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

DENNIS E. PARSONS,	)	
	)	
Plaintiff/Appellant	)	KNOX CHANCERY
	)	
v.	)	NO. 03S01-9807-CH-00080
	)	
W.T. WARREN DISTRIBUTING and THE ST. PAUL,	)	HON. FREDERICK D. McDONALD, CHANCELLOR
	)	
Defendants/Appellees	)	

For the Appellant:

James L. Milligan, Jr.
Law Offices of James L. Milligan, Jr. and Associates
607 Market Street, 10th Fl.
Knoxville, TN 37902

For the Appellees:

Ricky L. Apperson
Spicer, Flynn & Rudstrom, PLLC
800 S. Gay St., Suite 1209
Knoxville, TN 37929

M E M O R A N D U M O P I N I O N

Members of Panel:

Justice Frank F. Drowota, III
Senior Judge John K. Byers
Senior Judge William H. Inman

REVERSED and REMANDED

BYERS, Senior Judge

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. § 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 findings, 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 court in a workers' compensation case. *See Corcoran v. Foster Auto GMC, Inc.,* 746 S.W.2d 452, 456 (Tenn. 1988).

The trial judge found the plaintiff could not recover in this case because the medical evidence showed the plaintiff had suffered only an increase in pain from a preexisting degenerative disc disease.

The trial judge found the plaintiff had suffered a 30 percent vocational disability if he were entitled to recover.

We find the evidence preponderates in favor of the plaintiff. We reverse the judgment which dismisses the case and find the plaintiff is entitled to an award of 30 percent vocational disability as found by the trial judge.

The plaintiff was age 35 at the time of the trial and has a high school education. He was primarily employed as a truck driver, a job he did for the defendant.

On January 15, 1997, the plaintiff was doing repair work on an office ceiling. When a small piece of dry-wall fell toward the plaintiff's head, he jerked his head backward and heard his neck "pop." Soon after the plaintiff began to suffer pain in his neck and he sought medical attention.

Dr. Robert Scott Davis, a neurosurgeon, became the plaintiff's treating physician. Dr. Davis testified the plaintiff had degenerative changes at the C6 and C7 levels in his spine, with stenosis. Dr. Davis ultimately did surgery on the plaintiff in an effort to relieve the pain the plaintiff was experiencing.

It is not necessary to go into minute detail concerning the medical findings.

Dr. Davis testified the accident at work did not cause the degenerative changes which the plaintiff has. He did, however, testify that the accident caused the preexisting degenerative condition, which had been asymptomatic prior to the accident and then became symptomatic. Further, Dr. Davis testified the plaintiff may have never had a problem [pain] as a result of the preexisting condition but for the accident. Dr. Davis found the plaintiff to have a five percent permanent partial disability to the body as a whole. He placed no work restrictions on the plaintiff.

Dr. Gilbert L. Hyde, an orthopedic surgeon who examined the plaintiff, testified the accident caused the plaintiff's preexisting condition to become symptomatic. Dr. Hyde testified the plaintiff had an 18 percent medical impairment and suggested limitations on lifting, turning, etc.

The plaintiff testified he was unable to drive a truck as he had done before the accident because of the pain caused by driving a truck.

We find that the facts in this case warrant a judgment in favor of the plaintiff because they appear to meet the requirements of the rule set out by the Supreme Court in *Talley v. Virginia Ins. Reciprocal,* 775 S.W.2d 587 (Tenn. 1989), where the Court said: "There is not doubt that pain in considered a disabling injury, compensable when occurring as the result of a work-related injury."

In this case, the plaintiff was pain free from his preexisting condition. Both doctors testified the accident caused the condition to become symptomatic. One doctor testified that but for the injury the plaintiff may well not have ever had pain.

We believe this case fits also into the holdings in *Hill v. Eagle Bend Mfg., Inc.,* 942 S.W.2d 483 (Tenn. 1997) and *Townsend v. State,* 826 S.W.2d 434 (Tenn. 1992), which held increased pain as a result of an injury of a preexisting condition is not compensable unless the severity of the preexisting condition had been advanced or results in a disabling condition. In *Townsend,* there was preexisting pain. In *Hill,* there were restrictions placed after the injury. In this case, there was no preexisting pain prior to the accident, but there was subsequent thereto. In *Hill,* there were restrictions imposed after the injury. In this case, Dr. Hyde was of the opinion restrictions indicated should be imposed. For these reasons, we find the plaintiff has sustained an injury arising out of and in the course of his employment with the

defendant and that he should recover a judgment of 30 percent impairment to the body as a whole as found by the trial judge in his contingency ruling.

We therefore reverse the judgment of the trial judge in dismissing this case.

We remand the case to the trial judge for entry of such order as is necessary to carry out this opinion.

The cost of this appeal is taxed to the defendant.

_____
John K. Byers, Senior Judge

CONCUR:

_____
Frank F. Drowota, III, Justice

_____
William H. Inman, Senior Judge

IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE

FILED

March 23, 1999

Cecil Crowson, Jr.
Appellate Court
Clerk

DENNIS E. PARSONS,	)	KNOX CHANCERY
	)	No. 135239-1
Plaintiff-Appellant,	)	
	)	
	)	No. 03S01-9807-CH -00080
v.	)	
	)	
W.T. WARREN DISTRIBUTING and THE ST. PAUL.	)	Hon. Frederick D. McDonald
	)	Chancellor
	)	
Defendants/Appellees.	)	

JUDGMENT ORDER

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 appellee, W. T. Warren Distributing,for which execution may issue if necessary.

03/23/99