

**IN THE SUPREME COURT OF TENNESSEE**  
**SPECIAL WORKERS' COMPENSATION APPEALS PANEL**

**AT NASHVILLE**

(June 9, 1997 Session)

**FILED**

**October 21, 1997**

**Cecil W. Crowson**  
**Appellate Court Clerk**

TRACY JENKINS )

Plaintiff/Appellee )

VS. )

BRIDGESTONE/FIRESTONE, INC., )

Defendant/Appellant. )

RUTHERFORD CHANCERY

Hon. Robert E. Corlew, III,  
Chancellor

No. 01S01-9607-CV-00144

For the Appellant:

Katherine Boyte  
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GRACEY, RUTH, HOWARD, TATE &

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For the Appellees:

Michael J. Vetter  
BREWER, KRAUSE,  
BROOKS & MILLS

Nashville, Tennessee

Charles R. Niewold  
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 IN PART,

REVERSED IN PART

Brandt, Senior 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. §50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law.

The dispute is between the employee, Tracy Jenkins, her employer, Bridgestone/Firestone, and her employer's previous insurer, Yasuda Fire & Marine Insurance Company. The controversy results from Jenkins' increased disability following a court-approved workers' compensation settlement. We conclude that the increased disability is compensable and pursuant to Tenn. Code Ann. §50-6-231 she is entitled to an increase in the previous award. The statute authorizes the modification of an award on the ground of increase or decrease of incapacity due *solely* to the injury.

Jenkins had a pre-existing arthritic condition when she suffered a compensable neck injury at Bridgestone/Firestone in 1991 and underwent surgical fusion of the C4-5 disk. Yasuda was the workers' compensation carrier at that time and was ordered to pay periodic permanent partial disability benefits as well as future medical costs. Jenkins returned to work with restrictions and ultimately was assigned a job operating a tow motor. This job required her to move her neck and arms constantly and to drive while looking backwards.

Jenkins testified that she continued to have pain in her neck and to take pain medication after she returned to work. The doctor who performed the surgery,

Paul R. McCombs, continued to see Jenkins on an “as needed” basis which Jenkins stated was about every three months. In February of 1994, Jenkins called Dr. McCombs and told him that she really needed to see him because her pain had increased.

When Jenkins saw Dr. McCombs, they discussed the possible causes of her increased symptoms, including the possibility that driving the tow motor was a factor. Dr. McCombs examined her and ordered an MRI which showed new anatomical changes in the C5-6 and C6-7 disk levels, changes which were below the surgery site. At this time, Yasuda was no longer the insurance provider for Bridgestone/Firestone. Bridgestone/Firestone and Yasuda could not agree as to which of them, if either, was responsible for additional compensation.

If Jenkins’ 1994 condition was merely increased pain from the earlier injury, for which she already received benefits, then she is not entitled to any more benefits. If, on the other hand, there is a new injury or the severity of the old injury is advanced, then she is entitled to benefits. *Cunningham v. Goodyear Tire & Rubber Co.*, 811 S.W.2d 888, 891 (Tenn. 1991).

Dr. McCombs was the only medical expert who testified. He testified that Jenkins had a pre-existing degenerative arthritic condition and found a narrowing of the cervical canal and diagnosed her as having an accelerated degenerative disk disease with an additional permanent partial disability rating of 4%. Most importantly, Dr. McCombs concluded that the neck fusion at the C4-5 disk level caused the adjacent disk levels to work harder to achieve the same mobility,

accelerating the arthritis between the C5-6 and C6-7 levels. The condition Dr. McCombs found in 1994 is not simply the natural progression of degenerative disc disease. It results from the fusion.

The resolution of this case is difficult due to the nature of the medical evidence. Dr. McCombs in May 1994 wrote Jenkins that the accelerated degenerative disc disease “*is not related* to your previous disc herniation at the C4-5 level which was directly work related” (emphasis added). If the doctor had testified to that at trial, the decision in this case would be easy. Jenkins would not be entitled to any additional compensation.

But in his deposition, Dr. McCombs said something seemingly different.

“I can say with a reasonable degree of medical certainty that it [the degenerative disc disease] *was related* to her neck fusion *solely* and not related to bouncing around on a tow motor”(emphasis added). Though it is difficult to reconcile these two statements, when Dr. McCombs’ testimony is taken as a whole, it becomes clearer.

He emphasized that the 1994 condition was a progression of symptoms related to her neck fusion. As noted, the fusion at C4-5, he said, caused the adjacent levels to work harder to achieve the same mobility and accelerated the arthritis between other levels. He could not relate her accelerated degenerative disk disease directly to her tow motor activities but stated that any movement, absent immobilization in an upper body cast, would have caused the wear and tear

to the new disk levels.

We conclude that this satisfies the statute's "solely" requirement. When the movement of ordinary living advances the severity of the condition, it is due solely to the injury. Otherwise, no workers compensation award could ever be modified. Everyone moves to some degree, regardless of the severity of their disability.

But if the increase in incapacity is due to some other cause, such as out-of-the-ordinary non-work-related trauma or is caused by work, then the increase is not due solely to the previous injury.

We therefore conclude that the previous workers' compensation award should be modified pursuant to Tenn. Code Ann. §50-6-231.

None of the parties complain about the amount of the award, 16%, so that portion of the trial court's decision is affirmed. The award against Bridgestone/Firestone of a small amount of discretionary costs, \$880, is modified and is awarded against Yasuda.

In summary, we affirm the trial court's finding that Jenkins is entitled to workers' compensation for the 1994 condition and affirm the finding of 16% permanent partial disability. We reverse the trial court's finding that the additional disability, future medical expenses, and discretionary costs should be assessed against Bridgestone/Firestone, and hold that they should be assessed against Yasuda. Costs on appeal are assessed against Yasuda Fire & Marine

Insurance.

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Robert S. Brandt, Senior Judge

CONCUR:

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Adolpho A. Birch, Jr. Chief Justice

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Joe C. Loser, Jr., Judge

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TRACY JENKINS, ( ( ( Rutherford Chancery  
Plaintiff-Appellee, ( No. 34520  
v. ( Hon. Robert E. Corlew, III,  
Chancellor  
S. Ct. No. 01S01-9607-CV-00144  
BRIDGESTONE/FIRESTONE, INC., ( ( AFFIRMED IN PART;  
Defendant-Appellant. ( REVERSED IN PART.

**JUDGMENT ORDER**

This case is before the Court upon motion for review pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), 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 motion for review is not well taken and should be denied; 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 Yasuda Fire and Marine Insurance, for which execution may issue if necessary.

IT IS SO ORDERED this 21st day of October, 1997.

PER CURIAM

Birch, J. - Not participating.