

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE  
(August 29, 1997 Session)

**FILED**

**October 31, 1997**

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

CHARLES C. JONES,	)	RUTHERFORD CIRCUIT
	)	
Plaintiff-Appellee,	)	Hon. Robert Corlew,
	)	Judge.
v.	)	
	)	No. 01S01-9703-CV-00057
TRIDON and LIBERTY MUTUAL	)	
INSURANCE COMPANY,	)	
	)	
Defendants-Appellants,	)	
	)	
and	)	
	)	
ROYAL INSURANCE COMPANY,	)	
	)	
Defendant-Appellee.	)	

For Appellants:

Luther E. Cantrell, Jr.  
Davies, Cantrell & Humphrey  
Nashville, Tennessee

For Appellee, Jones:

Jim Wiseman  
Sally Schneider  
Murfreesboro, Tennessee

For Appellee, Royal Insurance Company:

Randolph A. Veazey  
Glasgow & Veazey  
Nashville, Tennessee

MEMORANDUM OPINION

Members of Panel:

Frank F. Drowota, III, Associate Justice, Supreme Court  
William H. Inman, Senior Judge  
Joe C. Loser, Jr., Special Judge

AFFIRMED IN PART  
REVERSED IN PART

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 defendants-appellants contend (1) the evidence preponderates against the trial court's finding of an injury by accident, (2) the evidence preponderates against the trial court's finding that the claimant's injury was one arising out of the employment, (3) the trial court exceeded its authority under an agreed order, and (4) the evidence preponderates against the trial court's award of medical and temporary total disability benefits. As discussed below, the panel has concluded the award of medical and temporary total disability benefits should be reversed and the judgment otherwise affirmed.

The claimant, Jones, was an employee of the employer, Tridon, on January 3, 1993, when he suffered a compensable back injury and was provided some medical benefits by the employer's insurer, Royal. He continued to work and, in January of 1994, requested additional benefits, claiming a new injury. He was given a list of approved physicians but chose, without further consulting the employer or its insurer, to see a chiropractor who was not on the list.

The trial court found that a compensable injury occurred on January 21, 1994 and awarded the medical expenses for treatment by Dr. McCombs, 36 weeks of temporary total disability benefits and permanent partial disability benefits based on 15% to the body as a whole. No issue has been raised with respect to the extent of permanent partial disability.

Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. section 50-6-225(e)(2). This panel is required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. Wingert v. Government of Sumner County, 908 S.W.2d 921 (Tenn. 1995). Where the trial judge has seen and heard the witnesses, especially if issues of credibility and weight to be given oral testimony are involved, considerable deference must be accorded those circumstances on review. Humphrey v. David Witherspoon, Inc., 734 S.W.2d 315 (Tenn. 1987).

(1)

The claimant testified that he suffered back pain when he was bending over to pick up a crate at work on January 21, 1994. He reported it to his supervisor the same day, but was able to complete his shift. The pain was so severe by the next morning he had difficulty getting out of bed and was unable to work. A chiropractor diagnosed a bulging disc.

An accidental injury is one which cannot be reasonably anticipated, is unexpected and is precipitated by an unusual combination of fortuitous circumstances. A. C. Lawrence Leather Company v. Loveday, 455 S.W.2d 141. From a deliberate consideration of the record, the panel finds the evidence fails to preponderate against the trial court's finding that the claimant suffered an injury by accident on January 21, 1994, while bending over to pick up a crate.

(2)

An accidental injury arises out of one's employment when there is apparent to the rational mind, upon a consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Fink v. Caudle, 856 S.W.2d 952 (Tenn. 1993). In order to establish that an injury was one arising out of the employment, the cause of the injury must be proved by expert medical testimony. Thomas v. Aetna Life and Cas. Ins. Co., 812 S.W.2d 278 (Tenn. 1991). Chiropractors are competent to testify as experts within the scope of their profession. Humphrey v. David Witherspoon, supra.

The proof of causation in this case came from the medical report of the chiropractor, wherein he opined that the claimant's injury was one arising out of his employment. We find in the record no countervailing expert medical testimony. Consequently, we do not find the evidence to preponderate against the trial court's finding that the injury was work related.

