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

FILED
November 7, 1997
Cecil W. Crowson
Appellate Court Clerk

J. C. McDOWELL, JR.,	)	WARREN CHANCERY
	)	
Plaintiff/Appellee	)	NO. 01S01-9703-CH-00045
	)	
v.	)	HON. CHARLES D. HASTON,
	)	CHANCELLOR
CARRIER AIR CONDITIONING CO.	)	
and CIGNA PROPERTY AND	)	
CASUALTY COMPANIES,	)	
	)	
Defendants/Appellants	)	

For the Appellant:

Gracey, Ruth, Howard, Tate & Sowell
Michael Lee Parsons
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Nashville, TN 37201

For the Appellee:

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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 William H. Inman
Special Judge Joe C. Loser, Jr.

AFFIRMED. **INMAN, 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.

This complaint in Chancery was filed November 9, 1995 seeking benefits for a back injury which the plaintiff alleged he suffered on March 14, 1995 while attempting to move a heavy tank.

The employer defendant answered in course, alleging that the plaintiff had a degenerative back condition of many years duration and denying the plaintiff suffered a compensable injury as alleged or that it had notice of any injury.

The trial judge referred the case to the Clerk and Master pursuant to RULE 53, TENN. R. CIV. P.[1] A judgment was entered finding that the plaintiff sustained a compensable injury on March 14, 1995 resulting in a 30 percent permanent partial disability to his whole body, and benefits were awarded accordingly.

The defendant appeals and presents the issue of whether the evidence preponderates against the finding of a compensable injury. We hold that it does not for reasons hereafter recited, and therefore affirm the judgment.

The plaintiff is 52 years old and has been employed at Carrier since 1972. He had three prior back surgeries in 1975, 1976, and 1985. On March 14, 1995, while working on a chiller tank, he twisted his body, and, as he stated, "I hurt myself." He did not report for work the following day, but on March 16, 1995, he went with a shop steward to see Joel Holt, the Safety Director. He testified that he reported to Holt that he had injured his back and requested some time off. He saw his family physician who said the pain was not work related. In course, he was referred to Dr. George Lien, a neurosurgeon who performed surgery on May 7, 1995. The plaintiff returned to work on August 23, 1995 with restrictions.

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[1] A Special Master may be appointed in any case, and his/her duties may be particularized. We assume the Clerk and Master was appointed as Special Master to hear and report the testimony, with recommendation, but there is no Appointing Order in the record.

There are two relevant documents in the record. The first such is a Finding of Fact signed by the trial judge. The second is an Order reciting that "the cause came on to be heard before the Honorable Charles D. Haston, Judge., etc. who referred the matter to J. Richard McGregor, Special Master. Thereafter, the court . . . filed a finding of fact . . . which is incorporated herein . . ." This Order [i.e. Judgment] is signed, not by the trial judge, but by J. Richard McGregor. "In the absence of the Judge, J. Richard McGregor, sitting as Chancellor *pro tem.*"

So far as the record reveals the Special Master *filed no report,* and the trial judge thus made findings of fact *without hearing* any proof. The anomaly continues: the Special Master, as Judge *Pro Tem, also entered* the final judgment, thereby approbating his prior action.

The parties make no issue of this 'unusual' procedure, and we therefore treat the case as one heard in compliance with RULE 53.04.

Dr. Lien testified on direct examination that "the incident that he described as occurring in March, 1995" caused no anatomical changes and did not accelerate any ongoing pre-existing condition. On cross-examination, he testified that the onset of pain experienced by McDowell on March 14, 1995 coincided with a twisting, turning, lifting movement at work, which *aggravated his pre-existing condition.*

Dr. James Talmadge, an orthopedic surgeon, examined the plaintiff for purposes of testifying. He testified, *inter alia*, that the March 14, 1995 episode aggravated a pre-existing condition.

In light of the testimony of these medical specialists, both of whom testified that the March 14, 1995 episode aggravated the pre-existing condition, we cannot find that the evidence preponderates against the judgment under the applicable standard of review. TENN. CODE ANN. § 50-6-225(e)(2); TENN. R. APP. P., RULE 13(d). It is true that both physicians testified randomly that the March 14, 1995 episode caused no anatomical changes, but each equivocated and conceded the aggravation factor.

We therefore affirm the judgment at the costs of the appellant and remand the case for all appropriate purposes.

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William H. Inman, Senior Judge

CONCUR:

_____
Frank F. Drowota, III, Justice

_____
Joe C. Loser, Jr., Special Judge

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

J. C. McDOWELL, JR.,	}	*WARREN CHANCERY*
	}	*No. 6141 Below*
Plaintiff/Appellee	}	
	}	*Hon. Charles D. Haston,*
vs.	}	*Chancellor*
	}	
CARRIER AIR CONDITIONING COMPANY and CIGNA PROPERTY AND CASUALTY COMPANIES	}	*No. 01S01-9703-CH-00045*
	}	
	}	
	}	
Defendants/Appellants	}	*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 Carrier Air Conditioning Co. & Cigna Property and Casualty Companies and their Surety, for which execution may issue if necessary.

IT IS SO ORDERED on November 7, 1997.

PER CURIAM