

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

AT KNOXVILLE  
(May 6, 1998 Session)

HAMBLEN COUNTY BOARD	)	
OF EDUCATION,	)	HAMBLEN CHANCERY
	)	
Plaintiff-Appellant,	)	Hon. Thomas R. Frierson,
	)	Chancellor
v.	)	
	)	No. 03S01-9708-CH-00094
MICHAEL JINKS,	)	
	)	
Defendant-Appellee.	)	

For Appellant:

J. Eric Harrison  
Wimberly, Lawson & Seale  
Knoxville, Tennessee

For Appellee:

Mark S. Stapleton  
Terry, Terry & Stapleton  
Morristown, Tennessee

MEMORANDUM OPINION

Members of Panel:

Charles D. Susano, Jr., Special Justice, Supreme Court  
John K. Byers, Senior Judge  
Joe C. Loser, Jr., Special Judge

AFFIRMED

Loser, Judge

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. section 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. The appellant contends the evidence preponderates against the trial court's finding that the battering of a school teacher in a school corridor by a student arose out of and in the course of the teacher's employment. The appellee insists the appeal is frivolous. As discussed below, the panel has concluded the judgment should be affirmed, but declines to award damages for a frivolous appeal.

On May 1, 1995, the employee or claimant, Jinks, was employed by the employer, Hamblen County Board of Education, as a teacher at Morristown East High School. On that day, he left his classroom for the purpose of delivering some graded papers to the school office. In the corridor, he was confronted by a large senior student, who attempted to stop Jinks and engage him in a discussion concerning what the student considered a disparaging remark about another student who had died as a result of a motorcycle accident. Jinks agreed to talk but continued with his errand.

Upon returning from the office, and before he could reach his classroom, Jinks was again confronted by the student, who was now accompanied by two other students. The first student demanded an apology from Jinks for the remark, which he had made in connection with a school function. Jinks refused to apologize and attempted to push the student out of his way and return to his duties as a teacher, whereupon an altercation occurred. The larger student lifted Jinks up and threw him to the floor, injuring him.

The chancellor found the claimant's injuries to be compensable and awarded compensation benefits. Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. section 50-6-225(e)(2). Where the trial judge has seen and heard the witnesses, especially if issues of credibility and weight to be given oral testimony are involved, considerable deference must be accorded those circumstances on review. Humphrey v. David Witherspoon, Inc., 734 S.W.2d 315 (Tenn. 1987).

An accidental injury arises out of one's employment when there is apparent to the rational mind, upon a consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury; Fink v. Caudle, 856 S.W.2d 952 (Tenn. 1993); and occurs in the course of one's employment if it occurs while an employee is performing a duty he was employed to do. Id. "Arising out of" refers to the origin of the injury in terms of causation; Reeser v. Yellow Freight Systems, Inc. 938 S.W.2d 690 (Tenn. 1997); and "in the course of" relates to time, place and circumstance. McCaleb v. Saturn Corp., 910 S.W.2d 412 (Tenn. 1995). For an accidental injury to be compensable, both components are required. Id. They are not synonymous terms. Lollar v. Wal-Mart Stores, Inc., 767 S.W.2d 143 (Tenn. 1989). Our Supreme Court has often said that any reasonable doubt as to whether an injury arises out of the employment should be resolved in favor of the employee. Reeser, supra at 692.

The employer argues that benefits should be denied because the

claimant struck the first blow and that striking a blow was not part of his responsibility as a teacher, relying on Winningham v. Mid-State Construction Company, an unpublished opinion of this panel. In that case, the panel affirmed the trial court's finding that the worker's injury did not arise out of the employment where a construction worker provoked a fight with a state inspector, over a purely personal dispute, relying on the rule in Sandlin v. Gentry, 201 Tenn. 509, 300 S.W.2d 897 (1957). The overriding rule in assault cases is that each case must be decided under its own facts and not by resort to some formula. Bell v. Kelso Oil Co., 597 S.W.2d 731 (Tenn. 1980). Moreover, common law defenses which exist in tort actions are not available under the Workers' Compensation Act. Tenn. Code Ann. section 50-6-101, et seq.

From a consideration of the relevant facts, which are not disputed, and the above principles of law, this tribunal is persuaded that the evidence fails to preponderate against the findings of the chancellor.

When it appears that an appeal in a workers' compensation case is frivolous or taken solely for delay, the reviewing court may, upon motion of either party or on its own initiative, award damages against the appellant and in favor of the appellee without remand, for a liquidated amount. Tenn. Code Ann. sections 50-6-225(i) and 27-1-122. It does not appear to this tribunal that this appeal is frivolous or that it was taken for any improper purpose.

The judgment of the trial court is affirmed and costs taxed to the plaintiff-

appellant. The cause is remanded to the Chancery Court for Hamblen County for an award of interest on accrued but unpaid benefits and all other purpose

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Joe. Loser, Jr., Special Judge

CONCUR:

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Charles D. Susano, Jr., Special Justice

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John K. Byers, Senior Judge

IN THE SUPREME COURT OF TENNESSEE  
AT KNOXVILLE

HAMBLEN COUNTY BOARD	)	Hamblen Chancery
OF EDUCATION,	)	96-98
Plaintiff-Appellant,	)	
	)	Hon. Thomas R. Frierson
V.	)	Chancellor
	)	
MICHAEL JINKS,	)	No. 03S01-9708-CH-00094
Defendant-Appellee.	)	

JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation 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 on appeal are taxed to the plaintifft/appellant, Hamblen County Board of Education and Wimberly, Lawson and Seale, sureties for which execution may issue if necessary.

07/07/98



This case is before the Court upon motion for review pursuant to Tenn. Code Ann. § 50-6-225 (e) (5) (B), 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 motion for review is



not well taken and should be denied; 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 the plaintiff-appellant and sureties, for which execution may issue if necessary.

IT IS SO ORDERED this \_\_\_\_ day of June, 1997.

PER CURIAM

Anderson, J. - Not Participating

al to the Special Worker' Compensation 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 act 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 plaintiff-appellant, Vernon Harris and Gilbert and Faulkner. surety, for which execution may issue if necessary.

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