

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE  
(January 23, 1997 Session)

**FILED**  
  
May 13, 1997  
  
Cecil W. Crowson  
Appellate Court Clerk

CARRIER AIR CONDITIONING CO. )  
and CIGNA PROPERTY AND )  
CASUALTY COMPANIES, )

COFFEE CIRCUIT

Plaintiffs-Appellees, )

Hon. Gerald L. Ewell, Sr.,  
Judge.

v. )

No. 01S01-9607-CV-00135

HENRY MAGUFFIN, )

Defendant-Appellant. )

For Appellant:

For Appellees:

Michael A. Friedland  
Nashville, Tennessee

Michael Lee Parsons  
Gracey, Ruth, Howard, Tate &  
Sowell  
Nashville, Tennessee

MEMORANDUM OPINION

Members of Panel:

Adolpho A. Birch, Jr., Chief Justice, Supreme Court  
Robert S. Brandt, Senior Judge  
Joe C. Loser, Jr., Special Judge

AFFIRMED

Loser, Judge

MEMORANDUM OPINION

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. section 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. In this appeal, the employee or claimant, Maguffin, contends the evidence preponderates against the trial court's finding that he did not suffer an injury by accident. The panel has concluded the judgment should be affirmed.

The claimant was working for Carrier in August of 1993 when he sprained his wrist while operating an air gun, thereby aggravating a pre-existing fracture, or "non-union of the scaphoid bone." His wrist swelled and he felt immediate pain. He received first aid from the company nurse, but continued to work. Almost a year later, because of continuing complaints of pain, he was referred by the employer to an orthopedic surgeon.

The doctor operated and returned the claimant to work with some restrictions. In his deposition, the doctor opined that the injury aggravated the pre-existing condition by increasing pain, but did not create any permanent anatomical change. The surgeon was properly paid by the employer.

The trial court found that the claimant had not suffered an injury by accident as contemplated by the Workers' Compensation Act. Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. section 50-6-225(e)(2).

Under the Tennessee Workers' Compensation Law, injuries by accident arising out of and in the course of employment which cause either disablement or death of the employee are compensable. Tenn. Code Ann. section 50-6-102(a)(5). An accidental injury is one which cannot be reasonably anticipated, is unexpected and is precipitated by unusual combinations of fortuitous circumstances. See Fink v. Caudle, 856 S.W.2d 952 (Tenn. 1993), and cases cited therein.

An employer takes its employee with all pre-existing conditions, and cannot escape liability when the employee, upon suffering a work related injury, incurs disability far greater than if he had not had the pre-existing condition; Rogers v. Shaw, 813 S.W.2d 397 (Tenn. 1991); but if work aggravates a pre-existing condition merely by increasing pain, there is no injury by accident. Townsend v. State, 826 S.W.2d 434 (Tenn. 1992).

The undisputed medical proof from the operating surgeon is that this claimant's aggravation of a pre-existing condition merely increased his pain

and did not cause any anatomical change. Moreover, the evidence fails to establish that the accident increased his disability. Consequently, we cannot say the evidence preponderates against the finding of the trial judge.

The judgment is accordingly affirmed. Costs on appeal are taxed to the defendant-appellant.

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Joe C. Loser, Jr., Judge

CONCUR:

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Adolpho A. Birch, Jr., Chief Justice

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Robert S. Brandt, Judge

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<i>CARRIER AIR CONDITIONING CO.</i>	}	
<i>and CIGNA PROPERTY AND</i>	}	<i>COFFEE CIRCUIT</i>
<i>CASUALTY COMPANIES,</i>	}	
	}	<i>No. 26,888 Below</i>
<i>Plaintiffs/Appellees</i>	}	
	}	<i>Hon. Gerald L. Ewell, Sr.,</i>
<i>vs.</i>	}	<i>Judge</i>
	}	
<i>HENRY MAGUFFIN,</i>	}	<i>No. 01S01-9607-CV-00135</i>
	}	
<i>Defendant/Appellant</i>	}	<i>AFFIRMED.</i>

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 Henry Maguffin, Principal, and Surety, for which execution may issue if necessary.*

*IT IS SO ORDERED on May 13, 1997.*

*PER CURIAM*