

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT KNOXVILLE  
August 30, 2000 Session

**GEORGE T. POTTER v. SCHLEGEL FINISHING, INC., ET AL.**

**Direct Appeal from the Circuit Court for Blount County  
No. L-8903 W. Dale Young, Judge**

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**No. E1999-01808-WC-R3-CV - Mailed - November 9, 2000  
Filed: December 12, 2000**

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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 to the Supreme Court of findings of fact and conclusions of law. The plaintiff appeals from the dismissal of his case by way of summary judgment and also appeals from the order of the trial court awarding the defendant discretionary costs. The defendant raises as an issue the action of the trial court in considering the affidavit of the plaintiff in determining the summary judgment motion. We reverse the judgment of the trial court and remand the case for further proceedings.

**Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Circuit Court  
for Blount County is Reversed and Remanded**

JOHN K. BYERS, SR. J., delivered the opinion of the court, in which E. RILEY ANDERSON, C.J. and ROGER E. THAYER, SP. J., joined.

Edward M. Graves, Jr, Carl Winkles, and Douglas C. Weinstein, Knoxville, Tennessee, for the appellant, George T. Potter.

F. R. Evans, Chattanooga, Tennessee, for the appellees BTR Sealing Systems N. America - Tennessee Operations f/k/a Schlegel Tennessee, Inc., and ACE USA (mis-styled "CIGNA" in the caption).

## OPINION

### Facts

The plaintiff brought suit to recover for an injury to his back, which he alleges occurred on June 14, 1993. The protracted proceedings in this case resulted in the taking of the plaintiff's deposition, the interrogatories of the plaintiff, the affidavit of the plaintiff, a deposition of a representative of the defendant, the depositions of two doctors, and various other documents which were collected and filed in the record.

In the course of taking the plaintiff's deposition and other discovery, it was discovered the plaintiff had suffered a previous back injury that ultimately required surgery; however, when the plaintiff filled out his application for employment with the defendant, he responded "no" to the questions concerning previous work injuries, workers' compensation claims and surgery. Further, he did not reveal the information to the preemployment physician who conducted a physical examination of him on behalf of the defendant.

The defendant made a motion for summary judgment in the case. The trial judge granted the motion, ruling:

Considering the entire record, the court is of the opinion and finds that the gross misrepresentations of the employee to the employer at the time of hire are unconscionable and that this is a proper case for summary judgment in that (1) the employee knowingly and wilfully made false representations of his physical condition, (2) the employer relied upon the false representations and such reliance was a substantial factor in the decision to hire, and (3) a causal connection exists between the false misrepresentations and the alleged injury suffered by the employee in this case.

### Discussion

The standard of review of a summary judgment order in a worker's compensation case is not *de novo* upon the record with a presumption of correctness, which is the standard generally applied to such cases in accordance with Tennessee Code Annotated § 50-6-225(e). Rather, it is governed by Rule 56 of the Tennessee Rules of Civil Procedure, and the judgment of the trial court is not reviewed with a presumption of correctness.

In considering a motion for summary judgment, the pleadings and the evidence must be viewed in the light most favorable to the opponent of the motion. *Wyatt v. Winnebago Indus. Inc.*,

566 S.W.2d 276 (Tenn. App. 1977). Summary judgment is to be rendered only when it is shown that there is no genuine issue of fact and that the moving party is entitled to a judgment as a matter of law. *Hilliard v. Tenn. State Home Health Services, Inc.*, 950 S.W.2d 345 (Tenn. 1997).

In cases of alleged false statements in an employment contract that would bar recovery for an injury to the employee, the employer must show the employee knowingly and willfully made a false representation as to his or her physical condition, that the employer relied upon the false representation and the reliance was a substantial factor in the hiring, and that there is a causal connection between the injury currently in question and the previous, unrevealed condition.

The causal connection must be a factual connection between the previous injury or condition which was concealed and the current injury. *Federal Copper and Aluminum Company v. Dickey*, 493 S.W.2d 463 (Tenn. 1973), *Beasley v. United States Fidelity and Guaranty Company*, 699 S.W.2d 143 (Tenn. 1985). All of these factors must be proven in order to establish the defense of false representation in the hiring process. *Raines v. Shelby Williams Industries, Inc.*, 814 S.W.2d 346 (Tenn. 1991).

The statements, the plaintiff's deposition, and the other discovery material in the record show conflicting facts with respect to each of the elements the defendant was required to prove in order to show the plaintiff could not proceed because of his alleged willful concealment of the previous back injury. Obviously, the trial judge had to weigh the evidence to reach the summary judgment entered. A summary judgment was inappropriate in this case.

The trial court's order awarding the defendant discretionary cost is set aside as well. The matter shall abide the trial of the case on the merits.

The issue of the plaintiff's affidavit in response to the defendant motion for a summary judgment is moot. We would have reached the same opinion in the case had the affidavit not been considered.

The cost of the appeal is taxed to the defendant.

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JOHN K. BYERS, SENIOR JUDGE

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GEORGE T. POTTER V. SCHELEGEL FINISHING, INC, ET AL  
**Circuit Court for Blount County**  
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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 facts 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 Defendant, Schlegel Finishing, Inc. and Cigna, for which execution issue if necessary.

12/12/00