

IN THE SUPREME OF TENNESSEE

AT NASHVILLE

FILED

October 11, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

RICKY MYERS

Plaintiff/Appellee

vs.

CARRIER CORPORATION

Defendant/Appellant

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GRUNDY CHANCERY

No. Below 4707

Hon. Jefferey Stewart

No. 01S01-9810-CH-00183

AFFIRMED

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 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 defendant/appellant, for which execution may issue if necessary.

IT IS SO ORDERED on October 11, 1999.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
(MAY 27, 1999 SESSION)

RICKY MYERS,)
)
Plaintiff/Appellee,)
)
v.)
)
)
CARRIER CORPORATION)
)
Defendant/Appellant,)

GRUNDY CHANCERY
FILED
Hon. Jeffrey L. Stewart
Judge
October 11, 1999
No. 01S01-9810-CH-00183
Cecil Crowson, Jr.
Appellate Court Clerk

For Appellants

Michael Lee Parsons
Nashville, TN

For Appellee

Garry Ferraris
Knoxville, TN

MEMORANDUM OPINION

Members of Panel:

Justice Adolpho A. Birch, Jr.
Henry D. Bell, Special Judge
Hamilton Gayden, Jr., Special Judge

AFFIRMED
Judge

Gayden,

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. § 50-6-225(e)(1). In this appeal, the employer, Carrier Corporation, questions the trial courts finding that the employee's diagnosis and treatment of a ruptured cervical disc was compensable under the Tennessee Worker's Compensation Act; the employer also questions the trial court's finding that the employee sustained a thirty-five percent permanent partial disability.

The panel finds that the evidence supports both the trial courts finding that the injury was work related and that the medical and lay evidence supports a finding of thirty-five percent permanent partial disability.

The dispute over whether the injury is compensable relates to whether the injury was work connected: There are differing times alleged as the onset of the injury. The employee reported to one physician, Dr. Fisher, his symptoms manifested five days prior to that particular physician's examination; however, the employee went on vacation seven days prior to the first medical examination. The employee also stated to the nurse at Carrier that his symptoms began while on vacation. He also confirmed the symptoms began while at home to a second physician Dr. Zwemer.

Nevertheless, plaintiff's physician, Dr. Hyde, testified in his opinion the cervical disc rupture was work related and assessed a fifteen percent impairment to the body as a whole. The only expert testimony is from Dr. Hyde.

Lay witnesses', more probably than not, testimony support the employer's contention that the cervical ruptured disk was work related due to an on-going malfunction in a machine which required extra physical exertion in putting tubes in undersized holes. Further, there was testimony from the employee and his wife that there was no other injury while off work.

The panel is of the opinion that the trial court correctly reconciled the possible temporal differences and found that the injury arose out of the employee's work even though the first describable pain manifested while the employee was on vacation.

The panel also affirms the trial court's finding of thirty-five percent permanent partial disability. Surgery was recommended to the employee which illustrates the gravity of the injury. The resultant limitations also buttress the trial court's findings.

In conclusion, the panel finds that the employee carried the burden of proof by a preponderance of the evidence that the injury was work related and that the employee is thirty-five percent permanently partially disabled.

Costs on appeal are taxed to the defendant/ appellant.

Hamilton Gayden, Jr., Special Judge

CONCUR:

Justice Adolpho A. Birch, Jr.

Henry D. Bell, Special Judge