

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

**FILED**  
  
June 20, 1996  
  
BLOUNT CIRCUIT  
**Cecil Crowson, Jr.**  
Appellate Court Clerk  
NO. 03S01-9508-CV-00087

RONALD H. ANSELM, )  
 )  
Plaintiff/Appellant )  
 )  
v. )  
 )  
K-VA-T FOOD STORES, INC., )  
 )  
FIREMAN'S FUND INSURANCE )  
 )  
COMPANY and SUE ANN HEAD, )  
 )  
DIRECTOR, DIVISION OF )  
 )  
WORKERS' COMPENSATION, )  
 )  
TENNESSEE DEPARTMENT )  
 )  
OF LABOR, )  
 )  
Defendants/Appellees )

BLOUNT CIRCUIT

NO. 03S01-9508-CV-00087

Hon. W. Dale Young

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**MEMORANDUM OPINION**

**Members of Panel:**

E. Riley Anderson, Chief Justice  
John K. Byers, Senior Judge  
William H. Inman, Senior Judge

**AFFIRMED.**

**INMAN, Senior Judge**

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 alleged that he sustained an injury to his neck, arms and shoulders during the course of his employment by the K-VA-T Food Stores while performing repetitive actions involving the stocking of food shelves from April 1 to May 19, 1992. He further alleged that these repetitive actions aggravated a prior neck injury.

The defendant denied the occurrence of an accidental injury.

The plaintiff began working for K-VA-T as a cashier in September, 1990. He was 50 years old, and had earned his livelihood driving a truck for most of his adult life. In 1987 he was treated for shoulder pain for which, in December 1987, he settled a workers' compensation claim. He suffered recurring pain in 1990 while driving a truck and sought workers' compensation benefits which were awarded in December, 1992. The purported repetitive actions entailed by his most recent job occurred, as heretofore stated, during a six-weeks period in April and May, 1992.

The trial judge found that the injuries complained of did not occur during the plaintiff's employment by K-VA-T, and dismissed the complaint.

Our review is *de novo* on the record accompanied by a presumption that the findings of fact of the trial judge are correct unless the preponderance of the evidence is otherwise. TENN. CODE ANN. § 50-6-225(e)(2).

Dr. Stephen Wiessfeld was the only medical expert called to testify. He said that based on the history related to him, the plaintiff sustained an aggravation to a pre-existing arthritic condition, but conceded that his opinion was dependent upon an accurate history of repetitive arm and shoulder movements. He found no anatomical changes, but relied upon the representations of his patient. Further evidence revealed that the claimed repetitive actions were not as onerous as claimed, which impelled the trial judge to find that the medical testimony was untrustworthy, and unreliable.

The burden to establish each element of a workers' compensation claim is upon the employee claiming benefits. *Oster v. Yates*, 845 S.W.2d 815 (Tenn. 1992). One

of these elements is establishing that an injury occurred during employment. *Smith v. Empire Pencil Co.*, 781 S.W.2d 833 (Tenn. 1989). Another requires medical proof of causation. *Tindall v. Waring Park Ass'n.*, 725 S.W.2d 935 (Tenn. 1987). The evidence in this case clearly reveals that the plaintiff suffered from bilateral shoulder problems before he was employed by K-VA-T, although he gave a contrary history to Dr. Weissfeld. Because of this, the trial judge concluded that the testimony of Weissfeld was without probative value; hence the plaintiff had not medically proved causation.

We cannot find that the evidence preponderates against the judgment, TENN. R. APP. P., RULE 13(d), which is affirmed at the costs of the appellant.

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William H. Inman, Senior Judge

CONCUR:

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E. Riley Anderson, Chief Justice

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John K. Byers, Senior Judge