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

FILED

August 27, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

M.S. CARRIERS, INC.	)	
	)	
Plaintiff/Appellee,	)	Shelby Circuit
	)	
v.	)	No. 02S01-9804-CV-00042
	)	
WILLIAM ORINGE,	)	Honorable James F. Russell, Judge
	)	
Defendant/Appellant.	)	

For the Appellant:

Jack V. Delany
668 Poplar Avenue
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For the Appellee:

Scott D. Carey
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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 Janice M. Holder
Senior Judge L. T. Lafferty
Special Judge J. Steven Stafford

AFFIRMED **LAFFERTY, Senior Judge**

O P I N I O N

This workers' compensation appeal was referred to the Special Workers' Compensation Appeals Panel of the Supreme Court pursuant to Tenn. Code Ann. § 50-6-225(e)(3) (Supp. 1998) for a hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

The plaintiff/counter-defendant employer in this case, M.S. Carriers, Inc., originally filed a petition against the defendant/counter-plaintiff employee, William Oringe, requesting a dismissal of Mr. Oringe's workers' compensation claim for an injury that the company alleged was not work-related. Mr. Oringe filed an answer and counter-complaint for benefits against the company. To avoid confusion on appeal, we will refer to Mr. Oringe as "the claimant" and to M.S. Carriers, Inc., as "the employer."

The case was tried on March 9, 1998. The trial judge found that the claimant failed to prove that his injury arose out of and in the course of employment with M.S. Carriers, Inc., on January 16, 1997. The claimant presents several issues on appeal that can be summarized as follows: (1) Whether the trial court erred in allowing a computer printout surrounding the date in question to be used in the testimony of David Work, the claimant's supervisor at the time of the accident; and (2) whether the trial court erred in finding that the claimant did not sustain a work-related injury. After a careful review of the record, we find that the judgment of the trial court must be affirmed.

At the time of trial, the claimant testified that he was a 33-year-old high school graduate with some vocational training in welding and truck driving, as well as experience as a supply clerk in the National Guard. He worked for the employer, M.S. Carriers, Inc., as an over-the-road truck driver from October of 1991 until January of 1997. In addition to driving a truck, the claimant was responsible for loading and unloading various types of cargo at their destinations. He testified that he had sustained two previous injuries to his back while working for the employer. The first injury occurred in 1993 or 1994 and healed normally. The second injury occurred on October 18, 1996, while the claimant was unloading a refrigerator from a truck with a two-wheeler, and his back "popped." He was treated by his family physician, Dr. James R. Jacobs, who referred him to a neurosurgeon, Dr. Gregory F. Ricca. An MRI revealed a bulging disc, and the claimant was released from

work for two weeks by Dr. Ricca. The claimant stated that he continued to have problems with his back after that time and took medicine to help alleviate the pain.

The injury that is the subject of this lawsuit allegedly occurred on January 16, 1997. The claimant stated that he reinjured his back that day at a Sam's Club or a Wal-Mart in Searcy, Arkansas, while unloading twelve to sixteen pallets of washing powder with a manual pallet jack. There were several thousand pounds of washing powder on each pallet. The claimant explained that he placed the jack under the pallet, pumped it up, and pulled the pallet out of the truck. It was the jack, however, that actually lifted the pallets and not the claimant. The claimant testified that his back began to hurt when he was pulling back on the jack, but he stated that the pain was not as severe as what he felt with his October 1996 injury. The claimant testified at trial that he used the Qual Comm[1] in his truck to report his back injury to his driver-manager, David Work. He received a return message telling him to see a doctor and get a doctor's excuse. In his deposition, the claimant testified that he had called David Work on the phone about the injury on January 16. Thinking that he was going to be all right, the claimant testified at trial that he drove his rig home to Earle, Arkansas, and parked it in his yard. However, in his deposition, the claimant testified that he drove his truck back to M.S. Carriers, Inc., in Memphis, Tennessee, where he picked up his car and drove back to Earle, Arkansas.

