

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

October 10, 2000 Session

RYDER DRIVER LEASING, INC. v. BRUCE WILSON ET AL.

**Direct Appeal from the Circuit Court for Knox County
No. 1-7-98 Dale Workman, Circuit Court Judge**

**No. E2000-00905-WC-R3-CV - Mailed - December 12, 2001
FILED: August 27, 2001**

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. The trial court found the plaintiff had a compensable psychiatric injury. We affirm the findings of the trial court.

Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Circuit Court is Affirmed

JOHN K. BYERS, SR. J., delivered the opinion of the court, in which HOUSTON M. GODDARD, SP. JUSTICE and WILLIAM H. INMAN, SR. J., joined.

Daniel C. Todd, Nashville, Tennessee, for the appellant, Ryder Driver Leasing, Inc.

William C. Cremins, Knoxville, Tennessee, for the appellee, Bruce Wilson.

MEMORANDUM OPINION

The trial court found the defendant had sustained a psychiatric injury but noted the doctor failed to assign an impairment rating and noted the medical testimony showed the defendant could return to gainful employment. After allowing additional psychiatric proof, the court awarded temporary total disability retroactive to January 1, 1998, the date of maximum medical improvement. The trial court eventually awarded 400 weeks permanent total disability, subject to the maximum allowable in Tennessee Code Annotated § 50-6-102(b) for complete loss of mental faculties, and awarded future medicals.

The employer argues the trial court erred in awarding psychiatric benefits after deciding

no compensable physical injury had occurred. The employer also argues the trial court erred in disallowing its motion for continuance. The employee is contesting the trial court's failure to award compensation for a physical impairment.

Facts

The defendant, age forty-seven at the time of trial, quit school in the tenth grade; he reads at an eighth grade level. His work history is that of a truck driver, which he has done for twenty years. He claims he was injured in August of 1995 while in Rhode Island. He strained his back while unloading bed rails.

He took time off after the injury, during which time he received temporary total disability benefits, and then tried to return to work in November of 1996 but could not stand the pain. He testified that after leaving work in November he could no longer travel to see family, camp or boat. He could not drive or lift or work. He could work before the accident despite pain because he was able to "work through it." The defendant has an extensive medical history pre-accident: chronic back pain, severe sleep apnea, depression, obesity, hypertension, gastroesophageal reflux disease, prostatitis, and impotence.

Medical Evidence

The employee was seen by a multitude of physicians. The pertinent testimony is set out below.

Dr. Margaret Robbins, M.D., a psychiatrist, testified via deposition. Dr. Robbins noted the employee had previously been treated by another doctor with Paxil but did not finish his course of treatment. The employee also had been non-compliant for his medical treatment of other conditions such as sleep apnea. Dr. Robbins testified that the employee's current medical condition is sufficiently explained by his ongoing medical problems and not caused by the August 1996 accident.

Dr. Robert Finelli, M.D., a neurosurgeon, testified via deposition. Dr. Finelli saw the employee on four occasions before the August 1996 event. The employee had complaints similar to the post-injury complaints at those visits—back and right leg pain with pain into the mid-thigh and calf, chronic since 1988. Dr. Finelli felt the employee would have to learn to live with the problems.

Dr. Kevin Bailey, M.D., an orthopedist with a specialty in physical medicine and rehabilitation, testified via deposition. Dr. Bailey saw the employee after the accident in August 1996. He performed an MRI in September of 1996 that was essentially normal and showed no change from one taken in February of 1996. Dr. Bailey testified that within a reasonable degree of medical certainty, the employee sustained no permanent injury and needed no permanent restrictions.

Dr. William Paulsen, M.D., a neurologist, testified via deposition. Dr. Paulsen examined the employee in January of 1998. He classified the employee as normal and felt the employee's chronic pain was due to musculoskeletal factors with no objective neurologic abnormalities. He felt the employee might experience periodic flare-ups of symptoms but should be able to return to his duties as a truck driver.

Dr. Clifton Tennison, M.D. a psychiatrist, testified via deposition. Dr. Tennison stated he examined the employee and found a change in the his depression due to his not being able to be the bread winner after the August accident. Dr. Tennison testified there was a physiological brain change after the August injury. Dr. Tennison's deposition was taken three weeks before trial. The employer moved for a continuance because the defendant had failed to disclose the expert and did not provide his records until a few days before the deposition; however, the continuance was denied by the trial judge. Dr. Tennison did not provide an impairment rating.

_____ Dr. Kelley Walker found the plaintiff's depression had worsened as a result of his inability to work.

Dr. Norman Hankins, Ph.D., a vocational disability expert, testified via deposition. Dr. Hankins found the employee unemployable in the Knox and Cocke County labor markets.

