IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
KNOXVILLE, JULY 1996 SESSION

SHELBY WILLIAMS INDUSTRIES, INC.,	)	HAMBLEN CHANCERY
Plaintiff/Appellant	)	
v.	)	
	)	HON. DENNIS H. INMAN,
ALTON SANE,	)	CHANCELLOR
Defendant/Appellee	)	
	)	NO. 03S01-9601-CH-00004

For the Appellant:	For the Appellee:
Joseph J. Doherty Wimberly & Lawson Liberty Center P. O. Box 1066 Morristown, TN 37816-1066	Fletcher L. Irvin 319 East Broadway Newport, TN 37821

M E M O R A N D U M O P I N I O N

M e m b e r s o f P a n e l:

Penny J. White, Justice
Roger E. Thayer, Special Judge
Joe C. Loser, Jr., Special Judge

AFFIRMED IN PART;
REVERSED IN PART.

THAYER, Special 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.

Plaintiff, Shelby Williams Industries, Inc., instituted suit against Defendant, Alton Sane, seeking a determination as to whether the defendant had sustained a work-related injury which was compensable. The Chancellor found the claim to be compensable and fixed defendant's permanent partial disability at fifty percent to the body as a whole.

The employer has appealed insisting the evidence is not sufficient to support the award and that the evidence preponderates against the trial court's findings.

The employee is forty years old and has a twelfth-grade education. He testified he sustained an injury on July 12, 1994, while assembling chair backs; he was using a two-wheel dolly and, as he rolled it, a chair frame started to slide off and he attempted to catch it with the dolly in one hand and the frame in the other hand; while in this position, he felt a jolt in his low back; the next morning his legs tingled, and there was a numb feeling.

He was seen at the hospital emergency room and was released; he also saw the company physician and later an orthopedic surgeon; he returned to work on August 30, 1994.

The employee told the court he was injured again on October 7, 1994, while doing the same type work; he said, while in a twisted position, he bent over to get a chair seat; as he was reaching for the seat, he sneezed, and it felt like he had been shot; he saw the company doctor again and the orthopedic surgeon, who diagnosed the problem as a ruptured disc; surgery was performed during November, 1994; and he had not been released to return to work as of the date of the trial on August 31, 1995.

Dr. William Foster, an orthopedic surgeon, testified by deposition and stated he saw defendant shortly after both the July and October incidents; his opinion in July was that he had suffered a lumbar strain with a possible ruptured dis,c but he did not do further testing as his patient seemed to improve and returned to work; he

examined him again on October 21, 1994 and ordered a myelogram test which indicated a ruptured disc; it was his opinion both incidents together resulted in the rupture of the disc, and he declined to say the sneeze was the only causation factor; he said the rupture started at the July incident and was aggravated by the second event in October; he gave defendant a fifteen percent medical impairment and anticipated he would be able to work again but subject to restrictions on bending and lifting.

Dr. Wayne Page, a family practice physician, testified by deposition and stated he saw the defendant on behalf of the employer; his diagnosis was a back strain, and he was of the opinion the injury was not work-related as the sole cause of the injury was due to the sneezing; he gave an eight percent medical impairment rating; he also examined that portion of the plant where defendant worked and said there was nothing in the atmosphere to cause the sneeze.

The employer argues there was no causal connection between the employee's work and the resulting injury; that the sneeze was unrelated to the work activity, and the claim does not arise out of any hazard of the employment.

Our review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise. TENN. CODE ANN. § 50-6-225(e)(2).

Our research has not led us to any case in our jurisdiction where the employee sneezed under circumstances similar to the present case. However, in the case of *Tapp v. Tapp,* 236 S.W.2d 977 (Tenn. 1951), the employee, while driving an automobile to make a delivery, suffered a coughing spell due to an asthmatic condition and blacked out causing the automobile to run into a ditch. The trial court dismissed the claim for workers' compensation benefits finding the injury did not result from an accident "arising out of" his employment. The Supreme Court reversed, holding that where the personal physical disturbance suddenly and without expectation occurs and contributes to cause an injury to an employee at work, the claim is compensable provided there is present another hazard incident to the

employment which is generally known to exist and which is shown to be the immediate cause of the accident. The decision also states that causal connection does not mean proximate cause as used in the law of negligence but is cause in the sense that the accident had its origin in the hazards to which the employment exposed the employee while doing the work.