The claimant testified that he saw his family doctor, Dr. Jacobs, for back pain, an ear infection, throat pain, and headache on January 17, 1997. On January 19, 1997, he awoke with severe back pain and sought treatment in a local hospital emergency room. There, the claimant received two shots and was referred to his doctor. On January 20, 1997, the claimant again saw Dr. Jacobs, who referred him to Dr. Ricca. After an MRI, the claimant underwent surgery for a ruptured disc on January 27, 1997. The claimant testified that he contacted David Work concerning the doctor's visits and necessity of surgery. He was off work from January to April, 1997, when Dr. Ricca permitted him to return to light duty as a security guard for two weeks. The claimant stated that he was unable to unload trucks and left M.S. Carriers, Inc., for a job with the Coca-Cola Company. After five

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[1]David Work explained that the Qual Comm is a computer installed in every truck that is used to dispatch drivers and also allows the drivers to send messages to the dispatcher.

months, the claimant obtained employment in the maintenance department of the City of Earle, Arkansas.

During cross-examination, the claimant testified he was certain he told Dr. Jacobs on January 17 and 20, 1997, about his back pain and stated that Dr. Jabobs was "lying" in his deposition when he stated that the claimant had not mentioned his back on January 17 and did not know the cause of his back pain on January 20. The claimant explained the discrepancies in Dr. Jacobs's records by saying that the doctor does not write down everything said in his records. However, the claimant admitted that Dr. Jacobs did not conduct any tests on his back or treat him for a back problem on January 17, despite the fact that he allegedly told the doctor about his injury. The claimant acknowledged that on March 5, 1997, he asked Dr. Jacobs to write a note stating that the claimant injured his back on January 16 and was treated on January 20, 1997. The doctor did write this note for him.

The claimant also insisted that he told Dr. Ricca during his first visit on January 23, 1997, that he injured his back at work January 16. When confronted with Dr. Ricca's testimony that the claimant knew of no precipitating cause of his back problems on January 23, the claimant would not say that Dr. Ricca was lying. He could not recall if he told Dr. Ricca for the first time three weeks after his back surgery that his injury occurred on January 18, 1997, a day the claimant was home with his family. The claimant agreed that he refused a job with the employer, because M.S. Carriers, Inc., was not paying for his medical bills, and he wanted to be home with his wife and children.

At trial, the claimant identified his payroll voucher for work done on January 16, 1997, which included the load from Kansas to Searcy, Arkansas, and a load invoice number revealing that he had been paid $70 for unloading cargo in Searcy, Arkansas, on January 16, 1997.

Pat Aeschliman, claims coordinator for M.S. Carriers, testified she was aware of the claimant's October, 1996, injury. Ms. Aeschliman identified an Employer's First Report of Injury form, which showed an injury date of January 16, 1997. The report also stated that the claimant's accident occurred in Searcy, Arkansas, while he was unloading a truck and indicated that the claimant had surgery on January 27, 1997. Ms. Aeschliman stated that

the report was taken on January 30, 1997, by Beverly Hudson, an employee in the employer's risk department, and all the information contained therein was based entirely on the claimant's statements. No investigation was done to verify the information given by the claimant.

Jacquelyn Oringe, the claimant's wife, testified her husband's last day of work was January 16, 1997. The claimant came home that day and informed her that he had injured his back while unloading in Searcy, Arkansas. She stated that her husband had driven his truck to their home in Earle, where it remained until January 23, 1997, when it was picked up by the employer. Mrs. Oringe testified that her husband awoke on Sunday, January 19, 1997, with severe back pain that sent him to the emergency room. On Monday, January 20, Mrs. Oringe took her husband to see Dr. Jacobs. Her husband also saw Dr. Ricca, who performed surgery on her husband's back on January 27, 1997. As a result of the surgery, Mrs. Oringe stated that her husband can no longer play games, such as basketball and football, with their sons, and the family's finances have suffered. Mrs. Oringe also stated that her husband's back continued to hurt while he was employed at Coca-Cola.

David Work, the claimant's driver-manager at the time of the alleged injury,[2] testified that he managed approximately fifty drivers at M.S. Carriers. He sat at a computer that monitored pickups and deliveries and communicated with the drivers via the Qual Comm computer system. Mr. Work explained that each truck was equipped with a computer, and all dispatches, instructions, and messages were sent through the computer system to the drivers, who could send messages in return. Messages sent back and forth between the dispatcher and driver would be received by the other within approximately one minute of the time sent.

