

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT NASHVILLE  
September 22, 2014 Session

**CHAD SEIGMUND v. BELLSOUTH TELECOMMUNICATIONS, LLC, ET  
AL.**

**Appeal from the Chancery Court for Coffee County  
No. 2012CV282 Vanessa Jackson, Chancellor**

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**No. M2014-00234-SC-R3-WC - Mailed November 26, 2014  
FILED: December 30, 2014**

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In December 2011, Chad Seigmund (“Employee”) was involved in a motor vehicle accident in the course of his employment. His employer, Bellsouth Telecommunications, LLC (“Employer”) provided medical treatment but denied that Employee sustained permanent impairment or disability. Following a trial, the trial court found that Employee had sustained permanent disability and awarded Employee 16.5% permanent partial disability to the body as a whole. Employer has appealed, contending that the evidence preponderates against the permanent disability finding. In accordance with Tennessee Supreme Court Rule 51, the appeal has been referred to the Special Workers’ Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law. After a thorough review of the record and the applicable law, we affirm the judgment of the trial court.

**Tenn. Code Ann. § 50-6-225(e) (2008) Appeal as of Right; Judgment of the Chancery  
Court Affirmed**

JEFFREY S. BIVINS, J., delivered the opinion of the Court, in which BEN H. CANTRELL, SR. J. and PAUL G. SUMMERS, SR. J., joined.

Charles E. Pierce, Knoxville, Tennessee, for the appellants, Bellsouth Telecommunications, LLC and Old Republic Insurance Company.

Michael Fisher and Charles M. Baldwin, Nashville, Tennessee, for the appellee, Chad Seigmund.

## OPINION

### Factual and Procedural Background

Employee worked as a service technician for Employer. Employee's job consisted primarily of repairing and installing telephone lines. On December 14, 2011, Employee was driving his service vehicle at night in a rural area of Coffee County when a deer crossed his path, causing him to swerve. His vehicle went over an embankment and hit several trees before coming to a stop. It is undisputed that Employee was wearing a seat belt at the time of the accident and that the vehicle was not equipped with airbags. Employee notified his supervisor of the accident, but he did not request medical treatment at that time.

A meeting was held the next day to investigate the circumstances of the accident. Those present at the meeting were: Employee; Kristy Williams (Employee's immediate supervisor); Don Willis (area manager); Gene Lomax (safety representative); and a union representative. Employee testified at trial that he requested medical treatment during this meeting, but he was instructed to "wait a couple of days." He testified that he had significant neck pain at that time. A few days later, Employee went to a local emergency room for treatment. Thereafter, he was provided with a panel of physicians from which he selected Dr. William Ledbetter to be his treating physician. Employer continued to provide medical treatment for the injury but denied that Employee had sustained permanent disability as a result of the accident. The Department of Labor and Workforce Development waived a Benefit Review Conference by letter dated August 6, 2012. Employee filed this worker's compensation action in the Chancery Court for Coffee County on August 16, 2012. This matter proceeded to trial on December 10, 2013.

Dr. Ledbetter, an orthopaedic surgeon, testified by deposition. He first examined Employee on December 28, 2011, two weeks after the accident. Employee described the accident to him and reported that he had received no benefit from the medication, diclofenac, prescribed for him at the emergency room. Dr. Ledbetter's examination revealed good motion in the cervical spine, "cautious" motion in the lumbar and thoracic spine, and normal neurological findings. His diagnoses were cervical, thoracic, and lumbar strains as well as degenerative disk disease. At that time, Dr. Ledbetter was authorized to treat the low-back only; however, he subsequently was authorized to treat the entire spine. Dr. Ledbetter prescribed a steroid dosepack and physical therapy. For reasons not apparent in the record, Employee did not receive the prescribed physical therapy until a much later date.

Dr. Ledbetter saw Employee several more times and ordered MRI scans. Those studies showed disk bulges at C4-5 and C5-6, early degenerative changes in the thoracic spine, and degenerative changes and facet hypertrophy in the lumbar spine. Dr. Ledbetter

was unable to state that the disk protrusions revealed by the MRI were caused by the accident. At Employee's request, Dr. Ledbetter referred Employee to a spine specialist, Dr. Juris Shibayama, for additional evaluation and treatment. Dr. Ledbetter last saw Employee on January 11, 2012.

