reaffirmed the basic rule that an employer takes an employee as he or she is and assumes responsibility of an employee having a preexisting condition aggravated by a work-related injury which might not affect a normal person. While the employer does not take issue with this rule, it contends that Mr. Cage made a material misrepresentation on a pre-employment medical history form. As discussed above, the failure to disclose the sarcoidosis was not considered material to the employer as it related to hiring Mr. Cage, but rather to his job assignment. Indeed, the record provides no support for the statement that the failure to disclose the sarcoidosis on the medical history form was material to Mr. Cage's employment or subsequent job assignments.

Mr. Cage has properly relied upon the above cited principle that an employer "takes an employee as he . . . is and assumes the responsibility of having a pre-existing condition aggravated by a work-related injury which might not affect a normal person." *Id.* at 488. Further, the employer provides no authority to apportion medical benefits for Mr. Cage's disabling asthmatic condition and his pre-existing sarcoidosis. In *McCormick v. Snappy Car Rentals*, 806 S.W.2d 527 (Tenn.1991), the Tennessee Supreme Court addressed the issue of whether an employer would only be responsible to an employee with a preexisting condition for the disability caused by the employment instead of the entire resulting disability. The Court held that the

rule prohibiting apportionment applies as a matter of law whether or

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<sup>10</sup> Dr. Boswell testified, "I don't think we have enough knowledge that anybody can say with any degree of medical certainty that any exposure aggravated the sarcoidosis because I don't think we have the medical knowledge to make those statements."

not the latest injury aggravates a pre-existing condition or injury of the employee . . . . [t]he insurer covering the risk at the time of the second injury was responsible for the entire award of benefits, even though the second injury did not apparently aggravate the prior one. "The last successive employer *or* insurance carrier, taking the employee as he is found at the time of the accident, will be liable for the entire resulting disability, including all medical expenses arising from the disability and regardless of any pre-existing condition.... This rule applies whether the subsequent injury aggravates or merely combines with a previous injury or condition of the employee."

*McCormick* at 529 (quoting *Bennett v. Howard Johnsons Motor Lodge*, 714 S.W.2d 273, 279 (Tenn. 1986))..

The trial court properly construed the case law in awarding Mr. Cage medical benefits for his pre-existing lung condition, the sarcoidosis, combined with the treatment for his asthma. While Dr. Deaton testified that the lung transplant, if necessary, is attributable to the sarcoidosis and not the asthma, treatment of Mr. Cage's respiratory problems are intertwined and cannot be piecemealed into separate areas for treatment. As stated above, absent some legislative action to the contrary, the employer is liable for the entire resulting disability, including all medical expenses arising from the disability and regardless of any pre-existing condition, whether the asthma aggravates or merely combines with the sarcoidosis. The trial court is affirmed with regards to this issue.

### **Conclusion**

The evidence fails to preponderate against the trial court's findings. We find no error and affirm the judgment of the trial court. Costs are taxed to the employer and its sureties, for which execution may issue if necessary.

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CAROL L. McCOY, SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE  
AT JACKSON  
December 9, 2004 Session

**HENRY L. CAGE v. YASUDA FIRE & MARINE INSURANCE  
COMPANY OF AMERICA, et al.**

**Circuit Court for Shelby County  
No. CT-005830-00**

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**No. W2004-01669-SC-WCM-CV - Filed June 16, 2005**

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**ORDER**

This case is before the Court upon the motion for review filed by Yasuda Fire and Marine Insurance Company and Sharp Manufacturing of America 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 employer and its sureties, for which execution may issue if necessary.

PER CURIAM