Mr. Work identified a computer printout dated January 16, 1997, that he used throughout his testimony. The printout showed that the claimant was in Lenexa, Kansas, and was dispatched to Harrisonville, Missouri, to pick up a load destined for Searcy, Arkansas. According to the printout, the claimant arrived in Searcy on January 17 at 7:51 a.m. Via the Qual Comm, the claimant sent messages at 10:16 a.m., 10:22 a.m., and

[2]Mr. Work testified at trial that he no longer works for M.S. Carriers, Inc.

10:35 a.m. requesting another load. Mr. Work did not have another load for the claimant at that time. At 10:47 a.m., the printout reflected that Mr. Work asked the claimant why he had gone from his pickup in Missouri to Earle, Arkansas, ninety miles out of his intended route. At 11:27 a.m., the claimant reported that his truck was empty at the Wal-Mart in Searcy and requested a "dead head" home at 11:35 a.m. The claimant also reported that his head was hurting. On Sunday, January 19, 1997, the printout reflected that the claimant had a back problem and was going to a doctor. Mr. Work testified that the claimant did not report an injury on January 16, 1997, and the computer records indicated that the claimant was not in Searcy, Arkansas until January 17, 1997.

Mr. Work acknowledged that he was not the keeper of the computer records, nor did he have control over them, although he had access to them. He admitted that he did not have an independent recollection of the events of January 16 or 17, 1997, without the printout. According to Mr. Work, the computer automatically sets the date reflected on the printouts, and he had never seen a wrong date before. Mr. Work emphatically insisted that the claimant did not report an injury on January 16, 1997.

Medical Testimony

Medical testimony was offered through the depositions of the claimant's long-time family physician and his surgeon. The claimant's physician, Dr. James R. Jacobs, testified that he saw the claimant in October of 1996 for a back injury. An MRI revealed mild degenerative disc disease with a central bulge at the L-5, S-1 level, and Dr. Jacobs subsequently referred the claimant to Dr. Gregory F. Ricca, a neurosurgeon. Dr. Jacobs did not see the claimant again until January 17, 1997. During this visit, the claimant complained of a sore throat and an earache, which was treated with an antibiotic, a decongestant, and anesthetic ear drops. After an episode of severe pain on Sunday, January 19, 1997, the claimant went to see Dr. Jacobs on Monday, January 20, with back pain. The claimant did not state a reason for his pain. Dr. Jacobs performed a straight leg raising examination, which indicated no disc herniation or other problems. The claimant was treated conservatively with muscle relaxants, anti-inflammatories, pain medication, and exercises. He was ultimately seen by Dr. Ricca when his symptoms worsened. The claimant returned to Dr. Jacobs's office on February 10, 1997, for a post lumbar surgery

checkup and was doing well. Dr. Jacobs testified the claimant later came to his office on March 5, 1997, requesting that the doctor write a note stating that the claimant was injured January 16 on the job and had been treated on January 20. Dr. Jacobs wrote a note on March 5 acknowledging that the claimant was seen and treated by his office on January 20, 1997, for back pain and that "[h]e [the claimant] stated that he injured his back while working on 1/16/97." Dr. Jacobs testified that March 5 was the first time he learned of a job-related injury. When Dr. Jacobs saw the claimant on May 2, 1997, he was doing well and requested a note releasing him for regular duty work. Dr. Jacobs was not aware that Dr. Ricca had already released the claimant to go back to full duties and wrote the claimant a note releasing him to regular duty work. Since that time, Dr. Jacobs testified that he has seen the claimant only once in October of 1997 for a cold and earache.

Dr. Gregory F. Ricca, the claimant's neurosurgeon, testified that he first saw the claimant when he injured his back in October of 1996. A review of an MRI and a physical examination by Dr. Ricca indicated that the claimant had low back muscle spasms and a decreased range of motion in his back. Nerve function was normal. The MRI revealed a small ruptured disc at the L-5 level but no pinched nerves. Dr. Ricca concluded that the claimant had a back sprain and released him to regular work duty after two weeks.

