IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT MEMPHIS
June 19, 2017 Session

# T & B TRUCKING v. TERRY PIGUE, ET AL.

**Appeal from the Circuit Court for Crockett County**
**No. 3357 George R. Ellis, Chancellor**

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**No. W2016-01194-SC-WCM-WC – Mailed September 27, 2017;**
**Filed December 14, 2017**

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The employee in this case worked for the employer as a truck driver. In 2003, the employee sustained compensable work-related injuries to his hand and neck. After neck surgery, the employee returned to work. In October 2008, the employee claimed that he sustained compensable work-related injuries to his shoulder and cervical spine. The employer paid temporary benefits but disputed whether the claimed injuries arose out of and in the course of employment. The employer filed a petition in the trial court seeking a determination of its obligations to pay further benefits. The parties submitted the deposition testimony of several physicians, who gave conflicting opinions about the cause of the employee's October 2008 shoulder and neck injuries. The trial court held that both injuries were compensable. The employer's appeal was referred to the Special Workers' Compensation Appeals Panel pursuant to Tennessee Supreme Court Rule 51. After a thorough review of the evidence, we hold that the employee did not sustain a compensable work-related injury in October 2008. Accordingly, we reverse.

**Tenn. Code Ann. § 50-6-225(e) (2014) (applicable to injuries occurring prior to July 1, 2014). Appeal as of Right;**
**Judgment of the Circuit Court Reversed and Remanded**

HOLLY KIRBY, J., delivered the opinion of the court, in which JAMES F. RUSSELL, J., and RHYNETTE N. HURD, J., joined.

Gregory H. Fuller and Julie Cochran Fuller, Brentwood, Tennessee, for the appellant, T & B Trucking.

Jeffrey P. Boyd, Jackson, Tennessee, for the appellee, Terry Pigue.

Herbert H. Slattery III, Attorney General and Reporter, and Alexander S. Rieger, Assistant Attorney General, for the appellee, Tennessee Department of Labor/Second Injury Fund.

## OPINION

### FACTUAL AND PROCEDURAL BACKGROUND

Terry Wayne Pigue ("Employee") began working as a truck driver for T & B Trucking ("Employer") in November 2000. On separate occasions in 2003, Employee sustained on-the-job injuries to his hand and neck. In November 2004, Joseph Campbell, M.D., performed surgery on Employee's C6-C7 vertebrae to treat the neck injury. After the surgery, Employee was able to return to work in the same job he previously held. Court-approved settlements were entered for both of Employee's 2003 workers' compensation claims. Employee later testified that his neck was "fine" after the 2004 surgery and that, from 2004 to October 2008, he was able to perform his job without difficulty, although he had some manageable pain in his neck and shoulder. During that same period, Employee said, he also experienced some neck stiffness and numbness in three fingers of the right hand.

On October 15 2008, as Employee was using a handrail to pull himself onto the catwalk of a tanker truck, he felt a popping sensation and pain between his neck and shoulder area. When he awoke the next morning, his shoulder and neck were very painful. He testified that he was barely able to move his right arm at that time. The next morning, when he informed Ms. Linda Head, an official of Employer, about his situation, she advised Employee to see his primary care physician. Employee's primary care physician was unable to assist him and referred him to a "specialist," Dr. Rolland. Dr. Rolland administered an injection in the back of Employee's head, which provided minimal relief.

On December 1, 2008, Employee filed a claim with Employee's workers' compensation insurer. Employer provided a panel of physicians from which Employee could choose a physician for treatment of his injuries.[1] Employee selected Keith Nord, M.D., an orthopedic surgeon who specializes in shoulder arthroscopy.

[1] Employer said that it provided certain benefits for Employee's alleged injuries, paid without prejudice pursuant to Tenn. Code Ann. § 50-6-205.

Employee first saw Dr. Nord on December 17, 2008. In the visit, Employee complained of neck and finger pain following the October 2008 injury. According to Dr. Nord, Employee did not mention a shoulder pop or shoulder tear sensation—Dr. Nord had "some examination findings consistent with a shoulder injury, although that's not specifically what [Employee] complained of." Employee told Dr. Nord that he had been doing well since his November 2004 C6-7 diskectomy and fusion surgery, until this October 2008 event. Dr. Nord acknowledged that Employee had ongoing degenerative issues in his shoulder and in his cervical spine and that these issues could contribute to the pain Employee has experienced. However, he maintained that the degenerative issues were not the major problem.