On cross-examination, Dr. Ledbetter testified that the disk protrusions shown in the cervical MRI were consistent with Employee's reported symptoms of pain, weakness, and tingling in his left arm. He also agreed that a motor vehicle accident can cause a previously asymptomatic condition to become symptomatic or cause an advancement of a preexisting degenerative condition. Dr. Ledbetter confirmed that nothing in Employee's medical records indicated that Employee ever had sought or received treatment related to back or neck pain prior to the accident.

Dr. Juris Shibayama, an orthopaedic spine specialist, examined Employee on January 26, 2012. He testified by deposition. Dr. Shibayama stated that the MRI scans ordered by Dr. Ledbetter showed degenerative changes that were normal for Employee's age. Dr. Shibayama's diagnoses were cervical and lumbar strains. He did not consider Employee to be a surgical candidate. Rather, Dr. Shibayama recommended physical therapy and pain management treatment. Dr. Shibayama agreed that a motor vehicle accident can cause an asymptomatic degenerative condition to become symptomatic. Likewise, Dr. Shibayama confirmed that nothing in Employee's medical records indicated that Employee ever had sought or received treatment related to back or neck pain prior to the accident.

Following his examination by Dr. Shibayama, Employee came under the care of another orthopaedic surgeon, Dr. Mitul Patel. Dr. Patel testified by deposition. He first saw Employee on February 14, 2012. Dr. Patel examined the MRI results and opined that they showed no acute structural changes in the thoracic or lumbar spine. He found that the cervical MRI results showed arthritic changes, especially at the C5-6 level. He recommended physical therapy and pain management. Dr. Patel's next encounter with Employee was on March 22, 2012. At that time, his examination revealed tightness in the trapezius muscle but otherwise was the same as before. In the interim, Employee had seen Dr. Jeffrey Hazelwood, a physical medicine and pain management specialist. Dr. Patel recommended a Functional Capacities Evaluation ("FCE"). That evaluation was performed on April 23, 2012. Employee returned to Dr. Patel on April 26. Dr. Patel reviewed the FCE and testified that it showed inconsistent effort that might not accurately represent Employee's maximum abilities. Dr. Patel stated that Employee was "really convinced he had a nerve-based problem." He explained to Employee that the MRI results, physical examinations, and Employee's symptoms did not indicate the presence of a nerve-related issue. At that time, Dr. Patel placed Employee at maximum medical improvement and permitted him to return to work at full duty. Employee returned to Dr. Patel on January 3, 2013. He reported that

he was back at work but “taking it easy.” He requested that Dr. Patel write a note to Employer permitting him to take a reduced physical load at work, but Dr. Patel declined to do so. Dr. Patel reviewed the independent medical evaluation report of Dr. Richard Fishbein, which will be discussed below. He stated that he disagreed with Dr. Fishbein’s opinions because Employee’s symptoms were not “concordant” with the MRI results. Dr. Patel concluded that it was inappropriate to assign permanent impairment in this case.

On cross-examination, Dr. Patel agreed that some portions of the FCE report were consistent with Employee’s complaints. The report also stated that Employee gave full effort at certain times. Dr. Patel also agreed that the MRI results showing a disk bulge at the C5-6 level was consistent with Employee’s subjective complaints of pain and weakness in his left arm. However, Dr. Patel opined that Employee had 0% permanent impairment according to the Sixth Edition of the American Medical Association Guides to the Evaluation of Permanent Impairment (“AMA Guides.”). Dr. Patel confirmed that nothing in Employee’s medical records indicated that Employee ever had sought or received treatment related to back or neck pain prior to the accident.