Dr. Ricca next saw the claimant on January 23, 1997, at the request of Dr. Jacobs. The claimant told Dr. Ricca that he woke up on January 19, 1997, with severe back pain that radiated into the lower left extremity, but the claimant did not know the cause of his symptoms. A physical examination revealed that the claimant had a marked left limp, oppressive muscle spasms, and a loss of range of motion. A nerve impingement test, or "SLR," indicated a pinched nerve on the claimant's left side. A CT-scan revealed a large, "fresh" ruptured disc pinching the S-1 nerve. Dr. Ricca explained that a "fresh" rupture has different characteristics than older ruptures and generally has occurred within the last couple of months preceding detection. Dr. Ricca performed surgery to remove the disc on January 27, 1997, and the claimant was recovering well at his subsequent visit on February 24. It was at this visit, one month after the surgery, that the claimant first told Dr. Ricca that

he had re-injured his back at work on January 18, 1997.[3] On April 8, the claimant was asymptomatic, and Dr. Ricca recommended the claimant be placed on light duty for two weeks before resuming full work activity and released him from care.

Dr. Ricca stated that an assumption that the claimant was unloading trucks on January 16 and sought treatment at the emergency room on January 19 would be consistent with the claimant's allegations of back injury on January 16, 17, or 18. However, according to Dr. Ricca, a person with degenerative disc disease is prone to a ruptured disc, and a disc may become herniated even when no trauma is involved. He stated that the claimant's herniated disc could have been caused by something other than a work-related injury and that he relied solely on the history given him by the claimant in assessing causation. Dr. Ricca gave an eight percent permanent partial impairment rating to the claimant but did not put any restrictions on his work activities.

Standard of Review

In workers' compensation cases, the standard of review in this Court on issues of fact is *de novo* on the record of the trial court, accompanied by a presumption of correctness of the findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (Supp. 1998); *Krick v. City of Lawrenceburg*, 945 S.W.2d 709, 712 (Tenn. 1997); *Lollar v. Wal-Mart Stores, Inc.*, 767 S.W.2d 143, 149 (Tenn. 1989). The employee has the burden of proof of establishing both causation and permanency by a preponderance of the evidence using expert medical testimony, which is considered in conjunction with lay testimony on how the injury occurred and the employee's subsequent condition. *Thomas v. Aetna Life & Cas. Co.*, 812 S.W.2d 278, 283 (Tenn. 1991). This Court 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, 922 (Tenn. 1995). In making such a determination, we give great deference to the trial court's assessment of oral testimony of witnesses at trial but make our own assessment of the credibility and weight to be given to deposition testimony of medical experts. *See Henson v. City of Lawrenceburg*, 851 S.W.2d 809, 812 (Tenn. 1993);

[3]Dr. Ricca testified that, although his office notes reflected that the claimant told him that he was injured on January 18, 1997, the date could have been January 16.

Townsend v. State, 826 S.W.2d 434, 437 (Tenn. 1992). All reasonable doubt as to whether an injury arose out of employment must be construed in favor of the employee. *White v. Werthan Indus.*, 824 S.W.2d 158, 159 (Tenn. 1992). With these principles in mind, we begin our analysis of the record.

Findings of Fact and Conclusions of Law

I.
Computer Printout

The claimant contends that the computer printout from the Qual Comm system furnished by the employer on the Friday before trial should have been produced pursuant to discovery requests. Thus, the claimant was caught by surprise, and failure to produce this document was prejudicial. The employer counters that there are no local rules requiring parties to exchange exhibits or an exhibit list, and the printout was not subject to disclosure, as it was part of protected work product.

On April 23, 1997, the claimant filed discovery requests pursuant to Tennessee Rules of Civil Procedure 26 and 34 asking for "any documents upon which you [M.S. Carriers] intend to rely upon at trial." The employer objected to the request as "overly broad, unduly burdensome, and seeks information which is protected by the work product doctrine." On Friday, March 6, 1998, at 5:03 p.m., the employer faxed the claimant a copy of the computer printout. The trial was scheduled for 10:00 a.m. on Monday, March 9. However, the record reflects that the claimant did not advise the trial court of this late production or request a continuance before the trial began. The claimant raised this issue for the first time during the testimony of David Work, a defense witness whose name had been given to the claimant in response to interrogatories. The trial court ruled that late production of the printout was not so prejudicial as to necessitate a continuance for further discovery or follow-up.