(3)

On application of the claimant and with the consent of the employer, an interlocutory order was entered in the trial court for a bifurcated trial. It was agreed that the first hearing would be solely for the purpose of determining whether the claimant had suffered a compensable injury. The order specifically provided that the court would make no "determination of liability between the defendants" at the first hearing.<sup>1</sup> Pursuant to that agreed order, the trial court conducted a hearing and made an interlocutory finding that the claimant suffered a compensable injury by accident on January 21, 1994.

The claimant and Liberty Mutual contend the trial court "exceeded its authority under the agreed order," by fixing the date of the injury. We disagree. Moreover, parties to litigation are not at liberty to limit a court's

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<sup>1</sup> The date of injury is deemed significant to the parties because there was a change of insurers between January, 1993 and January, 1994.

authority, or subject matter jurisdiction. That would be the exclusive province of the General Assembly, which has expressly given the circuit court, concurrently with chancery and criminal courts, jurisdiction to determine claims under the Workers' Compensation Law of this state. Tenn. Code Ann. section 50-6-225(a),(b) and (c).

Additionally and as already noted, the evidence fails to preponderate against the trial court's interlocutory finding, from which the trial judge wisely denied an application for an interlocutory appeal. While bifurcated trials may be fashionable, they usually serve little purpose in workers' compensation cases. The third issue is resolved in favor of the claimant.

(4)

#### Medical Expenses

When a covered employee suffers an injury by accident arising out of and in the course of his employment, his employer is required to provide, free of charge to the injured employee, all medical and hospital care which is reasonable necessary on account of the injury. Tenn. Code Ann. section 50-6-204. The injured employee is required to accept the medical benefits provided by the employer and must consult with the employer before choosing a treating physician and, unless the injured employee has a reasonable excuse for the failure to consult with the employer first, the injured employee may be responsible for his own medical expenses. Emerson Electric Co. v. Forrest, 536 S.W.2d 343 (Tenn. 1976).

In this case, the evidence establishes that the employer offered medical care from a list of three physicians and that the claimant simply rejected all three in favor of one of his own choosing, without a reasonable excuse for doing so. Consequently, the award of medical expenses is reversed.

#### Temporary Total Disability Benefits

Temporary total disability refers to the injured employee's condition while disabled to work because of his injury and until he recovers as far as the nature of his injury permits. Redmond v. McMinn County, 209 Tenn. 463, 354 S.W.2d 714 (1962). Benefits for temporary total disability are payable until the injured employee is able to return to work or, if he does not return to work, until he attains maximum recovery from his injury, at which time his entitlement to such benefits terminates. Prince v. Sentry Ins. Co., 908 S.W.2d 937 (Tenn. 1995). If disability exists for less than seven days,

excluding the day of the injury, such benefits are not allowed. Tenn. Code Ann. section 50-6-205(a).

We find in the record no evidence that the claimant was disabled to work for seven days or more. The award of temporary total disability benefits is accordingly reversed.

The judgment is otherwise affirmed. Costs on appeal are taxed one-half each to the plaintiff-appellee and the defendants-appellants.

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Joe C. Loser, Jr., Special Judge

CONCUR:

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Frank F. Drowota, III, Associate Justice

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William H. Inman, Senior Judge

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

**FILED**

October 31, 1997

Cecil W. Crowson  
Appellate Court Clerk

CHARLES JONES,	}	RUTHERFORD CIRCUIT
Plaintiff/Appellee,	}	No. 33965 Below
	}	
vs.	}	
	}	Hon. Robert Corlew,
TRIDON and LIBERTY MUTUAL	}	Chancellor
INSURANCE COMPANY,	}	
Defendants/Appellants,	}	
and	}	No. 01S01-9703-CV-00057
	}	
ROYAL INSURANCE COMPANY,	}	AFFIRMED IN PART,
Defendant/Appellee.	}	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; 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.*

*One-half of the costs will be paid by Plaintiff/Appellee, Charles C. Jones; and the other one-half of the costs will be paid by Defendants/Appellants, Tridon and Liberty Mutual Insurance Company and their Surety, for which execution may issue if necessary.*

*IT IS SO ORDERED on October 31, 1997.*

PER CURIAM