Dr. Jeffrey Hazlewood, a physical medicine and pain management specialist, testified by deposition. Dr. Hazlewood first saw Employee on March 5, 2012, pursuant to a referral from Dr. Patel. He reviewed all of the previous medical notes and diagnostic studies. Employee reported pain at a level of ten on a scale of ten, mainly in his neck. Employee also reported pain in his middle and low back. Dr. Hazlewood’s diagnosis was a soft tissue strain. He recommended physical therapy and prescribed pain medication. He saw Employee again on March 26, May 2, and June 13. Employee reported no improvement in his symptoms during this time. By June 2012, Dr. Hazlewood had no further treatment recommendations for Employee. He told Employee that he would have to “push through” as best he could and recommended use of over-the-counter medications such as ibuprofen.

Employee returned to Dr. Hazlewood on March 11, 2013. At that time, his primary problem was low back pain. Dr. Hazlewood thought that sufficient time had passed for Employee’s soft tissue injuries to heal and that Employee’s current symptoms were related to spinal degeneration. Employee requested another MRI, but Dr. Hazlewood did not consider the test to be medically necessary. On cross-examination, Dr. Hazlewood agreed that Employee’s medical records showed that Employee had been asymptomatic prior to the accident but was continuously symptomatic after the accident.

Dr. Richard Bagby, an orthopaedic surgeon, evaluated Employee at the request of Employer on April 10, 2012. He reviewed the January 2012 x-ray and MRI results as well as the records of Dr. Ledbetter. He did not review the records of any other of Employee’s treating physicians. Employee reported to Dr. Bagby that he had discontinued physical

therapy because he believed that it had worsened his back and neck pain. Dr. Bagby found that the x-ray and MRI results showed early degenerative changes in the mid- and low-back. The cervical MRI results revealed multilevel spinal canal stenosis at C4-5 and C5-6. Dr. Bagby's examination of Employee elicited inconsistent and variable ranges of motion. He described the motion as "reluctant and variable and cogged." Dr. Bagby explained that irregular or jerky motion of the back actually increases pain if there is an anatomical basis. He stated that such motion suggested a nonanatomical cause. Dr. Bagby opined that Employee had no functional impairment.

On cross-examination, Dr. Bagby stated that he was aware of treatment by other physicians and also of the FCE. Because he had not reviewed that information, he did not take it into consideration. He agreed that the cervical MRI results showed bulging disks at C4-5 and C5-6. Dr. Bagby confirmed that nothing in Employee's medical records indicated that Employee ever had sought or received treatment related to back or neck pain prior to the accident.

Dr. Richard Fishbein, an orthopaedic surgeon, examined Employee at his attorney's request on May 21, 2012. Employee reported that "his neck, his back, and his thoracic spine hur[t] really bad" and that the pain "radiate[d] down both upper extremities." Due to the pain, Employee reported that he stood "crooked" with his right shoulder "slightly elevated." Dr. Fishbein noted Employee's posture, testifying, "I noted on a lot of my examinations that [Employee's] shoulder is elevated because his pain is so severe on that side . . . and it's causing all sorts of humping of his upper back." Dr. Fishbein's examination revealed "tenderness . . . from top to bottom with severe pain between T10 and T12." Dr. Fishbein also noted that the Defendant showed decreased range of motion. He detected no evidence of symptom magnification or malingering.

Dr. Fishbein testified that the MRI results showed disk protrusions at C4-5 and C5-6. According to Dr. Fishbein, Employee's symptoms were consistent with the MRI results. He stated that a motor vehicle accident can cause an asymptomatic condition to become symptomatic. He concluded that Employee's accident in December 2011 was the cause of his present symptoms. When asked, "it is your opinion that [Employee's] work-related motor vehicle accident caused a progression or advancement of his low back and neck condition above and beyond any preexisting condition that he may have had prior to [the accident]?" Dr. Fishbein responded in the affirmative. He assigned permanent impairment of 8% to the body as a whole due to the neck symptoms and an additional 3% to the body as a whole for the mid- and low-back symptoms.

On cross-examination, Dr. Fishbein was unable to state if the accident had caused any anatomical changes in Employee's spine because he did not examine Employee prior to the

accident. Therefore, he could not say “for sure” that the disk protrusions he noted were caused by the accident.