The trial judge has inherent power to take corrective action against a party for abuse of the discovery process. *Ammons v. Bonilla*, 886 S.W.2d 239, 243 (Tenn. Ct. App. 1994) (quoting *Strickland v. Strickland*, 618 S.W.2d 496, 501 (Tenn. Ct. App. 1981)). The trial court's decision regarding whether corrective action is necessary will not be disturbed on appeal, unless there is an abuse of discretion. *Ammons*, 886 S.W.2d at 243.

We strongly disagree with the employer that the computer printout was not subject

to production. A party is under a duty to seasonably amend a prior discovery response if the original response was incorrect when made or is no longer correct, and failure to amend would constitute a "knowing concealment." Tenn. R. Civ. P. 26.05(2). The information in the printout was completely contrary to the employer's sworn answer to an interrogatory filed in June 1997 that stated, "William Oringe reported to David Works, on January 16, 1997, that he had injured his back." The employer utilized the printout at trial to impeach the claimant's credibility and place him in Searcy, Arkansas, on January 17, 1997, with no report of any job-related injury. The employer contends that it only was made aware of the printout on the day it was provided to the claimant.

However, there was no abuse of discretion in the trial court's decision not to grant a continuance for the late production of the printout. Mr. Work was named in the employer's original responses to the claimant's interrogatories as a person with knowledge of the employer's defense that the injury was not compensable. Therefore, the claimant knew that Mr. Work was a possible adverse witness in June of 1997 and apparently took no action to ascertain the substance of his testimony prior to the day of trial. The claimant also failed to file a timely motion to compel an answer to the interrogatory concerning the trial documents.

Moreover, it does not appear that the trial court's failure to grant a continuance more probably than not affected the outcome of the trial. *See* Tenn. R. App. P. 36(b); *Ammons*, 886 S.W.2d at 243. The trial court's opinion hinged on the medical testimony and inconsistencies in the claimant's testimony, rather than on the printouts. Even if the trial judge abused his discretion in refusing to sanction the employer once Mr. Work took the stand, the claimant chose to proceed with the trial on Monday without requesting a continuance or filing a motion in limine to exclude the printout or any testimony based on the printout, and, thus, failed to take reasonable action to prevent any harmful effect of an error. *See* Tenn. R. App. P. 36(a); *Ammons*, 886 S.W.2d at 243. There is no merit to this issue.

The claimant further complains that the trial court erred in overruling his objection to the admissibility of the computer printout as used by the witness, David Work, pursuant to Tennessee Rule of Evidence 612, Writing used to refresh memory. The employer

counters that the printout was properly admitted at trial pursuant to the hearsay exception found in Tennessee Rule of Evidence 803(5), Recorded Recollection.

We do not need to reach this issue. Even if the trial court erroneously admitted the computer printout, we find it to be harmless error. Tenn. R. App. P. 36(b). There was other substantial and competent evidence that the claimant's back injury was not work-related, and we cannot say that the outcome of the trial would have been different absent the information in the computer printout.

In addition, although almost all of David Work's testimony was based on the computer printout, he was apparently able to testify from memory that the claimant never reported an injury at work on January 16 or 17, 1997. The following exchange between the claimant's attorney and Mr. Work is contained in the record:

> Q: So everything that you've testified to have been related to the documents that you're holding in your hand; isn't that true?
>
> A: Uh-huh.
>
> Q: You don't know anything specifically about reporting to Mr. Oringe, any of that, whether he did or didn't or what he did other than what you're reading on those records; is that correct?
>
> A: That's right, because he reported nothing to me.
>
> Q: That's according to these records; is that right?
>
> A: From my recollection from working there, he reported no problems.
>
> * * *
>
> A: William Oringe did not report a back problem to me on the 16th. No, he didn't.

This testimony would be admissible regardless of the admissibility of the computer printout and essentially accomplishes what the employer was attempting to do with the computer printout, namely, to undermine the claimant's account of when and how he hurt his back. The admission of the printout was not a significant factor in the outcome of this trial in light of all the other evidence which the judge had before him.

II.

