

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT NASHVILLE  
September 23, 2013 Session

**ALBERT H. SIMPKINS v. A. O. SMITH CORPORATION, ET AL.**

**Appeal from the Circuit Court for Williamson County  
No. 2011-464 Timothy L. Easter, Judge**

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**No. M2012-02665-WC-R3-WC - Mailed December 11, 2013  
Filed January 15, 2014**

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This appeal calls into question the sufficiency of the evidence to support an award of workers' compensation disability benefits related to the aggravation of a pre-existing cervical injury. After settling a claim for an earlier lumbar and cervical injury, the employee filed a new claim in the Circuit Court for Williamson County seeking compensation for aggravation of that injury. The employer insisted that the employee's condition was a continuation of the prior injury. Following a bench trial, the trial court found that, as a result of performing repetitive tasks, the employee had sustained a new cervical injury and awarded the employee permanent total disability benefits. The employer appealed, asserting (1) that the evidence preponderates against the findings regarding causation and permanency and (2) that the testimony of the employee's examining physician should be disregarded because it does not comply with the AMA Guides. The appeal has been referred to the Special Workers' Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law in accordance with Tennessee Supreme Court Rule 51. We have determined that the evidence does not support the trial court's conclusion that the employee sustained a new injury and, therefore, we reverse the judgment of the trial court.

**Tenn. Code Ann. § 50-6-225(e) (2008) Appeal as of Right; Judgment of the Circuit  
Court Reversed and Remanded**

WILLIAM C. KOCH, JR., J., delivered the opinion of the Court, in which E. RILEY ANDERSON, SP.J. and DON R. ASH, SR.J., joined.

Lee Anne Murray, Nashville, Tennessee, for the appellants, A. O. Smith Corporation d/b/a APCOM, Inc. and Sentry Insurance.

Richard T. Matthews, Columbia, Tennessee, for the appellee, Albert M. Simpkins.

## OPINION

### I.

In 1997, Albert Simpkins went to work for A. O. Smith Corporation as a machine operator and a set-up operator. On June 16, 2006, he injured his lower back while lifting a heavy object. A. O. Smith accepted this injury as compensable and provided the medical care required by the Workers' Compensation Law.

Mr. Simpkins was referred to Dr. Richard Davis at Vanderbilt University Medical Center. Dr. Davis ordered MRI scans of Mr. Simpkins's neck and lower back. These scans revealed degenerative disk disease with a posterior disk bulge in Mr. Simpkins's lumbar spine and cervical stenosis at C4-5, C5-6, and C6-7. In September 2007, Dr. Davis recommended that Mr. Simpkins have surgery on his neck before having the surgery on his spine. The recommended cervical fusion surgery was not performed; however, Dr. Davis performed lumbar disk surgery on Mr. Simpkins in November 2007.

Mr. Simpkins reached maximum medical improvement in March 2008, and he returned to work for A. O. Smith subject to the limitations Dr. Davis had placed on his activities. Mr. Simpkins was initially assigned to a machine that cut brass tabs. However, approximately one month later, he reported to his supervisor that this job was causing his back pain to increase. In July 2008, A. O. Smith reassigned Mr. Simpkins to work as a "plugger" in the heating element department. This job required Mr. Simpkins to place rubber inserts on the ends of tubes of varying lengths that were filled with magnesium oxide using a tool made for that purpose.

While A. O. Smith's production manager later testified that a plugger's job could be performed either sitting or standing, Mr. Simpkins testified that he performed the job standing up with his head in the flexed position. He also testified that his co-workers had told him that the company did not want employees to sit down while working and that the chairs in the work area would be taken away if the employees continued to use them.

Dr. Davis assigned an anatomical impairment of 10% to the body as a whole as a result of Mr. Simpkins's 2006 injury. Eventually, Mr. Simpkins and A. O. Smith agreed to settle his workers' compensation claim for 15% permanent partial disability to the body as a whole. The trial court approved this settlement on September 15, 2008.

Approximately one month after settling his workers' compensation claim arising out of the 2006 injury, Mr. Simpkins reported that he was experiencing pain in his neck. After the pain increased to the point where it was interfering with his sleep, Mr. Simpkins received

A. O. Smith's permission to return to Dr. Davis for evaluation. Dr. Davis ordered another MRI scan which showed that the degenerative changes in Mr. Simpkins's neck had advanced. Dr. Davis again recommended a cervical fusion as a continuation of his treatment of the 2006 injury.

