IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT JACKSON

MARK ANTHONY PARKER Plaintiff/Appellee vs. NATIONAL SURETY CORPORATION Defendant/Appellee and ROYAL INSURANCE COMPANY Defendant/Appellant.	)	MADISON CHANCERY Hon. Joe C. Morris, Chancellor NO. 02S01-9601-CH-00004

FILED

September 9, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

For the Appellant:	For the Appellees:
David T. Hooper Hooper & Hooper Brentwood, Tennessee	T. J. Emison, Jr. Alamo, Tennessee Catherine B. Clayton Spragins, Barnett, Cobb & Butler Jackson, Tennessee

MEMORANDUM OPINION

Mailed:

Members of Panel:

Justice Lyle Reid

Special Judge Joe C. Loser, Jr.

Special Judge Billy Joe White

AFFIRMED

White, Judge

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated section 50-6-225 (e)(3) for hearing and reporting of findings of fact and conclusions of law. In this case the first employer appeals the ruling of the trial court that the injury occurred during his term of employment with the first employer. The trial court found no second injury after April 1 and awarded benefits against the first employer. The second issue is raised by Appellant to the awarding of 40% to each arm. We affirm the findings of the trial court.

The Plaintiff's carpal tunnel symptoms began in the right hand "at the beginning of the 90's." (T. at 24). The left hand became symptomatic "a year or so later." (T. P. 25). His symptoms became worse with time. (T.P. 25).

> "Q. . . .(t)hat you went to the doctor finally when it got so bad that you couldn't stand it. Is that correct?
>
> A. Yes, ma'am."
>
> (T. P. 39).
>
> "Q. . . .(t)hat was while you were working for the first employer?
>
> A. Yes, ma'am."
>
> (T. P. 39).

The Plaintiff had a conversation with the second employer's representative a few days before the second employer became responsible and reported a work related injury while working for the first employer. (T. P. 40).

The complaint here was filed alleging a February 1994 injury. The second employer took over on April 1, 1994.

The employee further testified that,

"Q Activities caused you to experience pain in your hands?

A Yes." (T. P. 63).

There was no evidence of a second injury after April 1, 1994 by lay or medical proof.

Defendant must establish by expert medical evidence the causal relationship between his disability and his employment, activity or condition. *Talley v. Virginia Ins. Reciprocal*, 755 S.W.2d 587, 591 (Tenn. 1989).

"An increase in pain is not a sufficient aggravation" and, to be compensable, "the pre-existing condition must be otherwise injured or advanced by employment. *Smith v. Smith Transfer Corp.*, 735 S.W.2d 221 (Tenn. 1987).

The last injury rule does not apply in this case because "for the last injurious injury rule to have any application, there must be qualitative evidence of a second injury . . . " In any event, the existence of a second injury must be established. *Johnson v. Levi Strauss & Co.*, 17 TAM 9-14.

The second issue is the awarding of 40% to each arm.

Dr. Glenn Barnett testified to a 5% AMA Guideline and gave restrictions. (Barnett Depo. P. 19). Dr. Joseph Boals rated the impairment at 20% to each arm. (Boals Depo. P. 12). The Appellee cites no medical or lay testimony showing the award to be excessive. The trial court saw the witnesses and applied many factors in arriving at 40%.

Appellate review is de novo, accompanied by a presumption of the correctness of the findings of the trial court, unless the preponderance of the evidence is otherwise. T.C.A. §50-6-225 (e)(2). This panel finds that the preponderance of the evidence supports the trial court on both issues of concern, and, therefore, affirm.

Costs taxed to Defendant/Appellant.

_____
Billy Joe White, Special Judge

CONCUR:

_____
Lyle Reid, Justice

_____
Joe C. Loser, Jr., Special Judge