

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE JANUARY 1997 SESSION

FILED

March 24, 1997

Cecil W. Crowson
Appellate Court Clerk

WILLIE BANKS,)	LAWRENCE CIRCUIT
)	
Plaintiff/Appellant)	NO. 01S01-9509-CV-00159
)	
v.)	HON. WILLIAM B. CAIN
)	JUDGE
MERIDIAN INSURANCE,)	
)	
Defendant/Appellee)	

For the Appellant:

Andrea Huddleston
Freemon, Hillhouse & Huddleston
327 W. Gaines
P. O. Box 787
Lawrenceburg, TN 38464

For the Appellee:

W. Charles Doerflinger
P. O. Box 692
8 Public Square
Lawrenceburg, TN 38464

MEMORANDUM OPINION

Members of Panel:

Frank F. Drowota, III, Justice
John K. Byers, Senior Judge
William H. Inman, Senior Judge

**AFFIRMED and
REMANDED**

BYERS, 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 reported that he had injured his back on May 4, 1993. The trial judge found the plaintiff had failed to show by a preponderance of the evidence that he had sustained a permanent impairment and dismissed the complaint.

We affirm the judgment of the trial court.

The undisputed evidence shows the plaintiff suffered from spinal stenosis, a manifestation of the aging process, which is normal for a person of the age of 62, the age of plaintiff. The material evidence consists of the deposition testimony of Dr. Roger Ray, a neurosurgeon, and a CT scan done at Crockett Hospital.

Dr. Ray, when asked on direct questioning, testified the plaintiff sustained a ten percent whole body impairment as a result of the alleged back injury. The finding was based upon the testing given to him and upon his evaluation of the plaintiff and review of the CT scan report.

On cross-examination, Dr. Ray testified he did not use the 4th Edition of the AMA Guides to determine the disability of the plaintiff, but testified he thought he used the 3rd edition. Dr. Ray's testimony was less than clear on whether he used any edition of the Guidelines.

The ultimate outcome of the testimony of Dr. Ray and the finding of the CT scan is that the plaintiff suffered from spinal stenosis, which was not caused by the injury at work. At most, the injury only caused the plaintiff to suffer pain. The plaintiff was released by Dr. Ray to return to work without any limitations.

From the record, we find the plaintiff suffered from an underlying condition that was not caused by the employment. At most, the plaintiff has, by his own report, suffered only pain. There is no evidence the employment caused any progression or aggravation of the underlying condition, but only caused pain. This is not compensable. *Cunningham v. Goodyear Tire and Rubber Co.*, 811 S.W.2d 888 (Tenn. 1991). *See also Townsend v. State*, 826 S.W.2d 434 (Tenn. 1992).

The plaintiff has the burden of showing by competent evidence every essential element to support a claim for compensation. *Tindall v. Waring Park Assoc.* 725 S.W.2d 935 (Tenn. 1987). This includes the obligation to show by a preponderance of the evidence that an injury arose out of and in the course of the plaintiff's employment and, to recover for permanent vocational disability, the plaintiff must show a permanent impairment has resulted from the injury.

The plaintiff in this case has failed to show he sustained a permanent impairment as a result of a work-related injury.

We find no error in the taxing of costs in the trial court to plaintiff.

We affirm the judgment of the trial court and remand this case thereto for the assessment of costs of appeal, which are taxed to the appellant.

John K. Byers, Senior Judge

CONCUR:

Frank F. Drowota, III, Justice

William H. Inman, Senior Judge

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

FILED

March 24, 1997

Cecil W. Crowson
Appellate Court Clerk

WILLIE BANKS,	}	LAWRENCE CIRCUIT
	}	No. 13856 Below
<i>Plaintiff/Appellant</i>	}	
vs.	}	Hon. William B. Cain,
	}	Judge
	}	
MERIDIAN INSURANCE,	}	No. 01S01-9509-CV-00159
	}	
<i>Defendant/Appellee</i>	}	AFFIRMED AND REMANDED.

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; and

It is, 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 will be paid by Plaintiff/Appellant and Surety for which execution may issue if necessary.

IT IS SO ORDERED on March 24, 1997.

PER CURIAM