Discussion

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 employer argues the trial court erred in finding the employee suffered a compensable psychiatric injury as a result of the August injury at work. This Court has recognized two factual situations in which employees may recover compensation benefits for mental disorders. Firstly, recovery is appropriate for a mental injury by accident or occupational disease, standing alone, if the mental disorder is "caused by an identifiable, stressful, work-related event producing a sudden mental stimulus such as fright, shock or excessive unexpected anxiety." *Hill v. Eagle Bend Mfg., Inc.*, 942 S.W.2d 483 (Tenn. 1997); *Batson v. Cigna Property & Casualty Companies*, 874 S.W.2d 566, 570 (Tenn. 1994). Secondly, compensation for psychological disorders has been allowed when an employee sustains a compensable work-related injury by accident and thereafter experiences a mental disorder which is caused by the original compensable work-related injury. *Batson*, 874 S.W.2d at 570.

In this case, the employee received compensation in the form of temporary total disability for a period of time due to his back injury. The trial judge found the injury to the employee's back,

although compensable on a temporary total basis, was not permanent according to the medical testimony. The medical evidence supports the trial judge's finding in this respect and the evidence does not preponderate against the finding regarding permanency of any physical injury suffered by the employee.

The trial judge found the employee's back injury contributed to and exacerbated the employee's pre-existing depression to the point he became unable to work.

As to the pre-existing depression, an employer is responsible for workers' compensation benefits, even though the claimant may have been suffering from a serious pre-existing condition or disability, if employment causes an actual progression of the prior disabling condition or disease. *See Hill v. Eagle Bend Mfg., Inc.*, 942 S.W.2d 483 (Tenn. 1997). To be compensable, the pre-existing condition must be advanced, there must be anatomical change in the pre-existing condition, or the employment must cause an actual progression of the underlying disease. *Sweat v. Superior Indus., Inc.*, 966 S.W.2d 31, 32 (Tenn. 1998). The medical evidence shows the plaintiff suffered a progression or worsening of the depression to the point that he essentially became non-functional. Also, Dr. Tennison testified the employee's brain underwent a physiological change as a result of the August injury.

The ultimate question in this case, as in any workers' compensation case, is vocational disability. In making determinations as to vocational disability, the court shall consider all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's disabled condition. TENN. CODE ANN. § 50-6-241(c); *Roberson v. Loretto Casket Co.*, 722 S.W.2d 380, 384 (Tenn. 1986).

The employee was suffering from a pre-existing condition of depression. The trial judge found the condition was not caused by the injury; however, the medical evidence accepted by the trial judge shows the employee, as a result of the work-related injury, suffered pain and distress caused an aggravation of his existing mental condition which has settled into a permanent impairment from which the physicians opine he will not recover. Thus, under *Hill* the mental injury is compensable

The ultimate question in a workers' compensation case is vocational disability. A medical expert's testimony is one of the relevant factors for determining the extent of vocational disability in a workers' compensation proceeding, but vocational disability is not restricted to precise estimates of anatomical disability made by a medical witness. *Cooper v. Insurance Co. of North America*, 884 S.W. 2d 446 (Tenn. 1994)

The extent of vocational disability is a question of fact to be determined from all of the evidence, including lay and expert testimony. TENN. CODE ANN. § 50-6-241(c); *Worthington v. Modine Mfg. Co.*, 798 S.W.2d 232, 234 (Tenn. 1990). A trial judge is not bound to accept physicians' opinions, but is entitled to determine the extent of the disability from all of the evidence,

both expert and nonexpert. *Hinson v. Wal-Mart Stores, Inc.*, 654 S.W.2d 675 (Tenn. 1983).

Dr. Clifton Tennison, M.D., the employee's treating psychiatrist, testified he found a change in the employee's depression after the August accident. He testified there was an actual physiological brain change after the injury.

Dr. Norman Hankins, Ph.D., a vocational disability expert, testified the employee is unemployable in the Knox and Cocke County labor markets.

It is clear that the employee suffered a compensable physical work-related injury and was entitled to the temporary total disability compensation he received. The employee, therefore, also suffered a mental injury that is compensable. The evidence does not preponderate against the trial judge's award in this respect.

Finally, as to the employer's argument that the trial judge erred in failing to grant a continuance, we find no showing of prejudice on the record; therefore, the argument is overruled.

The costs of this appeal are taxed to the employer.

JOHN K. BYERS, SENIOR JUDGE

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No. E2000-00905-WC-R3-CV

JUDGMENT
FILED: AUGUST 27, 2001

This case is before the Court upon Ryder Driver Leasing, Inc.'s motion for review pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), 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 motion for review is not well taken and should be denied; 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 Ryder Driver Leasing, Inc., for which execution may issue if necessary.

IT IS SO ORDERED.