IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE

FILED

July 1, 1998

Cecil W. Crowson
Appellate Court Clerk

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| THOMAS HUGGINS,<br>Plaintiff/Appellee | ) | No. 01S01-9708-CH-00178 |
| v. | ) | DAVIDSON COUNTY CHANCERY |
| ROYAL INSURANCE COMPANY,<br>Defendant/Appellant | ) | HON. IRVIN H. KILCREASE, JR.,<br>CHANCELLOR |

FOR THE APPELLANT:

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FOR THE APPELLEE:

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MEMORANDUM OPINION

MEMBERS OF PANEL

FRANK F. DROWOTA, III, ASSOCIATE JUSTICE, SUPREME COURT
JOHN K. BYERS, SENIOR JUDGE
WILLIAM S. RUSSELL, RETIRED JUDGE

AFFIRMED RUSSELL, SP. J.

This appeal in a workers' compensation case has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated Section 50-6-225 (e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

The injured employee, Thomas Huggins, while working for Cummings Sign Company (insured by Royal Insurance Company) fell 10-12 feet from atop a sign on June 22, 1993. Mr. Huggins apparently landed upon his head and was rendered unconscious. He suffered a fracture of the skull base. Later he was diagnosed with seizures and occipital neuralgia.

Dr. James P. Anderson, M.D., his last treating physician, opined that Mr. Huggins retained a permanent anatomical impairment of 8-10% for his brain seizure activity, and an additional 5% for headaches caused by occipital neuralgia. A prior treating physician, Robert Weiss, M.D., opined that Mr. Huggins suffered no permanent impairment; and two others, Harold P. Smith, M.D., and Pamela Auble, Ph.D., conducted medical evaluations at the instance of the defendant and they concurred with the opinion of Dr. Weiss.

The trial judge accredited the opinion of Dr. Anderson and fixed the permanent partial vocational disability of the injured

employee at 22 1/2% to the body as a whole.

The defendant, Royal Insurance Company, contends:

> (1) That Mr. Huggins' injury resulted not from the fall on June 22, 1993, but from a slap on the head by a fellow employee on May 4, 1994;
>
> (2) That the said incident on May 4, 1994 caused any residual impairment that exists and recovery could not be had because T.C.A. Sec. 50-6-110 (a) bars recovery resulting from an employee's willful misconduct;
>
> (3) That the court erred in setting permanent vocational impairment at 22 1/2% to the body as a whole; and
>
> (4) That the statute of limitations bars any recovery for injuries resulting from the slapping incident.

Review in this court is de novo upon the record of the trial court, accompanied by a presumption of the correctness of the findings of the trial court, unless the preponderance of the evidence is otherwise. T.C.A. Sec. 50-6-225 (e)(2)(1996); Hill v. Eagle Bend Mfg., Inc., 942 S.W. 2d 483, 487 (Tenn. 1997).

The key issue in this case is the cause of the employee's seizures and related injuries. Causation must be shown by expert medical evidence. Livingston v. Shelby Williams Industries, 811 S.W. 2d. 511, 515 (Tenn. 1991). The testimony of Dr. Anderson satisfies this requirement. He opined that the employee's retained injuries were primarily due to his fall of June 22, 1993. The other doctors who testified did not see Mr. Huggins after the seizure activity commenced. We hold that the medical evidence does not preponderate against the finding of the trial judge.

It was also the opinion of Dr. Anderson that the slap suffered during the horseplay nearly a year after his fall did not cause the employee's permanent disability. Furthermore, the slapping incident was not willful misconduct by the employee as proscribed by T.C.A. Sec. 50-6-110(a).

We affirm the judgment of 22 1/2 % permanent partial whole body impairment. This must be based upon age, education, training, job skills, work experience and job opportunities for an employee injured and impaired as is the plaintiff. Miles v. Liberty Mut. Ins. Co., 795 S.W. 2d 665 (Tenn. 1990); T.C.A. Sec. 50-6-241 (a)(1). Dr. Anderson testified that Mr. Huggins should avoid working in high places, or around heavy machinery and equipment; and should avoid driving a car.

Because this judgment is grounded upon the fall in 1993, the issue of the statute of limitations directed at any claim arising out of the slapping incident is irrelevant.

The judgment of the trial court is affirmed. Costs on appeal are assessed to the appellant.

WILLIAM S. RUSSELL, SPECIAL JUDGE

CONCUR:

FRANK F. DROWOTA, III,

ASSOCIATE JUSTICE

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JOHN K. BYERS, SENIOR JUDGE
SUPREME COURT

*IN THE SUPREME COURT OF TENNESSEE*

*AT NASHVILLE*

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|---|---|---|
| *THOMAS HUGGINS,* | } | *DAVIDSON CHANCERY* |
| | } | *No. 94-978-I Below* |
| *Plaintiff/Appellee* | } | |
| | } | *Hon. Irvin H. Kilcrease, Jr.,* |
| *vs.* | } | *Chancellor* |
| | } | |
| *ROYAL INSURANCE COMPANY,* | } | *No. 01S01-9708-CH-00178* |
| | } | |
| *Defendant/Appellant* | } | *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 and Surety, for which execution may issue if necessary.*

*IT IS SO ORDERED on July 1, 1998.*

*PER CURIAM*