In the present action, the trial court found "the sneeze in conjunction with the contorted position" of the employee caused injury to the ruptured disc. We cannot say the evidence preponderates against this finding, and we are of the opinion the rule as announced in the *Tapp* case would render the claim for benefits compensable.

It is also contended the award of fifty percent disability to the body as a whole is excessive. Considering the employee's age, education, work experience and all other factors used in determining an employee's ability to earn wages in the open labor market, we do not think the evidence preponderates against this award. The employee had not returned to work as of the date of the trial.

An issue is also presented regarding the trial court's action in allowing the employer to pay a portion of the judgment into the registry of the court as a means of stopping the accrual of interest on the judgment during the appeal period.

The judgment provided that a portion of the award was commuted in order to pay attorney's fees and the sum of $15,000.00 to the employee. After entry of same, the employer filed a motion under RULE 67.03, TENN. R. CIV. P., reciting that a significant portion of the award was not due and payable and requested the court to permit it to pay same to the court and the employer would not under this procedure be liable for further interest. The motion also stated that Tennessee Workers' Compensation statutes imposed interest on a judgment at the prime interest rate plus five percent and that this would pose an oppressive burden on the employer.

This motion was sustained, and the sum of $37,500.00 was paid to the Clerk and Master for investment in an interest-bearing account. The Chancellor directed the parties to raise an issue concerning the validity of this action.

The employee argues the provisions of TENN. CODE ANN. § 50-6-225(h)(1)

control the question. This section of the Workers' Compensation Act provides:

> If the judgment or decree of a court is appealed pursuant to subsection (e), interest on the judgment or decree shall be computed from the date that the judgment or decree is entered at an annual rate of interest five (5) percentage points above the average prime loan rate . . .

We have examined the rule and the statute and have concluded they are not in conflict as proposed by the employer. We note there is no language in RULE 67 which permits a party to proceed under the rule after entry of a judgment against the party. The rule is commonly referred to as an interpleader rule and is most often used prior to adjudication of a claim in the trial court. We do not deem it necessary to fix all boundaries of the rule but simply find and hold RULE 41, TENN. R. APP. P. provides for the accrual of interest on appealed cases and that TENN. CODE ANN. § 50-6-225(h)(1) regulates the rate of interest on workers' compensation cases while on appeal. To this extent the action of the Chancellor is reversed and the judgment is to draw interest pursuant to the quoted statutory language.

Employee Sane raises an issue regarding the action of the trial court in allowing a set-off in the sum of $3,380.00 as a credit against the award of accrued temporary total disability benefits. These payments were made under group insurance coverage and included sick pay benefits.

We agree it was not proper to allow this credit against temporary total disability benefits. The right to a set-off of this nature was recently addressed by the Supreme Court in *Simpson v. Frontier Community Cr. Union,* 810 S.W.2d 147 (Tenn. 1991). In this case a set-off of $18,422.12 was not allowed because the court found the disability insurance policy, which was introduced as evidence, did not contain an explicit set-off clause allowing the payments as credits against disability benefits. The opinion also stated the right to a set-off existed as a contractual nature between the parties and would only be recognized where there was an express provision in the policy of insurance.

In the present case, the disability insurance policy was not admitted into evidence and the employer has failed to show it is entitled to the set-off as a result of policy language explicitly allowing the credits.

It results the judgment entered in the trial court is affirmed as to the award of disability but is reversed as to the accrual of interest and allowance of a set-off. Costs of the appeal are taxed to plaintiff-employer and sureties.

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Roger E. Thayer, Special Judge

CONCUR:

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Penny J. White, Justice

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Joe C. Loser, Jr., Special Judge

IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE

SHELBY WILLIAMS INDUSTRIES, Plaintiff-Appellant, vs. ALTON SANE, Defendant-Appellee,	))))))))))))	HAMBLEN CHANCERY No. 94-335 No. 03S01-9601-CH-00004 Hon. Dennis H. Inman, Chancellor AFFIRMED IN PART; REVERSED IN PART.

JUDGMENT ORDER

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; andIt it, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the Judgment of the Court.

Costs on appeal are taxed to the plaintiff-employer, Shelby Williams Industries, Inc. and sureties Wimberly & Lawson, for which execution may issue if necessary.

10/15/96