Compensability of the Injury

In rendering its decision to deny Mr. Oringe's claim for compensation, the trial court

made detailed findings of fact and conclusions of law. The court was primarily influenced by the medical testimony from the claimant's treating physicians, along with inconsistencies in the claimant's testimony. Upon our review, we find that the evidence in the record does not preponderate against the judgment of the trial court.

The claimant testified that he reported a back injury to his supervisor, David Work, via his truck's Qual Comm computer from Searcy, Arkansas, on Thursday, January 16, 1997, and was told to go to a doctor. When the claimant saw his family physician, Dr. Jacobs, the day after the alleged accident, he never mentioned a back injury to the doctor, and the treatment he received was not related to any back problems. The claimant went to the emergency room with severe back pain on Sunday, January 19, but said nothing about what caused his back pain when he saw Dr. Jacobs on Monday for a follow-up visit. It seems reasonable that, if the claimant reported a work-related injury to his supervisor on Thursday, he would have known the cause of his back pain on Monday. Of course, the claimant insisted that he told Dr. Jacobs about his injury during both visits, but the only explanation the claimant offered for the discrepancies between his account and Dr. Jacobs's was that the doctor was lying. The hospital emergency room records were conspicuously absent from the record. The claimant apparently saw Dr. Jacobs again in February for a post-operative checkup but again said nothing about what had caused his problems.

Dr. Ricca, who treated the claimant's herniated disc within days of the alleged injury, also testified that the claimant did not know what had caused his back problems. A month later, on February 24, the claimant told Dr. Ricca for the first time that he injured his back on the job. Shortly afterwards, the claimant approached Dr. Jacobs in early March and requested a note stating that Dr. Jacobs treated him for a back injury that occurred at work. This was the first time Dr. Jacobs knew that the claimant was claiming a work-related injury. Furthermore, Dr. Ricca testified that the claimant's herniated disc could have been caused by something other than his work activities, due to his degenerative disc disease, and he relied solely on information given him by the claimant in connecting the back problem with work-related activity. Taken as a whole, the medical evidence does not establish that the claimant's herniated disc was work-related.

In considering the oral testimony of the claimant as to how his injury occurred, we must give great deference to the trial court's assessment of this witness. The trial judge was in the best position to observe and evaluate Mr. Oringe's oral testimony and simply did not believe the claimant's version of what caused his herniated disc. In his ruling, the judge said, "The Court believes that Mr. Oringe simply did not tell the whole truth to Dr. Jacobs or Dr. Ricca about hurting himself pulling a pallet of laundry powder from the truck in Searcy, Arkansas." The judge also commented on discrepancies between Mr. Oringe's testimony in his deposition and his testimony at trial. We find nothing in the record to invalidate the finding of the trial court.

The interrogatories and other exhibits offered at trial reflecting that Mr. Oringe reported his injury to David Work on January 16 and that he was in Searcy, Arkansas, on that date do not affect our conclusion. Even assuming that an injury was reported to Mr. Work on January 16, the claimant must still establish causation with medical testimony. *See Orman v. Williams Sonoma, Inc.*, 803 S.W.2d 672, 676 (Tenn. 1991). In this case, medical testimony from the claimant's treating physicians undercut his account of how the injury occurred and failed to connect the back problem with any events at work on January 16, 1997, by a preponderance of the evidence.

On our *de novo* review, we find that the evidence in this case does not preponderate against the findings of the trial court and, therefore, affirm.

The claimant will pay all costs.

_____
L. T. LAFFERTY, SENIOR JUDGE

CONCUR:

_____
JANICE M. HOLDER, JUSTICE

_____
J. STEVEN STAFFORD, SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

M. S. CARRIERS, INC.,	)	SHELBY CIRCUIT
	)	No. 86214 T.D. Below
Plaintiff/Appellee,	)	
	)	Hon. James Russell
v.	)	Judge
	)	
	)	No. 02S01-9804-CV-00042
WILLIAM ORINGE,	)	
	)	
Defendant/Appellant.	)	Affirmed.

FILED

August 27, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

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 on appeal are taxed to the appellant.

IT IS SO ORDERED this ____ day of _____, 1999.

PER CURIAM

Holder, J. - Not participating.