IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT KNOXVILLE

JAMES CARDEN,	)	ROANE CHANCERY
	)	
Plaintiff/Appellee	)	NO. 03S01-9712-CH-00151
	)	
v.	)	
	)	
ROANE COUNTY, TENNESSEE,	)	HON. FRANK V. WILLIAMS, III,
	)	CHANCELLOR
Defendant/Appellant	)	
	)	

For the Appellant:

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Gerald L. Gulley, Jr.
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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:
Justice Adolpho A. Birch, Jr.
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 plaintiff was injured in July 1993 while driving a truck during the course and within the scope of his job. The occurrence of the accident is not questioned; neither does the defendant question that the plaintiff suffered a back injury as a result of the accident.

The plaintiff continued his employment with intermittent medical treatment for his back complaints. On September 1, 1995, at his residence, he stooped to pick up an object and suffered another onset of pain.

The complaint was filed November 20, 1995, alleging the occurrence of the traffic accident (as a result of which periodic payments of compensation were made to the plaintiff through November 15, 1995), and subsequent physical impairment.

The thrust of the defense is directed to the incident of September 3, 1995, when the plaintiff allegedly suffered the non-job-related accident at home, from which his present impairment is derived.

The Chancellor found a 40 percent impairment, holding that the incident at his residence was not an intervening cause, but was merely a manifestation of problems which began in 1993.

The issue is whether the evidence preponderates against the finding of the Chancellor.[1]

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[1]The appellant states that the Chancellor found that "the injury sustained by the plaintiff while working at home in 1995 was causally related to a work-related injury the plaintiff had suffered two years previously." As observed, the Chancellor referred to the September 1995 event as a non-intervening incident which was merely a natural progression of the plaintiff's back problems.

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).

Dr. David Hauge, a neurological surgeon, testified that he first saw the plaintiff on September 1, 1995, with complaints of intermittent back pain commencing in 1993, highlighted by the episode of September 1, 1995. On October 25, 1995, during surgery "a large, bulging patulous appearing disc was encountered which was excised in a quadrangular manner and multiple large fragments of his disc material were retrieved without difficulty." The plaintiff progressed satisfactorily and was released to return to work on March 1, 1996, with an impairment rating of ten percent.

Dr. Hauge testified that the July 1993 accident was "the most likely cause" of the plaintiff's disc problems, but that he "could not unequivocally [100%] say" that the bulging disc was caused by this accident because "we don't have imaging studies . . . to compare . . . [and ascertain] how big the disc protrusion was at that time." He then stated that the disc ruptured, *from a clinical viewpoint,* when the plaintiff lifted the yard object. This statement is the basis of the appellant's argument that the yard incident was an intervening cause of the plaintiff's back problem, for which the appellant is not responsible.

The remedial nature of the workers' compensation law has been often discussed by the Supreme Court of this State. We need not elaborate the principle. Because the Law is remedial, the public policy of Tennessee requires that any reasonable doubt as to whether an injury arose from employment should be resolved in favor of the employee. *See, Williams v. Preferred Dev. Corp.,*

452 S.W.2d 344 (Tenn. 1970). When considered in complete context, we agree with the Chancellor that the plaintiff's back problems as of the date of trial were causally related to the 1993 accident and that the yard incident was not an intervening cause. Stated otherwise, we cannot find that the evidence preponderates against the Chancellor's finding.

The appellant argues that the evidence does not justify an award of 40 percent impairment, because the plaintiff returned to his former job for the same wage, thusly triggering the mathematical multiplier of 2.5 times the medical impairment as prescribed by T.C.A. § 50-6-241. The appellee responds that he returned to work for one-half day after September 1, 1995, and did not return to full duty until March 1, 1996. He was dismissed from employment on September 3, 1996, which limits his award to six (6) times the medical impairment rating, since he did not work for the pre-injury employer for one year after he returned to work. We see no error in the Chancellor's computations, and the judgment is affirmed at the costs of the appellant.

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William H. Inman, Senior Judge

CONCUR:

_____

Adolpho A. Birch, Jr., Justice

_____

Joe C. Loser, Jr., Special Judge

IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE

FILED

May 20, 1999

Cecil Crowson, Jr.
Appellate Court
Clerk

JAMES E. CARDEN,	)	Roane Chancery
	)	No. 12,751
Plaintiff-Appellee,	)	
	)	Hon. Frank V. Williams, III, Chancellor
vs.	)	
	)	
ROANE COUNTY, TENNESSEE,	)	NO. 03S01-9712-CH-00151
	)	
Defendant-Appellant,	)	AFFIRMED

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 are taxed to the defendant-appellant and its surety, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM

Birch, J., Not Participating