A. O. Smith's insurer submitted Dr. Davis's recommendation to its utilization review provider, but the utilization review provider declined to approve the procedure. Mr. Simpkins appealed this decision to the Medical Director of the Department of Labor and Workforce Development. He also filed a contempt petition in the trial court claiming that A. O. Smith's decision not to approve the surgery was contrary to the September 2008 order approving the settlement of the workers' compensation claim for his 2006 injury.<sup>1</sup> Before the trial court ruled on Mr. Simpkins's motion, the Department of Labor's Medical Director approved the surgery.<sup>2</sup> Dr. Davis performed this surgery in March 2010.

Dr. Clinton Devin became Mr. Simpkins's authorized physician after Dr. Davis moved his practice to another state. Dr. Devin found Mr. Simpkins to be at maximum medical improvement on September 10, 2010. He assigned an impairment of 5% to the body as a whole and placed no additional restrictions on Mr. Simpkins's activities. However, Mr. Simpkins was unable to return to work at A. O. Smith because of the narcotic pain medications he was taking.

In August 2010, Mr. Simpkins sought reconsideration of the 2008 settlement of the claim arising out of his 2006 injury because he was no longer employed by A. O. Smith at the same or a greater wage. The parties reached an agreement with regard to the reconsideration claim, and the trial court entered an order on October 1, 2010 approving this agreement. At this point, A. O. Smith and its insurer believed that all of Mr. Simpkins's workers' compensation claims has been settled. They were mistaken.

On November 3, 2010, Mr. Simpkins filed a request for a Benefit Review Conference alleging that he had sustained a new, gradual injury to his neck on March 1, 2009. On August 30, 2011, after the parties were unable to settle this claim, Mr. Simpkins filed suit in the Circuit Court for Williamson County seeking workers' compensation benefits from A. O. Smith and the Second Injury Fund. A. O. Smith responded that Mr. Simpkins's neck injury was not a new, compensable event but rather was directly related to his 2006 injury.

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<sup>1</sup>Dr. Davis had related Mr. Simpkins's cervical problems back to his 2006 work-related injury.

<sup>2</sup>The Department of Labor and Workforce Development's order referenced Mr. Simpkins's 2006 injury.

The trial court conducted an extremely truncated bench trial on August 24, 2012. At the outset, Mr. Simpkins informed the court that he had settled with the Second Injury Fund. The parties also stipulated during the trial that Mr. Simpkins was permanently and totally disabled. Mr. Simpkins testified regarding his work history with A. O. Smith, his 2006 injury, and the onset of his neck pain after he began working as a plugger in July 2008.

In addition to his own testimony, Mr. Simpkins presented the deposition of Dr. James Wiesman, an orthopaedic surgeon who had examined him on October 18, 2010. Dr. Wiesman testified that he was basing his opinion on the history that Mr. Simpkins had provided him and that Mr. Simpkins had told him that he had not had problems with his neck or arms prior to 2009. After comparing the August 2007 MRI scans with the November 2009 MRI scans, Dr. Wiesman opined that Mr. Simpkins's work as a plugger had exacerbated the pre-existing degenerative condition in Mr. Simpkins's neck. He also stated that Mr. Simpkins retained a 17% impairment to the body as a whole based on his conclusion that the neck injury was a Class III impairment according to the cervical spine section of the Sixth Edition of the AMA Guides. Finally, Dr. Wiesman stated that Mr. Simpkins was medically unable to hold an income-producing job.

A. O. Smith presented three witnesses. Vivian Armstrong, Mr. Simpkins's group leader, testified that Mr. Simpkins never complained about neck pain to her. John Myers, A. O. Smith's production manager, testified that he was never informed that Mr. Simpkins's job as a plugger was causing him neck pain. Finally, Mike Galloway, A. O. Smith's Human Resources and Safety Environmental Manager, testified that he too had received no reports that Mr. Simpkins was experiencing neck pain and that had he received these reports, he would have worked with Mr. Simpkins to find another job he could perform.

