

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE MARCH 1997 SESSION

FILED

May 21, 1997

Cecil W. Crowson
Appellate Court Clerk

RANDY PERTUSET,)	DAVIDSON CHANCERY
)	
Plaintiff/Appellant)	NO. 01S01-9609-CH-00189
)	
v.)	HON. IRVIN H. KILCREASE, JR.,
)	CHANCELLOR
PARGO'S, INC.,)	
)	
Defendant/Appellee)	

For the Appellant:

H. Tom Kittrell, Jr.
1416 Parkway Towers
404 James Robertson Parkway
Nashville, TN 37219

For the Appellee:

Cyrus L. Booker
Mark A. Baugh
First American Center
315 Deaderick Street
Suite 1280
Nashville, TN 37238-1280

MEMORANDUM OPINION

Members of Panel:

Chief Justice Adolpho A. Birch, Jr.
Senior Judge John K. Byers
Special Judge Joe C. Loser, Jr.

AFFIRMED

BYERS, Senior 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. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

The trial court dismissed the plaintiff's petition for workers' compensation benefits.

The plaintiff raises the following issues:

- I. The trial court erred in finding that the altercation between the plaintiff and Thomas Wilson, a co-employee, was not an "accident" sufficient to justify an award of workers' compensation benefits.
- II. The trial court erred in finding that the medical evidence was insufficient to justify an award based on a mental or nervous disorder.

We affirm the judgment of the trial court.

The plaintiff in the case was employed as a supervisor at Pargo's, Inc., a restaurant.

On January 27, 1994, during the lunch hour, the plaintiff became involved in an exchange with a cook over an order. The evidence shows the plaintiff entered the kitchen to reprimand the cook. The plaintiff pointed his finger at the cook's face as he spoke to him. There is a dispute between the plaintiff and the other witnesses about what then occurred.

The plaintiff testified the cook struck him on the neck with his arm, and that he fell to the floor as a result of the blow. The plaintiff was the only witness to give this history of the confrontation. The other witnesses testified the cook placed his hand on the plaintiff's face and pushed him away. All of these witnesses testified the plaintiff did not fall.

The day following the incident, the plaintiff became emotionally upset and had to leave work. Basically, the plaintiff was never successfully employed after this time because his mental condition seemed to deteriorate.

The Chancellor's memorandum stated in its most pertinent part as follows:

The Court finds that the altercation on January 27, 1994 between the plaintiff and Mr. Wilson did not amount to an "accident" sufficient to justify an award. While the plaintiff claims that the plaintiff assaulted him with such force sufficient to cause him to fall to the floor and suffer from neck stiffness, evidence in the record and testimony at trial do not support such a conclusion. Testimony at trial by co-workers who witnessed the altercation reports that the plaintiff began the altercation by verbally

insulting the line cook. The plaintiff then proceeded to enter the kitchen and put his finger in Mr. Wilson's face as he spoke. Mr. Wilson then shoved the plaintiff. Plaintiff sustained no physical injuries from this assault by Mr. Wilson.

Our 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 finding, 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 584 (Tenn. 1991).

The trial court held that the plaintiff had failed to show he sustained an injury by accident within the meaning of the Workers' Compensation Law.

The trial judge found the incident complained of in this case did not exceed the stress and strain of everyday life, and therefore this case is controlled by the Court's holding in *Jose v. Equifax*, 556 S.W.2d 82 (Tenn. 1977), which held:

"The statutory criterion for injury by accident does not embrace every stress or strain of daily living or every undesirable experience encountered in carrying out the duties of a contract of employment."

We concur in the conclusions reached by the Chancellor.

We see no need to set out the medical evidence in this case. The trial court found there was no credible medical evidence to support the plaintiff's claim that his psychiatric illness was caused by the incident which occurred. We have reviewed the medical evidence, which is by deposition testimony and reports, and find the Chancellor's findings on the medical evidence is correct.

The costs are taxed to the plaintiff.

John K. Byers, Senior Judge

CONCUR:

Adolpho A. Birch, Jr., Chief Justice

Joe C. Loser, Jr., Special Judge

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RANDY PERTUSET,
Plaintiff/Appellant

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DAVIDSON CHANCERY
No. 95-809-1 Below

vs.

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}

Hon. Irvin H. Kilcrease, Jr.,
Chancellor

PARGO'S, INC.,

}
}

No. 01S01-9609-CH-00189

Defendant/Appellee

}
}

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 Plaintiff/Appellant and Surety, for which execution may issue if necessary.

IT IS SO ORDERED on May 21, 1997.

PER CURIAM