

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

AT JACKSON
(April 18, 1996 Session)

JIMMY McCARVER,) HENRY CIRCUIT
)
Plaintiff-Appellee,) Hon. Julian P. Guinn,
) Judge.
v.)
) No. 02S01-9512-CV-00124
TECUMSEH PRODUCTS COMPANY,)
)
Defendant-Appellant.)

FILED

August 28, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

For Appellant:

David F. Hessing
Hessing, Ventimiglia & Swayne
Paris, Tennessee

For Appellee:

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Huntingdon, Tennessee

MEMORANDUM OPINION

Members of Panel:

Lyle Reid, Associate Justice, Supreme Court
John K. Byers, Senior Judge
Joe C. Loser, Jr., Special Judge

REVERSED

Loser, Judge

This workers' compensation appeal has been referred to the Special

Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. section 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. In this appeal, the employer, Tecumseh, contends that the evidence preponderates against the trial court's finding that the employee's disability arose out of the employment. The panel agrees.

On October 1, 1993, the employee or claimant, McCarver, while working for the employer, bumped his leg against a metal container and felt immediate pain. He was referred to a doctor, who diagnosed a bruised leg and arthritis. When the pain persisted, the claimant was referred to another doctor, who made a similar diagnosis.

The claimant testified that he has difficulty standing, walking, squatting, sitting and sleeping that he did not have before the accident, and that he is no longer able to work. His condition interferes with his hunting and fishing.

Doctors have determined that he has degenerative joint disease and synovitis of the left knee. There is no medical evidence that his condition is causally connected to the work-related accident of October 1, 1993.

The trial court awarded permanent partial disability benefits on the basis of seventy-five percent to the left leg. Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance is otherwise. Tenn. Code Ann. section 50-6-225(e)(2).

Unless admitted by the employer, the employee has the burden of proving, by competent evidence, every essential element of his claim. Mazanec v. Aetna Ins. Co., 491 S.W.2d 616 (Tenn. 1973). He must prove, among other things, that his injury arose out of his employment. In order to establish that an injury was one arising out of the employment, the cause of the injury must be proved. In all but the most obvious cases, causation may only be established by expert medical testimony. Orman v. Williams Sonoma, Inc., 803 S.W.2d 672, 676 (Tenn. 1991).

In the present case, there simply is no medical evidence either that the accident at work caused the injury or that it aggravated a pre-existing condition, causing the disability. Moreover, the causal connection is not obvious from the circumstances. We therefore find that the evidence preponderates against any award of permanent disability benefits.

The judgment of the trial court is accordingly reversed. Costs on appeal are taxed to the plaintiff-appellee.

Joe C. Loser, Jr., Judge

CONCUR:

Lyle Reid, Associate Justice

John K. Byers, Judge