Dr. Nord ordered an MRI of Employee's shoulder, a CT myelogram of his cervical spine, and an EMG/nerve conduction study of his right arm. The shoulder MRI showed a partially detached superior labrum, cysts, degenerative tearing of the rotator cuff, and advanced arthritis in the glenohumeral joint. After recommended pain management did not provide Employee lasting relief, Dr. Nord performed shoulder surgery on Employee on May 25, 2010. After that, Employee completed numerous physical therapy sessions. Dr. Nord released Employee from his care in November 2011.

On December 5, 2011, Employee returned to Dr. Nord. Employee told Dr. Nord that he had been doing great since the first shoulder surgery, but shortly before his December 5, 2011 visit, his shoulder started hurting as he put on a T-shirt. On September 25, 2012, Dr. Nord performed a second shoulder surgery on Employee. After that surgery, Employee told Dr. Nord that he was doing much better. Dr. Nord later testified that "there is no way to tell" what pain in Employee's shoulder was caused by the degenerative condition and what pain was caused by the 2008 injury, "other than he did not have any significant problems with his shoulder before this injury."

The EMG/nerve conduction study Dr. Nord ordered revealed a C6 radiculopathy, meaning there is pressure on Employee's C6 nerve root causing pain and numbness that radiates down his arm. Dr. Nord said that Employee's neck injury was caused by the October 2008 work injury because the C6 radiculopathy that appeared on the EMG study, and that corresponded with Employee's complaints, resulted from pressure on the nerve root above the level of Employee's 2004 C6-7 diskectomy and fusion. "Based on that," Dr. Nord concluded that Employee's C6 radiculopathy was a new injury.

Dr. Nord conceded that he did not review any of Employee's medical records for the neck treatments Employee received before the October 2008 injury, although Dr. Nord acknowledged that doing so would have been helpful in making his diagnosis. Dr. Nord agreed that he based his treatment and diagnosis on what the Employee told him and the assumption that it was accurate. Ultimately, Dr. Nord recommended that Employee see a neurosurgeon for his neck injury.

Hugh Glenn Barnett, M.D., a neurosurgeon, saw Employee on referrals from Dr. Nord and from Employer's workers' compensation insurer. Dr. Barnett examined Employee on March 10, 2011. In that visit, Employee told Dr. Barnett that he had had continuing symptoms after his 2004 surgery, including neck pain, headaches and residual numbness in the first three fingers of his right hand. Employee also told Dr. Barnett that, at that time, he was unable to work because of his neck pain and headaches.

After taking Employee's history and evaluating Employee, Dr. Barnett opined that Employee had cervical spondylosis in 2004 and that he continued to have cervical spondylosis, which is a degenerative change that occurs in the spine. Based on Employee's complaints, Dr. Barnett opined that Employee had some aggravation of the cervical spondylosis that Dr. Barnett "sincerely" believed existed well before the 2008 work injury. Dr. Barnett believed that the additional cervical pain and neck ache and, the continued numbness in the fingers, were the only symptoms caused by Employee's 2008 work event.

Notably, Dr. Barnett testified that he conferred with a radiologist about the imaging of Employee's spine. The radiologist interpreted Employee's 2003 spinal images as well as the 2012 spinal images. The 2003 images showed spondylosis (degenerative changes) at C4-5 and C5-6. The 2012 images showed that "perhaps there had been slight progression," but the degenerative changes were still basically the same. Thus, Dr. Barnett opined that there was no anatomical change due to an acute injury that occurred between 2003 and 2012, but Employee did have slight progression of his spondylosis over that period of time. Any injury Employee experienced in 2008 did not result in "any major change to the structure of his neck." Dr. Barnett recommended only pain management for Employee but no additional surgery for the neck conditions.[2] Dr. Barnett released Employee to return to full employment once he was released by Dr. Nord.

As for Employee's shoulder complaints, Dr. Barnett stated that Employee had a recent work injury that resulted in a rotator cuff injury, but he did not address Employee's shoulder injury in treatment. Dr. Barnett also reported that Employee had been

[2] Dr. Barnett is a former partner of Dr. Joseph Campbell, the neurosurgeon who performed Employee's 2004 neck surgery. Dr. Campbell had moved to Arkansas but examined Employee upon Dr. Nord's request. Dr. Barnett was provided with Dr. Campbell's clinical note of his November 2010 examination of Employee. Dr. Barnett testified that Dr. Campbell found that Employee had mild spondylosis at the C4-5 and C5-6 levels. Dr. Campbell also recommended against additional surgery on the neck and recommended only pain management.

diagnosed with an acoustic neuroma, a benign tumor in the ear canal. He stated that the neuroma was a possible cause of Employee's headaches.[3]

Damon Petty, M.D., an orthopedic shoulder and Sports Medicine specialist, performed an Independent Medical Evaluation on Employee at Employer's request. Employee visited Dr. Petty in May 2010 for a physical evaluation, and Dr. Petty reviewed his medical records. Employee described his October 2008 injury event.