Mr. Galloway stated that he later discovered that Mr. Simpkins had started taking pain medications after his lumbar surgery and that had he known this in 2008, he would not have permitted Mr. Simpkins to return to work. Mr. Galloway also testified that A. O. Smith believed that the settlement of Mr. Simpkins's reconsideration claim included Mr. Simpkins's back and neck injuries. Finally, Mr. Galloway testified that knowledge of Mr. Simpkins's intent to pursue a new workers' compensation claim for injury to his neck would have affected the amount of the settlement of the reconsideration claim.

The trial court filed a memorandum opinion on October 26, 2012. The court stated that it accredited Mr. Simpkins's explanation regarding how he performed his job as a plugger, as well as his testimony that he had reported his neck injury to "Ms. Armstrong [] or someone in a leadership role." The trial court acknowledged that Dr. Davis had related Mr. Simpkins's cervical injury back to the 2006 work-related accident. Nonetheless, relying on the opinion of Dr. Wiesman, the trial court found that the repetitive work that Mr.

Simpkins was required to do as a plugger caused a new aggravation of a pre-existing cervical injury. The trial court also found that Mr. Simpkins's claim was not barred by deficient notice, the statute of limitations, or equitable estoppel.<sup>3</sup>

Accordingly, the trial court determined that Mr. Simpkins had sustained a 42.5% permanent partial disability due to the neck injury alone. In light of the parties' stipulation that Mr. Simpkins was permanently and totally disabled, the trial court apportioned 42.5% of the award to A. O. Smith and entered a judgment accordingly. On this appeal A. O. Smith asserts that the evidence preponderates against the trial court's findings regarding causation and permanency and that the trial court erred by accepting Dr. Wiesman's opinion on the extent of permanent impairment.

## II.

Courts reviewing an award of workers' compensation benefits must examine the trial court's factual findings and conclusions in-depth. *Trosper v. Armstrong Wood Prods., Inc.*, 273 S.W.3d 598, 604 (Tenn. 2008). This examination is guided by Tenn. Code Ann. § 50-6-225(e)(2) (Supp. 2013) which directs the court to "[r]eview . . . the trial court's findings of fact . . . 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."

When reviewing the record in a workers' compensation case, the court must defer to the trial court's findings with regard to the credibility of the live witnesses and the weight that should be given to their testimony. *Tryon v. Saturn Corp.*, 254 S.W.3d 321, 327 (Tenn. 2008). However, the reviewing court is not required to defer in the same way to a trial court's findings based on documentary evidence such as depositions, *Padilla v. Twin City Fire Ins. Co.*, 324 S.W.3d 507, 511 (Tenn. 2010), or to a trial court's conclusions of law, *Seiber v. Reeves Logging*, 284 S.W.3d 294, 298 (Tenn. 2009).

It is not appropriate for the courts to review the evidence "in the light most favorable to the employee." *Blankenship v. Ace Trucking, Inc.*, No. M2010-00597-WC-R3-WC, 2011 WL 1433776, at \*9 (Tenn. Workers' Comp. Panel Apr. 14, 2011). However, in cases where the evidence permits inferences which could support either party, the reviewing court is "bound by the strong public policy of our workers' compensation law to resolve the conflicts and doubts in favor of the [employee]." *McCarver v. Insurance Co. of State of Pennsylvania*, 208 S.W.3d 380, 388 (Tenn. 2006) (citing *Wheeler v. Glens Falls Ins. Co.*, 513 S.W.2d 179, 184 (Tenn. 1974)). None of our cases, however, require the courts to disregard discrepancies in the employee's testimony or other evidence that tends to disprove the employee's claim.

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<sup>3</sup>A. O. Smith has not contested those findings in this appeal.

*Kenney v. Shiroki N. Am., Inc.*, No. M2009-02484-WC-R3-WC, 2011 WL 684628, at \*5 (Tenn. Workers' Comp. Panel Feb. 28, 2011).

### III.

A. O. Smith argues that the record does not support the trial court's conclusion that Mr. Simpkins's work as a plugger caused a new aggravation of a pre-existing injury. While the parties' briefs join issue on whether Mr. Simpkins was experiencing neck pain or other symptoms prior his work as a plugger, this dispute is tangential to the outcome-determinative question. That question is – does this record contain sufficient competent evidence to support the trial court's conclusion that the neck pain that Mr. Simpkins began to experience after he started working as a plugger was a new injury rather than a continuation of the 2006 injury?

