

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

<p>F U D</p> <p>March 25, 1999</p> <p>Cecil W. Crowson Appellate Court Clerk</p>
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INTERMODAL CARTAGE, INC., and) SIGNA PROPERTY & CASUALTY CO.) Plaintiffs/Counter-) Defendants/Appellees) v.) ROGER DALE CHAMBLISS) Defendant/Counter-) Plaintiff/Appellant)	Davidson County Circuit) No. 97C-2687) Hon. Hamilton Gayden,) Judge) S. Ct. No. 01-S-01-9803-CV-00051) AFFIRMED)
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JUDGMENT ORDER

This case is before the Court upon defendants' 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 appellant and surety, for which execution may issue if necessary.

PER CURIAM

Barker, J., not participating

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

F I L E D

March 25, 1999

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

INTERMODAL CARTAGE, INC.)
and CIGNA PROPERTY &)
CASUALTY CO.,)

DAVIDSON

CIRCUIT

Plaintiffs/Counter-Defendants/)
Appellees)

NO. 01S01-9803-CV-00051

v.)

ROGER DALE CHAMBLISS,)
Defendant/Counter-Plaintiff/)
Appellant)

HON. HAMILTON GAYDEN,
JUDGE

For the Appellant:

For the Appellee:

Steve C. Norris
28 Middleton Street
Nashville, TN 37210

Raymond S. Leathers
150 Second Avenue North, Suite 201
Nashville, TN 37201

MEMORANDUM OPINION

Members of Panel:

Justice William M. Barker
Senior Judge William H. Inman
Special Judge Joe C. Loser, Jr.

AFFIRMED

INMAN, Senior Judge

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 claimant alleged that he sustained a low back injury on July 7, 1997 when he “threw a used tire onto the trailer of his truck” during the course and scope of his employment.

The trial court found that the claimant failed to carry his burden of proof that he suffered an injury by accident arising from employment and dismissed his claim. Our 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 finding, 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).

The claimant is 34 years old. He was employed by Intermodal Cartage, Inc., as a truck driver on October 15, 1996. On July 7, 1997, after a service station attendant changed a flat tire, the claimant loaded it onto his trailer. Sometime later he “noticed a tingling in his legs and lower back” and sought medical treatment the following morning. The ER physician referred him to Dr. Ronald Zellum, a neurosurgeon, who saw the claimant on July 14, 1997. Examination revealed a decreased sensation in his first sacral nerve root distribution and diminished right ankle reflex, superimposed upon scoliosis and a limp. Formal diagnosis was spinal dysplasia, aggravated by the on-job injury as related by the claimant.¹

¹The Employer's position remained constant that the claimant's back problem resulted from scoliosis, a congenital condition, unrelated to his job. Liability for any benefits was denied. For this reason the employee moved the court to bifurcate the trial, and first determine “the issues of compensability, extent of compensable injury, liability for temporary total disability and medical care,” reserving all other issues. As stated, the Court concluded that the claimant failed to carry his burden of proving that he suffered a compensable injury during the course of employment.

Keeping in mind that the alleged tire incident occurred on July 7, 1997, and that the claimant sought ER treatment two days later, the triage nurse recorded claimant's statement of "low back pain times two weeks," and when the claimant saw Dr. Zellum on July 14, 1997, he completed a patient-information form and answered, "No" to an important question as to whether he had a work-related injury. Further, claimant told Dr. Zellum that he had had the described symptoms for three weeks.

Dr. Zellum testified that it was reasonable to conclude that the injury exacerbated a pre-existing condition, but that his diagnostic studies, which included an MRI, myelogram and CT scan, were consistent with the pre-existing condition, and that the tests did not reflect that lifting the tire caused any anatomical changes.

When the medical testimony is presented by deposition, as it was in this case, this Court is able to make its own independent assessment of the medical proof to determine where the preponderance of the evidence lies. *Cooper v. INA*, 884 S.W.2d 446, 451 (Tenn. 1994); *Landers v. Fireman's Fund Ins. Co.*, 775 S.W.2d 355, 356 (Tenn. 1989). Our review of the medical evidence reveals that these evaluative comments of the trial judge are supported by a preponderance of the evidence:

"... Mr. Chambliss had an overriding scoliosis condition that pre-existed his condition that is a predominant cause of this chronic condition, as opposed to acute onset of an injury on the job. There is no bulging disc or spasm, as found by the doctor, and this was a chronic condition that just got worse."

The judgment is affirmed at the costs of the appellant.

William H. Inman, Senior Judge

CONCUR:

William M. Barker, Justice

Joe C. Loser, Jr., Special Judge