IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

RICHARD B. ANDERSON,	)	DAVIDSON CHANCERY
	)	NO. 95-3137-I
PLAINTIFF-APPELLANT,	)	
	)	HON. IRVIN H. KILCREASE,
v.	)	CHANCELLOR
	)	
ALCOA FUKIKARA, LTD. AND	)	
LIBERTY MUTUAL INSURANCE	)	
COMPANY,	)	S. CT. NO. 01S01-9802-CH-00019
	)	
DEFENDANTS-APPELLEES.	)	AFFIRMED

FILED

January 26, 1999

Cecil W. Crowson
Appellate Court Clerk

JUDGMENT

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 plaintiff-appellant, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM

DROWOTA, J., NOT PARTICIPATING

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE
(September 16, 1998 Session)

RICHARD B. ANDERSON,	)	DAVIDSON CHANCERY
	)	
Plaintiff-Appellant,	)	Hon. Irvin H. Kilcrease,
	)	Chancellor.
v.	)	
	)	No. 01S01-9802-CH-00019
ALCOA FUKIKARA, LTD. and LIBERTY MUTUAL INSURANCE COMPANY,	)	
	)	
Defendants-Appellees.	)	

For Appellant:

Steve Norris
Nashville, Tennessee

For Appellees:

Luther E. Cantrell, Jr.
Nashville, Tennessee

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

Members of Panel:

Frank F. Drowota, III, Associate Justice, Supreme Court
William H. Inman, 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. The employee or claimant, Anderson, insists the evidence preponderates against the chancellor's finding that he did not suffer a compensable injury by accident. As discussed below, the panel has concluded the judgment should be affirmed.

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). 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).

From November of 1994 through January of 1995, the claimant experienced back and leg pain at work, causing him to seek medical attention. Dr. Catherine R. Stallworth, a specialist in physical medicine and rehabilitation, diagnosed minor spondylolisthesis, a condition in which one vertebra is displaced over another, rather than being properly aligned. The condition, she said, is not work-related, but is usually either congenital or degenerative. The doctor referred the claimant to Dr. Hopp, who did not testify, although the claimant testified equivocally that Dr. Hopp told him he probably hurt his back at work.

Dr. David Gaw examined the claimant and also diagnosed minor spondylolisthesis. Dr. Gaw testified on direct examination that, from the history given by the claimant, his work could have caused, exacerbated or aggravated or accelerated the spondylolisthesis and made it symptomatic. However, the history given by the claimant to Dr. Gaw is not supported by a preponderance of all the evidence and we find in the record no evidence of any anatomical change as a result of the claimant's work. Moreover, Dr. Gaw testified on cross-examination

that the claimant's work did not in any way cause his medical condition and that his medical condition would have occurred even if the claimant had not worked a day in his life.

The claimant contends he should recover because of the similarity between this case and Hill v. Eagle Bend Mfg. Co., 942 S.W.2d 483 (Tenn. 1997). In that case, based on uncontradicted medical proof that the claimant was severely impaired as a result of a work-related accident that aggravated preexisting conditions, as well as supporting lay and expert vocational proof, the trial judge awarded permanent disability benefits. The Supreme Court affirmed that conclusion. The present case is readily distinguishable from that one in that there is no expert vocational evidence and no evidence of severe medical impairment. Additionally, the trial court in the present case found for the employer.

It is true that the employer takes the 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 conditions; Id at 488; but if work aggravates a pre-existing condition merely by increasing pain, there is no injury by accident. Sweat v. Superior Industries, Inc., 966 S.W.2d 31, 32 (Tenn. 1998). To be compensable, the preexisting condition must be advanced, there must be anatomical change in the preexisting condition, or the employment must cause an actual progression of the underlying disease. Id at 33. None of those circumstances is established by a preponderance of the evidence in this case.

For those reasons, the judgment of the trial court is affirmed. Costs on appeal are taxed to the plaintiff-appellant.

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