#### A.

Employees seeking workers' compensation benefits must prove every element of their claim by a preponderance of the evidence. *Vandall v. Aurora Healthcare, LLC*, 401 S.W.3d 28, 32 (Tenn. 2013); *Dixon v. Travelers Indem. Co.*, 336 S.W.3d 532, 536 (Tenn. 2011). For an injury to be compensable, the employee must prove that it arose out of the work and that it occurred in the course of employment. *Padilla v. Twin City Fire Ins. Co.*, 324 S.W.3d at 511. In order to prove that an injury arose out of his or her work, the employee must prove that the injury has a rational causal connection with the work. *Foreman v. Automotic Sys., Inc.*, 272 S.W.3d 560, 572 (Tenn. 2008); *Orman v. Williams Sonoma, Inc.*, 803 S.W.2d 672, 676 (Tenn. 1991).

Except in the most obvious circumstances, causation in a workers' compensation case must be established by expert medical evidence. *Arias v. Duro Standard Prods. Co.*, 303 S.W.3d 256, 264 (Tenn. 2010); *Trosper v. Armstrong Wood Prods., Inc.*, 273 S.W.3d at 604. This expert evidence may be supported by relevant lay testimony. *Excel Polymers, LLC v. Broyles*, 302 S.W.3d 268, 274 (Tenn. 2009). Although causation in a workers' compensation case cannot rest on speculative or conjectural evidence, absolute medical certainty is not required because medical evidence can rarely be certain. *Clark v. Nashville Mach. Elevator Co.*, 129 S.W.3d 42, 47 (Tenn. 2004); *see also Glisson v. Mohon Int'l, Inc./Campbell Ray*, 185 S.W.3d 348, 354 (Tenn. 2006).

When courts review the causation evidence in a workers' compensation case, they should resolve all reasonable doubts regarding its weight in favor of the employee. *Cloyd v. Hartco Flooring Co.*, 274 S.W.3d 638, 643 (Tenn. 2008); *Clark v. Nashville Mach. Elevator Co.*, 129 S.W.3d at 47. However, when the medical testimony regarding causation

is presented by deposition, the reviewing court may independently assess the evidence to determine where the preponderance of the evidence lies. *Williamson v. Baptist Hosp. of Cocke Cnty., Inc.*, 361 S.W.3d 483, 487 (Tenn. 2012); *Excel Polymers, LLC v. Broyles*, 302 S.W.3d 268, 271 (Tenn. 2009); *Trosper v. Armstrong Wood Prods., Inc.*, 273 S.W.3d at 604.

Mr. Simpkins's causation evidence consists of Dr. Wiesman's testimony during his deposition taken on May 7, 2012 and Dr. Wiesman's written report dated October 18, 2010 that is an exhibit to the deposition. Dr. Wiesman stated in his report that Mr. Simpkins told him that he did not begin experiencing problems with his neck until he began working as a plugger. Dr. Wiesman found this information to be very material. His report emphasizes:

In reviewing the patient's history, physical examination, operative findings and work history, it is apparent that the patient did have an MRI-proven but asymptomatic condition in his cervical spine revealed on the MRI of 8/8/07. At that time the patient was asymptomatic.<sup>4</sup>

Based on this information, Dr. Wiesman concluded: "The employment aggravated an asymptomatic pre-existing condition and caused progression of that condition to become symptomatic and require treatment with cervical fusion and decompression."

Dr. Wiesman stressed in his report that his analysis and conclusions were "based on the available information at this time, including the history given by the examinee" and that he "assumed that the information provided to me is correct." He also stated that "[i]f more information becomes available at a later date, an additional report may be requested. Such information may or may not change the opinions rendered in this evaluation."

Dr. Wiesman's deposition testimony tracked his written report. He repeated that Mr. Simpkins had told him that he did not begin to have problems with his neck until he changed jobs. He confirmed that Mr. Simpkins's report that he was asymptomatic in 2007 was "important" to his causation opinion. Finally, Dr. Wiesman repeated his opinion that the tasks Mr. Simpkins was performing as a plugger "advanced Mr. Simpkins[s] cervical condition to the point of causing pain and the need for the surgery that Dr. Davis performed on or about March the 24th of '10."