Dr. Petty testified that the pop in Employee's neck in October 2008 would not indicate a shoulder injury and that the right shoulder pathology is separate from the cervical pathology. Dr. Petty stated that the January 2009 MRI showed degenerative changes in the shoulder that existed for quite some time, most likely years, and that labral tears can wax and wane with symptoms. Dr. Petty described how the MRI indicated chronicity and a degenerative condition rather than an acute problem. He added that the degenerative changes in the shoulder pathology could not have occurred between the October 2008 work injury and the January 2009 MRI—the cysts appearing in the MRI take more time to develop and are evidence of a chronic condition. He also stated that the shoulder surgery of May 2010 was absolutely not necessary by the reported October 2008 injury. He was sure that the shoulder pathology was not caused by the October 2008 work injury.

Regarding the cervical spine condition, Dr. Petty said that there is medical evidence that Employee's spine condition was advanced, exacerbated, or aggravated by the 2008 injury. Employee's cervical symptoms were consistent with C6 radiculopathy and the EMG study showed C6 radiculopathy. However, he also stated that the October 2008 work injury did not produce any kind of permanent anatomical impairment and that

[3] Dr. Barnett referred Employee to Wendy Cran-Carty, M.D., who specializes in anesthesia and pain management. Dr. Cran-Carty saw Employee as a new patient on May 21, 2012. He had many complaints, including pain in his mid-back, hip, low back, neck, both legs, right shoulder, and both knees. He told Dr. Cran-Carty that he was pain free for a while after his 2004 surgery but that he reinjured his neck and shoulder in October 2008. Employee told her that his headaches were the debilitating part of his pain. Dr. Cran-Carty testified that Employee's headaches were caused by another source, the acoustic neuroma, not the work incident of October 2008. She stated that Employee's chronic neck and right shoulder pain were related to the work event in 2008. However, she agreed that continued numbness in Employee's hand following 2004 surgery would indicate some abnormality in his cervical spine between 2004 and 2008, and she agreed that Employee did report shoulder problems all the way back to 2004. She also agreed that Employee's current radicular pain and numbness "is a direct and natural result of the injury that occurred back in 2002-2004." Dr. Cran-Carty ordered an MRI of the cervical spine. That test was performed on June 6, 2012, and revealed degenerative changes at the C4-5 and C5-6 levels. She stated that she would defer to Dr. Barnett with regard to the cause of injury which necessitated Employee's pain management by Dr. Cran-Carty.

Employee's finger numbness since 2004 indicates that the spinal condition is a persisting problem.

Apurva Dalal, M.D., an orthopedic surgeon, saw Employee on April 30, 2014, for an Independent Medical Evaluation at the request of Employee's attorney. Employee told Dr. Dalal that he was lifting steel hoses when he felt a pop in his right shoulder and neck, and he developed numbness in the right thumb, and second and middle fingers. He did not tell Dr. Dalal of the tingling and numbness in these three fingers since 2004. Dr. Dalal did not have any records from Employee's 2004 surgery, and he did not review or compare any of the imagining studies that surrounded the 2004 surgery.

Dr. Dalal reviewed the same reports as Dr. Nord regarding the EMG/nerve conduction study of Employee's right upper extremity, the CT/myelogram of the cervical spine, and the MRI of the right shoulder. Dr. Dalal opined that the C6 radiculopathy shown in the EMG is likely the result of an acute injury, but he acknowledged that the EMG cannot tell when the radiculopathy started. Dr. Dalal also acknowledged that the CT/myelogram from January 2009 showed mild spondylosis, which is a degenerative condition, and the CT/myelogram did not show any acute spinal injury. However, he added that the CT/myelogram is a crude test and may not show a problem that is there.

Dr. Dalal opined that Employee's shoulder injury was an acute injury because, in his opinion, the MRI shows that the labrum is "ripped off of the bone" and the cysts appearing in the MRI take only two to four weeks to develop after a tear. He absolutely disagreed that the shoulder changes are degenerative in nature.

