

**IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE AUGUST 1999 SESSION**

CHARLES BLAKE BRITTON,)	
)	MONROE CHANCERY
Plaintiff/Appellant)	
)	
v.)	NO. 03S01-9901-CH-00012
)	
LIBERTY MUTUAL INSURANCE CO.,)	
)	HON. JERRI S. BRYANT
Defendant/Appellee)	

For the Appellant:

J. Lewis Kinnard
311 Tellico Street
Madisonville, TN 37354

For the Appellee:

James T. Shea
Baker, McReynolds, Byrne, O'Kane,
Shea & Townsend
607 Market Street, 11th Floor
P.O. Box 1708
Knoxville, TN 37901-1708

MEMORANDUM OPINION

Members of Panel:

Justice William M. Barker
Senior Judge John K. Byers
Special Judge Howell N. Peoples

AFFIRMED

BYERS, Senior Judge

_____This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

Review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise. TENN. CODE ANN. § 50-6-225(e)(2); *Stone v. City of McMinnville*, 896 S.W.2d 548, 550 (Tenn. 1995).

The application of this standard requires this Court to weigh in more depth the factual findings and conclusions of the trial courts in workers' compensation cases. See *Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988).

The plaintiff brought this action to recover for an injury which he alleges occurred in February of 1995.

The trial judge found the plaintiff had failed to show the injury of 1995 entitled him to recover.

We affirm the judgment of the trial court.

The plaintiff suffered a back injury in 1993 and received treatment for pain he experienced as a result of the injury. He never lost any work as a result of the injury. Indeed, the record is sparse as to any medical treatment received by the plaintiff.

The plaintiff sustained another back injury in February of 1995 doing the same work for the defendant that he was doing in 1993 when he sustained the previous injury.

The plaintiff testified that he began to suffer pain again after the 1995 injury. He described the pain as being more extensive than the previous pain. Ultimately, the plaintiff was seen by Dr. Mark K. Thomas, an orthopedic surgeon. Dr. Thomas did a discectomy on the plaintiff's L5-S1 disc to correct a herniation which was impinging on the S-1 nerve root. Dr. Thomas was of the opinion the plaintiff had suffered an 11 percent medical impairment to the body as a whole as a result of his back condition.

The difficulty faced by the trial judge in this case is that there is no medical evidence to show the herniation of the disc in the plaintiff's back was caused by the plaintiff's 1995 injury. Further, there is no medical evidence to show the injury of 1995 caused any progression or worsening of any condition affecting the plaintiff's back.

The record shows Dr. Thomas was not made aware of any injury suffered in 1995. The only history he had was the injury of 1993. Dr. Thomas found the injury of 1993 caused the plaintiff's disability.

There is no medical information in the case to support a finding that the 1995 accident caused the plaintiff's injury or that it advanced the severity of the plaintiff's pain nor is there any evidence of a progression of the injury to the plaintiff's back.

In ruling on the case the trial judge found specifically "[w]ithout medical testimony that there was an acceleration of the preexisting injury, which we'll have to call the '93 injury, I find that this is not going to be a compensable claim as far as permanency of the injury."

The plaintiff agreed that he was proceeding only on the injury of 1995 and not on the 1993 injury.

The general rule is that aggravation of a preexisting condition may be compensable under the workers' compensation laws, but it is not compensable if it results only in increased pain or other symptoms caused by the underlying condition.

To be compensable under workers' compensation laws, a preexisting condition must be advanced, there must be anatomical change in the preexisting condition, or the employment must cause an actual progression of the underlying disease. *Sweat v. Superior Indus.*, 966 S.W.2d 31 (Tenn. 1998). The supreme court has also held: "[a]n award may be predicated on medical testimony to the effect that a given incident 'could be' the cause of the plaintiff's injury when he has before him lay testimony from which it may reasonably be inferred that the incident was in fact the cause of the injury." *Tindall v. Waring Park Ass'n*, 725 S.W.2d 935 (Tenn. 1987).

In this case there is no medical evidence to support the plaintiff's claim.

We affirm the judgment of the trial court. The cost of the appeal is taxed to the appellant/plaintiff.

John K. Byers, Senior Judge

CONCUR:

William M. Barker, Justice

Howell N. Peoples, Special Judge

Chief Justice E. Riley Anderson