IN THE SUPREME OF TENNESSEE

AT NASHVILLE

JAMES E. RAINEY	}	*COFFEE CHANCERY*
	}	*No. Below 96-173*
Plaintiff/Appellant	}	
	}	*Hon. Gerald L. Ewell, Sr.*
vs.	}	
	}	
	}	*No. 01S01-9805-CH-00106*
MICRO CRAFT,INC., MICRO CRAFT, INC. d/b/a MICRO CRAFT TECH., FIDELITY AND CASUALTY CO. OF NEW YORK, SVERDRUP TECH., INC., and TRAVELERS INDEMNITY COMPANY OF ILLINOIS	}	
	}	
Defendants/Appellees	}	*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 plaintiff/appellant, for which execution may issue if necessary.

IT IS SO ORDERED on October 11, 1999.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE

JAMES E. RAINEY, Plaintiff/Appellant, vs. MICRO CRAFT, INC., MICRO CRAFT, INC. d/b/a MICRO CRAFT TECHNOLOGIES, FIDELITY AND CASUALTY COMPANY OF NEW YORK, SVERDRUP TECHNOLOGY, INC., and TRAVELERS INDEMNITY COMPANY OF ILLINOIS, Defendants/Appellees.	)	01S01-9805-CH-00106 COFFEE COUNTY Hon., Robert Wedemeyer, Judge No. 96-173

FILED

October 11, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

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MEMORANDUM OPINION

MEMBERS OF PANEL:

ADOLPHO A. BIRCH, JR., JUSTICE
HENRY DENMARK BELL., RETIRED JUDGE
HAMILTON V. GAYDEN, JR., SPECIAL JUDGE

AFFIRMED

HENRY DENMARK BELL
Special 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 of findings of fact and conclusions of law.

Plaintiff began working at Arnold Engineering Center in Tullahoma, Tennessee in 1965. His job duties involved being a pipe fitter, a welder and performing maintenance. Plaintiff had three employers during his time working at the base, Sverdrup, Calspan, Micro Craft and again with Sverdrup. Plaintiff worked for Sverdrup from 1965 to 1980 and again from October 1995 until his retirement. During the period immediately preceding his second employment with Sverdrup Plaintiff worked for Micro Craft. During his employment at the base Plaintiff reported two injuries, one occurring in May of 1995 and the other occurring in November of 1995. The first injury occurred while Plaintiff worked for Micro Craft. The second injury occurred while Plaintiff worked for Sverdrup.

Plaintiff instigated this litigation by simultaneously filing claims against each employer seeking compensation for permanent partial disability. At the conclusion of the trial the court found that plaintiff failed to sustain his burden of proof as to either claim and dismissed both claims thereby rendering other issues moot.

Upon *de novo* review as required by statute, the panel concludes that the evidence does not preponderate against the findings and conclusions of the trial court.

On May 30, 1995 while engaged in strenuous work related to his employment plaintiff experienced pain in his back and was temporarily unable to straighten his back. Plaintiff immediately reported the injury to his supervisor who told him to go to the dispensary. At the dispensary plaintiff saw one of the company doctors who sent him home from work and told him to stay home on the next day which would be Thursday. The doctor did not

recommend any treatment beyond plaintiff taking off one day of work. Plaintiff did not return to work on Friday due to a previously scheduled vacation day but in

compliance with company policy he reported to the dispensary on Monday morning. The doctor released plaintiff to return to work without restrictions, and plaintiff continued to perform his normal work duties without incident until after he began working for Sverdrup on October 1, 1995. Plaintiff sought no further medical treatment for this injury and testified that his symptoms resolved following the May 1995 injury.

Plaintiff reported a second injury in November 1995 while working for Sverdrup. Plaintiff testified that on approximately November 18, 1995 he first felt a shock in his right knee when he was taking a shower at home and that a few days later he felt a severe shock in his right knee when he was in the process of climbing onto the roof of the APTU building in the course of his employment. On December 5, 1995 plaintiff reported for work, but he felt a shocking sensation approximately every five minutes. He went to the dispensary and the doctor gave him some Advil and told him to go to his family doctor if the pain worsened. Ultimately plaintiff was referred to Dr. McNamara, an orthopaedic surgeon. Dr. McNamara ordered an MRI and, after reviewing that test determined a CT scan and myelogram would be necessary. These tests resulted in the discovery of a bulging disc and Dr. McNamara prescribed physical therapy. While undergoing therapy plaintiff continued to work with a restriction of not lifting greater than 20 pounds. Plaintiff testified that his back improved with therapy and towards the end of his therapy he quit taking pain pills and the shocking in the leg subsided. Plaintiff returned to his normal work without restrictions and continued with his employment with Sverdrup until he voluntarily retired.

Dr. McNamara testified that plaintiff's chief complaint involved back and right leg pain. Dr. McNamara took a history from plaintiff that indicated that plaintiff first noted a tingling in his posterior calf while taking a shower around

Thanksgiving 1995. Plaintiff reported to McNamara that he pulled his back the following week and then went to the dispensary. Based upon his physical examination of plaintiff, Dr. McNamara believed that plaintiff had foramenal encroachment and S1 radiculopathy and ordered an MRI for confirmation. The

MRI rendered inconclusive results and therefore Dr. McNamara recommended a full evaluation that included a myelogram. After the myelogram and CT scan were performed Dr. McNamara determined that plaintiff had a L4-5 disc bulge. Dr. McNamara determined that the disc bulge did not require surgery and recommended physical therapy. Following physical therapy the majority of plaintiff's pain had resolved and, while plaintiff still had some soreness in his back, he no longer had any leg pain. Dr. McNamara determined that plaintiff had reached maximum medical improvement on June 18, 1996. Dr. McNamara's final diagnosis was discogenic back pain because of the bulging disc and assigned plaintiff a five percent (5%) impairment to the body as a whole under AMA Guidelines. Dr. McNamara further concluded that plaintiff had no physical limitations or restrictions as a result of this injury.

The preponderance of the evidence established that the temporary pain experienced by plaintiff in May-June 1995 was work related but there is no proof, lay or expert, that it was a permanent injury. As to the condition ultimately identified as a bulging disc, its first symptomatic manifestation occurred in the shower at plaintiff's home. We conclude that the evidence does not preponderate against the trial court's conclusion that plaintiff failed to carry his burden of proof as to either alleged injury.

The judgment of the trial court is affirmed and the cause remanded to the Circuit Court for Coffee County for such further proceedings, if any, as may be necessary. Costs on appeal are taxed to the plaintiff/appellant.

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HENRY DENMARK BELL
RETIRED JUDGE

CONCUR:

_____

ADOLPHO A. BIRCH, JR.
JUSTICE

_____

HAMILTON V. GAYDEN, JR.
SPECIAL JUDGE