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<sup>4</sup>Dr. Wiesman emphasized the importance of Mr. Simpkins being asymptomatic by underlining the word in his report.

## B.

There can be little question that Dr. Wiesman based his opinion regarding the causation of Mr. Simpkins's neck problems on his understanding that Mr. Simpkins was asymptomatic before he started working as a plugger. This conclusion would have been logical and legally supportable if Mr. Simpkins had, in fact, been asymptomatic before he became a plugger. Our in-depth examination of the record convinces us, however, that Mr. Simpkins was having problems associated with his neck before he began working as a plugger in 2008.

We note at the outset the significant difference between the medical records provided to Dr. Wiesman in 2010 – and on which Dr. Wiesman based his conclusion – and the medical records introduced at trial as Exhibit 17. The records Dr. Wiesman received included medical records from a number of healthcare providers who had treated Mr. Simpkins, including Dr. Davis and Vanderbilt. However, the records from Dr. Davis and Vanderbilt dealt primarily with the surgery Dr. Davis performed in March 2010. They did not include many of the records regarding Mr. Simpkins's treatment at Vanderbilt in 2007 and 2008.

The information contained in the records that Dr. Wiesman did not receive but that were filed in the trial court as Exhibit 17 provides the basis for questioning the soundness of Dr. Wiesman's assumption that Mr. Simpkins's neck became symptomatic only after he began working as a plugger. A summary of this evidence follows.

Mr. Simpkins was treated conservatively following his injury in June 2006. On July 19, 2007, after these treatments gave Mr. Simpkins little relief from his pain, Dr. Horace E. Watson referred Mr. Simpkins to Dr. Richard Davis for evaluation of his neck and back pain. Dr. Davis first examined Mr. Simpkins on July 30, 2007. Dr. Davis noted that Mr. Simpkins had repeated hyperflexia and clumsiness in his hands and that he was having a hard time holding onto objects. Believing that these could be symptoms of a cervical condition, Dr. Davis ordered MRI scans.

MRI scans of Mr. Simpkins's cervical spine and lumbar spine were conducted on August 8, 2007. The scan of Mr. Simpkins's cervical spine showed "posterior osteophyte complexes at the C4-5, C5-6, and C6-7 levels with mild to moderate central canal narrowing at these levels." The STIR images showed "mild increased T2 signal within the cord at the C5-6 level" and "mild neural foraminal narrowing at the C5-6 and C4-5 levels without definite compression of existing nerve roots." The scan of Mr. Simpkins's lumbar spine showed "degenerative disc disease with loss of disc space height at L5-S1" and a "broad based posterior disc bulge [at] the L5-S1 level without central canal or neural foraminal narrowing."



Based on these scans, Dr. Davis decided that Mr. Simpkins should have surgery on both his cervical and lumbar spine and that the surgery on the cervical spine should be performed first. When Dr. Davis's recommendations were communicated to Mr. Simpkins on August 6, 2007, Mr. Simpkins asked for an opportunity to review the scans and to talk with Dr. Davis. As it turned out, Mr. Simpkins was "adamantly opposed" to surgery on his neck. This record does not reflect the basis for Mr. Simpkins's opposition. During an examination on October 1, 2007, Mr. Simpkins told Rhonda Pinkerman that he was not having any current neck pain or shoulder pain and that he was not dropping items as he had reported during Dr. Davis's examination on July 30, 2007.

Dr. Davis performed surgery on Mr. Simpkins's lumbar spine on November 7, 2007. During a functional capacity test on March 13, 2008, Mr. Simpkins complained that his feet felt like they were going to sleep, that pain was shooting down his left leg, and that his feet felt like they were burning. On March 18, 2008, Mr. Simpkins left a voice message with one of the nurses assisting him stating that he was "experiencing severe back pain and shooting pain from his neck since the [functional capacity evaluation]." On May 22, 2008, Dr. Davis referred Mr. Simpkins to a pain management specialist for further assistance.

