

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

AT KNOXVILLE  
(August 5, 1996 Session)

**FILED**  
**January 27, 1997**  
**Cecil Crowson, Jr.**  
Appellate Court Clerk

RONALD L. SHOOK, ) KNOX CIRCUIT  
 )  
Plaintiff-Appellant, ) Hon. Harold Wimberley,  
 ) Judge.  
v. )  
 ) No. 03S01-9602-CV-00011  
YATES CONSTRUCTION COMPANY, )  
INC, and CNA INSURANCE )  
COMPANIES, )  
 )  
Defendants-Appellees. )

For Appellant:

Robert C. Edwards  
Knoxville, Tennessee

For Appellee:

Stephen E. Yeager  
Lowe, Shirley & Yeager  
Knoxville, Tennessee

MEMORANDUM OPINION

Members of Panel:

E. Riley Anderson, Associate Justice, Supreme Court  
William H. Inman, Special Judge  
Joe C. Loser, Jr., Special Judge

AFFIRMED

Loser, Judge

MEMORANDUM OPINION

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 employee or claimant, Shook, contends the evidence preponderate against the trial judge's finding that his psychological condition did not arise out of his employment. The panel has concluded that the judgment should be affirmed.

The claimant has a long history of mental illness, including severe depression and post-traumatic stress disorder, and drug and alcohol abuse. He has been hospitalized and received out-patient care since his discharge from military

service following a tour of duty in Vietnam.

On July 10, 1991, while working for Yates, he was slowly driving a dump truck when the front axle dropped suddenly, causing the front end of the truck to hit the pavement. He claims that he felt immediate back pain and fright. Immediately following the accident, the claimant angrily confronted his supervisor and the owner of the business, using abusive language, about the accident and condition of the truck. He was fired.

Shook also has a history of back pain, having received a previous workers' compensation award in 1977 while working for another employer. He also experienced back pain following a car accident in 1984 and a work-related truck accident in 1989.

An orthopedic surgeon examined the claimant and diagnosed chronic back strain and early osteoarthritic changes, but opined by deposition that he was not impaired. Two psychiatrists testified that the accident triggered an acute episode of the claimant's pre-existing condition, but their testimony did not establish any impairment causally connected to the accident. The record also contains the testimony of two psychologists and a social worker, who expressed opinions as to the

claimant's industrial disability.

The trial court denied any workers' compensation benefits for Mr. Shook's psychological condition. 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 of the evidence is otherwise. Tenn. Code Ann. section 50-6-225(e)(2). This tribunal is required to conduct an independent examination of the evidence to determine where the preponderance of the evidence lies.

A mental injury by accident arises out of employment if it is caused by an identifiable, stressful work-related event producing sudden mental stimulus such as fright, shock or excessive unexpected anxiety. Batson v. Cigna Property and Cas. Co., 874 S.W.2d 566, 569 (Tenn. 1994). As in all but the most obvious cases, both causation and permanency must be established by expert medical testimony. Wade v. Aetna Casualty and Surety Company, 735 S.W.2d 215 (Tenn. 1987). The medical evidence in this case fails to preponderate against the finding that the claimant's psychological injury pre-existed the work-related accident and was not caused by it.

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

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Joe C. Loser, Jr., Judge

CONCUR:

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E. Riley Anderson, Associate Justice

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William H. Inman, Judge

IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE

RONALD L. SHOOK ) KNOX CIRCUIT  
) NO. 2-587-91  
Plaintiff/Appellant, )  
) Hon. Harold Wimberly  
V. )  
) S. Ct. No. 03-S-01-9602-CV-  
YATES CONSTRUCTION COMPANY, )  
00011  
INC., and CNA INSURANCE )  
COMPANIES, )  
) Affirmed  
Defendants/Appellees. )

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JUDGMENT ORDER

This case is before the Court upon 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.

Cost will be paid by Plaintiff/Appellant for which execution may issue if necessary.

It is so ordered this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

PER CURIAM