Employee was sixty-two years old when the trial occurred in 2016. He spent most of his adult life working in the trucking industry, mostly as a driver but also as a safety manager and manager. However, since the 2008 injury, he has had difficulties. On a good day, he testified that he is able to watch television and do yard work, but on a bad day, he takes pain medication and watches television in bed. He experiences constant pain in his neck and is limited in his ability to bend his head to either side. Employee had several medical conditions unrelated to his work in the years prior to trial. He had surgeries for a torn meniscus, plantar fasciitis, placement of a cardiac stent and removal of the acoustic neuroma. As a result of the latter procedure, he was completely deaf in his right ear.

*Procedural History*

As stated above in note one, the insurance carrier provided benefits to Employee following the October 2008 event. However, a dispute later arose between the parties regarding whether Employee's injuries actually arose out of and in the course of his employment, and as to whether he was entitled to any further medical or disability

benefits. Thus, on March 25, 2014, Employer filed a petition for determination of workers' compensation benefits. Employer asserted that Employee complained of conditions resulting from pre-existing conditions that were not progressed or advanced by the alleged work-related injury in October 2008. Therefore, Employer stated that Employee was due no further benefits beyond his date of maximum medical improvement, as he suffered no permanent disability from the claimed injury in October 2008.

On May 10, 2016, this matter was tried in the Circuit Court for Crockett County, Tennessee. After receiving the evidence, the trial court issued its decision from the bench. The court found that Employee had sustained new, compensable injuries to his neck and shoulder in October 2008. It found that he was permanently and totally disabled as a consequence of those injuries. It apportioned the entire award of benefits to Employer and assigned no liability to the Second Injury Fund. Employer timely appealed the trial court's judgment to the Tennessee Supreme Court. The appeal has been assigned to this Panel pursuant to Tennessee Supreme Court Rule 51.

Employer raises three issues on appeal: (1) The trial court erred by hearing Employee's motion for continuance *ex parte*, granting the motion, and basing its decision on the deposition testimony obtained after the court granted the continuance; (2) The trial court erred by finding that Employee sustained compensable injuries to the cervical spine and shoulder; and (3) The trial court erred by determining that Employee is permanently and totally disabled, or in the alternative by apportioning no liability to the Second Injury Fund.

We begin by addressing the second issue raised on appeal. After a thorough review of the evidence, we find that Employee did not suffer compensable injuries to the cervical spine and shoulder in October 2008; thus, the first and third issues are pretermitted.

## STANDARD OF REVIEW

In a workers' compensation action we are required by law to review the trial court's factual findings "de novo upon the record of the trial court, accompanied by a presumption of correctness of the finding, unless the preponderance of evidence is otherwise." Tenn. Code Ann. § 50-6-225(e)(2) (2008). We give considerable deference to the trial court when the trial judge has the opportunity to observe the witnesses' demeanor and to hear in-court testimony. *Padilla v. Twin City Fire Ins. Co.*, 324 S.W.3d 507, 511 (Tenn. 2010); *Madden v. Holland Group of Tenn.*, 277 S.W.3d 896, 900 (Tenn. 2009). When the issues involve expert medical testimony contained in the record by deposition, determination of the weight and credibility of the evidence necessarily must

be drawn from the contents of the depositions, and the reviewing court may draw its own conclusions with regard to those issues. *Foreman v. Automatic Sys., Inc.*, 272 S.W.3d 560, 571 (Tenn. 2008) (citing *Orrick v. Bestway Trucking, Inc.*, 184 S.W.3d 211, 216 (Tenn. 2006)). "Ultimately, we must conduct an independent review of the evidence to determine where the preponderance of the evidence lies." *Glisson v. Mohon Int'l, Inc./Campbell Ray*, 185 S.W.3d 348, 353 (Tenn. 2006).

## ANALYSIS

Employer asserts that the trial court erred by finding Employee's neck and shoulder injuries to be compensable because Employee did not sustain a new injury or a compensable aggravation of his pre-existing injury. To be eligible for workers' compensation benefits, an employee must suffer an "injury by accident arising out of and in the course of employment that causes either disablement or death of the employee." Tenn. Code Ann. § 50-6-102(13) (2005). "An injury must both 'arise out of' as well as be 'in the course of' employment to be compensable under workers' compensation." *Hill v. Eagle Bend Mfg. Co.*, 942 S.W.2d 483, 487 (Tenn. 1997). The "in the course of employment" requirement "focuses on the time, place, and circumstances of the injury." *Clark v. Nashville Mach. Elevator Co.*, 129 S.W.3d 42, 47 (Tenn. 2004). The "arising out of" employment requirement refers to causation. *Id.* "An injury arises out of employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury." *Id.*