Employee was forty-three years old at the time of trial. He was a high school graduate, with additional training in Industrial Maintenance at Tennessee Technology Center in Shelbyville. Prior to being hired by Employer in 2000, he had worked in several factories. All of his previous jobs had required some sort of physical labor. Prior to the accident, Employee never had experienced any problems with his neck or back, nor had he ever received any medical treatment for his neck or back. Employee testified that he was in “constant pain” following the accident. Due to the pain in his neck and back, Employee could not do many of the physical activities he previously had done, such as home-improvement, mowing his lawn, and hiking with his family. He testified that it felt as though a knife were stuck in the back of his neck and that his range of motion was significantly reduced. According to Employee, his pain had not improved since the time of the accident.

Sandy McCall, Employee’s girlfriend, testified that she and Employee had been living together for about six months by the time of the trial. She stated that, due to his back and neck pain, Employee had been unable to participate in certain physical activities such as hiking and playing games with his children. Employee’s pain also had precluded Employee from performing various home improvement projects which he did regularly prior to the accident. McCall testified that Employee had trouble standing for extended periods of time and that he could not sleep for more than two hours at a time due to his back and neck pain. Employee often would sleep on the floor multiple nights per week.

Jeanette Carol Seigmund, Employee’s mother, testified that she never had observed Employee have any problems with neck or back pain prior to the accident. Employee regularly performed various home renovation projects on both Jeanette’s<sup>1</sup> and Employee’s own property prior to the accident. However, Employee was unable to do such work after the accident. Jeanette stated that Employee appeared to be in “a lot of pain” and that it was difficult for Employee to lift his arms above his head as a result. Chester Seigmund, Employee’s father, also testified. Chester<sup>2</sup> characterized Employee as being very active prior to the accident. He did not observe Employee have any problems with his back or neck prior

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<sup>1</sup> Because she and Employee share the same surname, we will refer to this witness by her first name to avoid any confusion. We intend no disrespect.

<sup>2</sup> Because he and Employee share the same surname, we will refer to this witness by his first name to avoid any confusion. We intend no disrespect.

to the accident. Chester agreed that, following the accident, Employee was unable to do many of the physical activities he previously had done.

Although Employee returned to work in April 2012, he no longer was working for Employer at the time the trial occurred. The date of and reason for his separation are not disclosed in the record. The parties stipulated that any award of disability benefits would be limited to one and one-half times the impairment pursuant to Tennessee Code Annotated section 50-6-241(d)(1)(A) (Supp. 2011). Employee testified that he had not sought other employment and that he was unable to return to any of his previous jobs.

The trial court issued its findings from the bench. The trial court stated that it found the testimony of Employee, McCall, Chester, and Jeanette all to be “very credible.” The trial court found that, as a result of the motor vehicle accident, Employee suffered “severe and persistent pain in his back and neck, [and] that pain has made it difficult for him to engage in his normal daily activities.” The trial court noted that “[t]here is overwhelming evidence that [Employee] did not suffer from any neck or back pain prior to the accident.” The trial court further noted that Employee’s medical records and the testimony of each of the treating physicians established that Employee was asymptomatic prior to the accident. The trial court reasoned,

If you haven’t had injuries and you’ve had no pain and you’ve had no problems prior to an event and you start having them after the event, it’s pretty clear that the event was the cause of those problems. Every physician that testified in the case stated that [Employee’s] medical records didn’t indicate that he had sought any treatment for his neck or back prior to this accident . . . but that following the accident [Employee] had sought extensive . . . help for those symptoms.

Based on that reasoning, the trial court concluded that Employee had sustained permanent impairment and disability as a result of the December 2011 motor vehicle accident. It adopted Dr. Fishbein’s impairment assessment of 11% to the body as a whole and awarded 16.5% permanent partial disability benefits. Judgment was entered in accordance with those findings. Employer appealed, asserting that the evidence preponderates against the finding of permanent impairment and disability.

