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

FILED

October 21, 1998

Cecil Crowson, Jr.
Appellate Court Clerk

ROBBIE BICKERS,	)	
	)	
Plaintiff/Appellant,	)	Shelby Chancery
	)	
v.	)	No. 02S01-9710-CH-00097
	)	
CIGNA INSURANCE COMPANY,	)	Honorable D. J. Alissandratos, Chancellor
	)	
Defendant/Appellee.	)	

For the Appellant:

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For the Appellee:

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

Members of Panel:

Senior Judge John K. Byers
Special Judge F. Lloyd Tatum
Special Judge Paul R. Summers

AFFIRMED **TATUM, Special Judge**

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 to the Supreme Court of findings of fact and conclusions of law.

The complaint filed by the plaintiff, Robbie Bickers, alleges that on February 24, 1996 he was injured while employed for Parsec, Inc. at its Memphis, Tennessee rail yard. The complaint further charges that, as a result of the accident, he sustained injuries to his arms, chest, neck, and back.

After considering the evidence, the chancellor found that the plaintiff failed to carry the burden of proof and rendered judgment in favor of the defendant, CIGNA Insurance Company, which is the workers' compensation carrier for the plaintiff's employer.

In his only issue, the plaintiff states:

> Whether the proof supports a finding that the plaintiff suffered a compensable injury to his right wrist for which he retains permanent impairment.

Since the issue presented to us questions only the action of the trial judge in failing to compensate plaintiff for permanent impairment to the right wrist, we will not elaborate in this opinion on the evidence concerning the other alleged injuries of the plaintiff.

On February 24, 1996, plaintiff was operating a "yard mule," which is a half-truck. While removing heavy loads from a railcar, a container box separated from the frame, lifting plaintiff's truck-tractor rig off the ground and then slamming it back on the ground, allegedly injuring the plaintiff.

The plaintiff was taken to the St. Joseph Hospital emergency room in Memphis and was treated briefly by Drs. Vernon Miller and Thomas Fowlkes. These doctors later referred the plaintiff to Dr. Mark Harriman, an orthopedic surgeon, who continued to treat the plaintiff. He was later examined by Dr. Joseph C. Boals, on two occasions.

The plaintiff testified that because of his wrist injury, he had a lack of grip and "catching." He stated that due to this he could not use a hammer or turn wrenches. He also complained of difficulty with his back and shoulder.

After the accident, the plaintiff was first seen by Dr. Vernon Miller, who primarily treats weight loss. He treated the plaintiff on February 26, 1996 and March 4, 1996. The plaintiff originally complained of injuries to his chest, right ankle, right hand, right forearm, and left forearm.

From tests, x-rays, and examination on February 26, Dr. Miller was of the opinion that the plaintiff suffered a contusion to his right forearm and abrasion to his right hand.

The plaintiff was also seen by Dr. Thomas Fowlkes on February 28, 1996. At that time, the plaintiff was complaining of pain in chest, right wrist, and foot. The right wrist was tender and had abrasions. Dr. Fowlkes's diagnosis was multiple contusions, abrasions, and a suspected rib fracture.

On the March 4, 1996 visit to Dr. Miller, the plaintiff was complaining only of pain in the rib region and the right ankle and not the right wrist. At that time, the plaintiff was improving and Dr. Miller told him that he could return to work on March 7, 1996. However, since the plaintiff continued to complain, Dr. Miller referred him to Dr. Harriman, an orthopedic surgeon, for further treatment.

Dr. Harriman first saw the plaintiff on March 14, 1996. Dr. Harriman testified that the plaintiff had minimal swelling and a "little bit" of tenderness in the right wrist. The function of the right wrist was good. Dr. Harriman's diagnosis was a sprained wrist and heel bruise. Dr. Harriman advised plaintiff that he could return to work at full duty.

On March 28, 1996, the plaintiff again saw Dr. Harriman. Plaintiff told the doctor that his wrist was "doing great," but he still complained of soreness in the heel. He could continue to work "full duty."

Dr. Harriman saw the plaintiff on April 24, 1996 and again on May 21, 1996. On these two visits, the plaintiff made no complaint with respect to his wrist.