The question of whether a particular event constitutes a compensable aggravation of a pre-existing condition has been the subject of numerous appellate decisions. *See Hill*, 942 S.W.2d at 488 (employee's pre-existing back condition was permanently worsened by work related injury and was thus compensable); *Fink v. Caudle*, 856 S.W.2d 952, 958 (Tenn. 1993) (work injury advanced the severity of employee's pre-existing condition); *Townsend v. State*, 826 S.W.2d 434, 436 (Tenn. 1992) (employee's knee condition was independently progressive and work did not advance the severity of his condition or cause a disabling condition); *Cunningham v. Goodyear Tire & Rubber Co.*, 811 S.W.2d 888, 891 (Tenn. 1991) (employee's work aggravated his pre-existing condition by making the pain worse but it did not otherwise injure or advance the severity of his osteoarthritis). "[A]n injury is compensable, even though the claimant may have been suffering from a serious pre-existing condition or disability, if a work connected accident can be fairly said to be a contributing cause of such injury." *Fink*, 856 S.W.2d at 958.[4] However, where an employee's work aggravates his pre-existing condition by

[4] This standard has changed for injuries occurring on or after July 1, 2014. Tenn. Code Ann. § 50-6-102(14) (2014).

making the pain worse but does not otherwise injure or advance the severity of the condition, or result in any other disabling condition, the situation does not constitute a compensable injury. *Smith v. Smith's Transfer Corp.*, 735 S.W.2d 221, 225-26 (Tenn. 1987); *accord. Trosper v. Armstrong Wood Products, Inc.*, 273 S.W.3d 598, 606-607 (Tenn. 2008) ("We reiterate that the employee does not suffer a compensable injury where the work activity aggravates the pre-existing condition merely by increasing the pain."). In other words, "to be compensable, the pre-existing condition must be 'advanced,' or there must be an 'anatomical change' in the pre-existing condition, or the employment must cause 'an actual progression . . . of the underlying disease.'" *Sweat v. Superior Industries, Inc.*, 966 S.W.2d 31, 32-33 (Tenn. 1998) (internal citations omitted).

The following evidentiary standard for proving causation was in place at the time of Employee's October 2008 injury:

> Although causation in a workers' compensation case cannot be based upon speculative or conjectural proof, absolute certainty is not required because medical proof can rarely be certain, and any reasonable doubt in this regard is to be construed in favor of the employee. *Hill*, 942 S.W.2d at 487. Our courts have thus consistently held that an award of benefits may properly be based upon medical testimony to the effect that the employment could or might have been the cause of the worker's injury when, from other evidence, it can reasonably be inferred that the employment was the cause of the injury. *Id.*

*Clark*, 129 S.W.3d at 47; *accord. Excel Polymers, LLC v. Broyles*, 302 S.W.3d 268, 274 - 275 (Tenn. 2009).

*Shoulder Injury*

In this case, the trial court was presented with the testimony of Dr. Nord, an orthopedist who specializes in shoulder treatment and who was Employee's treating physician from shortly after the injury until 2014. Dr. Nord initially testified that both the shoulder and neck injuries were directly caused by the October 2008 incident. However, Dr. Nord also testified that upon his first visit with Employee, Employee reported a pop in his neck and complained of neck and finger pain following the October 2008 injury. Dr. Nord did not recall Employee complaining of a shoulder pop or tear sensation. Dr. Nord found Employee's shoulder injury during his examination of Employee and testified that Employee had ongoing degenerative issues in his shoulder. He also stated that "there is no way to tell" what pain in Employee's shoulder is from the degenerative condition and what pain was caused by the 2008 injury, "other than he did not have any significant problems with his shoulder before this injury."

Dr. Petty, also an orthopedic shoulder specialist, testified that Employee described his October 2008 injury as a pop in his neck. Dr. Petty stated the pop in his neck would not indicate a shoulder injury and that Employee's right shoulder pathology is separate from his cervical pathology. Dr. Petty testified that the January 2009 MRI of Employee's shoulder showed degenerative changes that had existed for quite some time, most likely years, and that the cysts appearing in the MRI are evidence of a chronic condition and could not have formed since October 2008. He added that the labral tears in Employee's shoulder can wax and wane with symptoms. According to Dr. Petty, Employee's shoulder surgery of May 2010 was absolutely not necessitated by the reported October 2008 injury.