Mr. Simpkins started working as a plugger around July 7, 2008. On September 10, 2009, he returned to Dr. Davis because he was experiencing increased neck and arm pain, as well as consistent leg pain. After deciding that Mr. Simpkins continued to have myelopathy with worsening symptoms in his neck as well as his legs, Dr. Davis ordered repeat MRI scans. These scans, which were performed on November 6, 2009, showed significant stenosis, primarily at the C5-6 level, with high intensity signal in the spinal cord indicating significant spinal cord compression and irritation. Dr. Davis concluded that his findings were consistent with Mr. Simpkins's complaints in his upper extremities and that the condition in Mr. Simpkins's cervical spine was "likely the reason why he has not had significant improvement in his lower extremities." Dr. Davis also determined that these findings were consistent with myelopathy.

Based on the November 2009 scans, Dr. Davis decided that cervical surgery was reasonable and necessary treatment for the continuing effects of Mr. Simpkins's 2006 injury. However, Dr. M. Robert Weiss, on behalf of Utilization Review Department of Eckman/Freeman & Associates, declined to approve the surgery. In his notice of denial dated January 7, 2010, Dr. Weiss stated that the relationship of Mr. Simpkins's cervical condition and his complaints of pain "to his original work injury several years ago seems specious at best."

Dr. Davis disagreed with Dr. Weiss's conclusions and appealed the denial of the surgery to the Department of Labor and Workforce Development. After reviewing Mr.

Simpkins's medical records, Dr. Robert D. Kirkpatrick, the Medical Director of the Department of Labor and Workforce Development's Division of Workers' Compensation, disagreed with Dr. Weiss's conclusions and authorized Dr. Davis to proceed with the cervical surgery he recommended. The Department entered an order reflecting Dr. Kirkpatrick's decision on March 8, 2010. Dr. Davis performed the surgery on Mr. Simpkins's neck on March 24, 2010.

### C.

In our view, the record shows that Mr. Simpkins sustained work-related spinal injuries in June 2006. These injuries caused Mr. Simpkins almost constant pain in his lumbar spine and lower extremities. However, they also caused him episodic pain in his neck, as well as other symptoms of cervical injuries such as repeated hyperflexia, clumsiness in his hands, and difficulty holding onto objects. While Mr. Simpkins consistently complained to his healthcare providers about the pain in his lower back, the record also reflects that he complained about pain and other problems involving his neck before he began working as a plugger.

Accordingly, the record does not bear out Dr. Wiesman's assumption that Mr. Simpkins's neck was asymptomatic before he began working as a plugger. Dr. Wiesman's assumption was based on less than a complete set of Mr. Simpkins's medical records. While it is not necessary for us to speculate about the reasons for providing Dr. Wiesman less than a complete set of medical records, the inescapable fact remains that Dr. Wiesman's assumption that Mr. Simpkins's neck was asymptomatic is not borne out by the records included in Exhibit 17. Because the record does not support the foundation of Dr. Wiesman's opinion that Mr. Simpkins sustained a new injury in 2008, we find that the trial court erred by relying on Dr. Wiesman's opinion.

We cannot disregard the evidence contained in Exhibit 17. This evidence undermines the value of Dr. Wiesman's opinion that the problems that Mr. Simpkins began experiencing with his neck in 2008 were caused by a new injury rather than a continuation of the 2006 injury. Without Dr. Wiesman's opinion, the record contains no other evidence supporting the trial court's conclusion that Mr. Simpkins sustained a new, compensable injury in 2008 when he began to work as a plugger. Accordingly, we find that the record does not support the trial court's conclusion that Mr. Simpkins sustained a new compensable injury in 2008.

### IV.

In light of our conclusion that the record does not support the trial court's decision that Mr. Simpkins sustained a new, compensable injury after he started working as a plugger,

we need not address A. O. Smith's challenge to the methodology Dr. Wiesman used to determine the extent of Mr. Simpkins's disability. Accordingly, we reverse the trial court's judgment and remand the case with directions that it be dismissed. The costs of this appeal are taxed to Albert H. Simpkins for which execution, if necessary, may issue.

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WILLIAM C. KOCH, JR., JUSTICE

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

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**Circuit Court for Williamson County  
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**No. M2012-02665-WC-R3-WC  
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**JUDGMENT**

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 Albert H. Simpkins, for which execution may issue if necessary.

PER CURIAM