### **Standard of Review**

The standard of review of issues of fact in a workers’ compensation case is “de novo upon the record of the trial court accompanied by a presumption of correctness of the findings, unless the preponderance of evidence is otherwise.” Tenn. Code Ann. §

50-6-225(e)(2) (2008). When credibility and weight to be given testimony are involved, considerable deference is given the trial court when the trial judge had the opportunity to observe the witness' demeanor and to hear in-court testimony. Madden v. Holland Group of Tenn., 277 S.W.3d 896, 900 (Tenn. 2009). When the issues involve expert medical testimony that is contained in the record by deposition, determination of the weight and credibility of the evidence necessarily must be drawn from the contents of the depositions, and the reviewing court may draw its own conclusions with regard to those issues. Foreman v. Automatic Sys., Inc., 272 S.W.3d 560, 571 (Tenn. 2008). A trial court's conclusions of law are reviewed de novo upon the record with no presumption of correctness. Seiber v. Reeves Logging, 284 S.W.3d 294, 298 (Tenn. 2009).

### **Analysis**

Employer asserts that the evidence preponderates against the trial court's finding that Employee sustained a permanent injury as a result of the December 2011 motor vehicle accident. It points to the testimony of Drs. Ledbetter, Shibayama, Patel, Hazlewood and Bagby. All of these physicians, to a greater or lesser extent, opined that the accident did not cause any anatomical change or advancement of Employee's preexisting condition. Employer also points to the inconsistent effort given by Employee during the FCE as well as to the lack of objective findings correlating to his subjective complaints.

However, it is undisputed that Employee had no symptoms or indications of neck or back pain prior to December 2011. It also is undisputed that Employee had symptoms in those areas after the accident. All of the physicians who testified agreed that it was possible for a trauma such as a motor vehicle accident to cause a dormant, asymptomatic condition to become symptomatic. In Trosper v. Armstrong Wood Products, Inc., 273 S.W.3d 598, 607 (Tenn. 2008), our supreme court stated:

We reiterate that the employee does not suffer a compensable injury where the work activity aggravates the pre-existing condition merely by increasing the pain. However, if the work injury advances the severity of the pre-existing condition, or if, as a result of the pre-existing condition, the employee suffers a new, distinct injury other than increased pain, then the work injury is compensable.

273 S.W.3d at 607. In Trosper, the Court cited with approval Panel decisions in which benefits were awarded based upon a compensable event that caused a previously dormant condition to become symptomatic. Trosper, 273 S.W.3d at 615; see also Mathenia v. Milan Seating Systems, 254 S.W.3d 313, 319 (Tenn. Workers Comp. Panel 2007); Sweat v. Superior Industries, Inc., 966 S.W.2d 31, 34 (Tenn. Workers Comp. Panel 1998); Darryl

Gene Williams v. Bridgestone/Firestone, Inc., No. M2003-02962-WC-R3-CV, 2005 WL 762612, at \*3 (Tenn. Workers Comp. Panel Apr. 5, 2005). By contrast, in Foreman v. Automatic Systems, Inc., 272 S.W.3d 560, 573 (Tenn. 2008), our supreme court applied Trosper to deny that a compensable permanent disability occurred where it was demonstrated that, unlike in the instant case, the employee had “an extensive history of back problems.” We believe these decisions provide the framework for evaluating the evidence in this case.

As the trial court correctly noted, the record in the instant case is devoid of evidence that Employee had any symptoms of neck or back problems prior to his December 2011 motor vehicle accident. The circumstances of that event are not in dispute. Employee swerved his vehicle to avoid a collision with a deer, went over an embankment, and collided with several trees before coming to a stop. There is abundant evidence that he experienced thereafter significant and persistent pain and stiffness in his neck and back. While the record provides a basis to question at least the extent of those symptoms, there is no cause to question their existence. Further, there is a common sense connection between the motor vehicle accident and the immediate onset of those symptoms. Taking these factors into consideration, we are unable to conclude that the evidence preponderates against the trial court’s finding.

### **Conclusion**

The judgment is affirmed. Costs are taxed to Bellsouth Telecommunications, LLC, Old Republic Insurance Company, and their surety, for which execution may issue if necessary.

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JEFFREY S. BIVINS, JUSTICE

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
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**Chancery Court for Coffee County  
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**No. M2014-00234-SC-R3-WC - Filed December 30, 2014**

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**JUDGMENT**

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 Bellsouth Telecommunications, LLC, Old Republic Insurance Company, for which execution may issue if necessary.

PER CURIAM