Dr. Harriman did not see the plaintiff again until February 10, 1997 when the plaintiff complained of heel pain and wrist pain. Examination revealed tenderness on the back of the wrist, some decrease in palmar flexion, and some clinical decrease in grip strength. X-rays were taken of the wrist and other areas of which the plaintiff was complaining and the x-rays were normal. The doctor's impression at this time was "wrist soreness, possibly tendinitis."

Dr. Harriman again saw the plaintiff on March 3, 1997 at which time the plaintiff told the doctor that "something is not right" in his wrist, but his pain and difficulty were different. He did not have pain on the back of the wrist as on previous occasions, but had some pain with full extension of the ring finger and pain in the wrist on the opposite side on the back of the wrist. He had a pre-existing problem with his small finger and could not extend it due to an old injury. He also had heel pain.

The doctor's impression was tendinitis of the wrist. He was scheduled to return in April, 1997, but did not show up. The doctor, at this time, felt that the plaintiff had no permanent impairment from injuries caused by the industrial accident.

Dr. Harriman thought that tendinitis could possibly result from the accident if it had continued from the time of the injury throughout his treatment. However, the plaintiff had no complaints regarding his wrists for at least eight months and because of this fact, the doctor did not think that the tendinitis was a result of the accident.

We note that in August, 1996, plaintiff testified in a deposition that at this time he was having problems only with his heel, except that he might have some occasional problems with his back. He said nothing about having problems with his shoulder or wrist at this time.

Dr. Joseph C. Boals, an orthopedic surgeon, gave two depositions. In his deposition of September 19, 1996, he stated that he saw the plaintiff on April 16, 1996. At this time, the plaintiff complained only of rib pain, bruised back, and an injury to his right ankle and heel. There was no record of any complaint made to Dr. Boals concerning his right wrist on this occasion and the doctor's examination was restricted to the back and right heel.

The second deposition of Dr. Boals was taken on April 14, 1997 at which time he testified that the plaintiff returned to him on November 12, 1996, stating that he had also injured his right wrist in the industrial accident. An examination of the wrist revealed tenderness to palpitation over the wrist with 45 degrees of flexion. Otherwise, the wrist appeared normal.

Dr. Boals's diagnosis from the examination of the wrist was that the plaintiff had residual loss of motion secondary to soft tissue injury of the right wrist. This was based upon a 15- degree loss of flexion. Dr. Boals was of the opinion that the plaintiff suffered

two and one-half percent impairment to the right upper extremity, according to the AMA Guidelines.

It is noted that the tenderness and loss of flexion reported by Dr. Boals required patient participation.

When questioned on cross-examination concerning the long periods that the plaintiff made no complaint of problems with his wrist, Dr. Boals described plaintiff's history as "bizarre."

A party claiming the benefits of the Workers' Compensation Act has the burden of proof to establish every essential element of his claim by a preponderance of all of the evidence. White v. Werthan Ind., 824 S.W.2d 158, 159 (Tenn. 1992). The employee must establish by expert medical evidence the causal relationship between the employment activity which caused his injury and the resultant disability. Masters v. Industrial Garments Mfg. Co., 595 S.W.2d 811, 812 (Tenn. 1980).

The trial court has the discretion to accept the opinion of one medical expert over another medical expert. Johnson v. Midwesco, Inc., 801 S.W.2d 804, 806 (Tenn. 1990).

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 findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2); Stone v. City of McMinnville, 896 S.W.2d 548, 550 (Tenn. 1995).

After considering the entire record, we do not find that the evidence preponderates against the findings and judgment of the trial court. Therefore, the judgment of the trial court must be affirmed. Costs of this appeal are adjudged against the plaintiff.

_____
F. LLOYD TATUM, SPECIAL JUDGE

CONCUR:

_____
JOHN K. BYERS, SENIOR JUDGE

_____
PAUL R. SUMMERS, SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

ROBBIE BICKERS,	)	SHELBY CHANCERY
	)	NO. 107262-3
Plaintiff/Appellant,	)	
	)	Hon. D. J. Alissandratos,
vs.	)	Chancellor
	)	
CIGNA INSURANCE COMPANY,	)	NO. 02S01-9710-CH-00097
	)	
Defendant/Appellee.	)	AFFIRMED.

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 Appellant and surety, for which execution may issue if necessary.

IT IS SO ORDERED this 21st day of October, 1998.

PER CURIAM