Dr. Dalal, an orthopedist but not a shoulder specialist, opined that Employee's shoulder injury was an acute injury because the cysts appearing in the MRI take only two to four weeks to develop after a tear. Dr. Barnett, a neurosurgeon, briefly stated that Employee had a work injury that resulted in a rotator cuff injury, but Dr. Barnett did not address Employee's shoulder injury in his recommended treatment for Employee or elaborate on Employee's shoulder pathology.

Based on this evidence, we are convinced that the preponderance of the evidence weighs in favor of finding that Employee's shoulder condition is degenerative in nature and independent of his reported work injury of October 2008.

*Neck Injury*

Dr. Nord opined that Employee's C6 radiculopathy, revealed on the CT/myelogram of the cervical spine, was most likely a "new finding" because it stemmed from a problem just above where Employee had a fusion surgery in November 2004. He stated that Employee's neck injury was caused by the October 2008 work injury. However, he acknowledged that Employee had ongoing degenerative issues in his cervical spine and that these can contribute to the pain Employee experienced. He also conceded that he did not review any medical records of Employee's treatments prior to the October 2008 injury and he agreed that doing so would have been helpful in making his diagnosis. Furthermore, Dr. Nord referred Employee to Dr. Barnett, a neurosurgeon, for his neck injury.

Dr. Barnett said that Employee reported to him that he experienced some residual neck pain and numbness in his first three fingers of his right hand since his 2004 fusion surgery. Dr. Barnett testified that Employee had cervical spondylosis in 2004 and that he still has cervical spondylosis, which is a degenerative change that occurs in the spine. Additionally, Dr. Barnett consulted with a radiologist who interpreted both Employee's

2003 spinal images and his 2012 spinal images. Based on the comparison of these images, Dr. Barnett opined that Employee had only slight progression of his spondylosis over that time and there was no anatomical change due to an acute injury that occurred between 2003 and 2012. Dr. Barnett stated that Employee's only symptoms following the 2008 work injury were additional pain and neck ache along with continued numbness in his fingers. Dr. Barnett released Employee to return to full employment once he was released by Dr. Nord. He recommended only pain management and no additional surgery on Employee's neck.

Dr. Petty testified that there is evidence that Employee's spine condition was advanced, exacerbated, or aggravated by the 2008 injury. However, he also stated that the 2008 work injury did not produce any kind of permanent anatomical impairment and that Employee's finger numbness since 2004 indicates a persisting problem. Dr. Cran-Carty, who treated Employee for his pain, ultimately stated that she would defer to Dr. Barnett with regard to the cause of Employee's cervical injury which necessitated pain management.

Dr. Dalal opined that the C6 radiculopathy confirmed in the EMG/nerve conduction study is likely the result of an acute injury. However, he also acknowledged that Employee did not tell him of the tingling and numbness in the first three fingers in his right hand since 2004. Dr. Dalal also did not have any medical records or cervical images from the 2003 injury to review for comparison purposes. Dr. Dalal acknowledged that the CT/myelogram from January 2009 showed mild spondylosis, a degenerative condition.

Based on the medical testimony regarding Employee's neck condition, we are convinced that the preponderance of the evidence lies in favor of finding that Employee's neck condition is degenerative in nature. While he experienced some aggravation of the condition which produced increased pain following the October 2008 injury, his condition was not anatomically advanced by the October 2008 injury. Therefore, we conclude that Employee did not suffer a compensable work related injury in October 2008.

## CONCLUSION

Because we hold that Employee did not suffer a compensable work injury in October 2008, we need not address whether the trial court committed reversible procedural errors or whether it should have apportioned some liability for the workers' compensation award to the Second Injury Fund.

The judgment of the trial court is reversed and the cause remanded to the trial court for entry of a judgment consistent with this opinion. Costs are taxed to Terry Pigue, for which execution may issue if necessary.

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HOLLY KIRBY, JUSTICE

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

**T & B TRUCKING v. TERRY PIGUE ET AL.**

**Circuit Court for Crockett County**
**No. 3357**

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**No. W2016-01194-SC-WCM-WC – Filed December 14, 2017**

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## JUDGMENT ORDER

This case is before the Court upon the motion for review filed by Terry Pigue pursuant to Tennessee Code Annotated section 50-6-225(e)(5)(A)(ii), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Opinion setting forth its findings of fact and conclusions of law.

It appears to the Court that the motion for review is not well taken and is, therefore, denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to Terry Pigue, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

HOLLY KIRBY, J., not participating.