

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

September 24, 2007 Session

**JEFFREY COTTON v. GOODYEAR TIRE & RUBBER COMPANY ET AL.**

Direct Appeal from the Chancery Court for Obion County, No. 22,784  
No. W2006-02291-SC-WCM-WC - Mailed March 12, 2008; Filed May 28, 2008

DONALD P. HARRIS, SR. J., concurring, in part, and dissenting, in part.

I concur with the majority opinion that the evidence presented in this case does not preponderate against the trial court's finding that Mr. Cotton was permanently and totally disabled as a result of the injury he sustained while working at Goodyear Tire & Rubber Company. In order to find that this injury rendered Mr. Cotton permanently and totally disabled, however, it is necessary to find that he sustained the shoulder injury and that the injury and subsequent treatment aggravated his pre-existing diabetes.

An employer is responsible for workers' compensation benefits, even though the claimant may have been suffering from a serious pre-existing condition or disability, if the employment causes an actual progression or aggravation of the prior disabling condition or disease. Hill v. Eagle Bend Mfg., Inc., 942 S.W.2d 483, 488 (Tenn. 1997) ; White v. Werthan Indus., 824 S.W.2d 158, 159 (Tenn. 1992); Talley v. Va. Ins. Reciprocal, 775 S.W.2d 587, 592 (Tenn. 1989). An employer takes the employee with all pre-existing conditions and cannot escape liability when the employee, upon suffering a work-related injury, incurs disability greater than if he or she had not had the pre-existing conditions. Sweat v. Superior Indus., Inc., 966 S.W.2d 31, 32-33 (Tenn. 1998). To be compensable, the pre-existing condition must be advanced, there must be anatomical change in the pre-existing condition, or the employment must cause an actual progression of the underlying disease. Id.

In this case, the trial court found Mr. Cotton's shoulder injury resulted in a 30% permanent partial disability. That injury and the subsequent treatment of it, however, also resulted in an aggravation of his pre-existing diabetes causing him additional disability. In my view, in order to properly assess the disability caused by the current injury, the trial court must consider both the disability caused by the shoulder injury and the aggravation of Mr. Cotton's diabetes. A finding that his current injury only caused injury to his shoulder is at variance with the finding it rendered him totally and permanently disabled. In order for the current injury to have rendered Mr. Cotton permanently and totally disabled, it must also have aggravated his diabetic condition which should have been included in the disability rating for this injury. In my opinion, the majority's determination with regard to this issue is contrary to the cited case law, places a disproportionate share of the liability on the Second Injury Fund, and, taken to its logical

conclusion, would absolve employers from liability for the work-related aggravation of their employees' pre-existing conditions.

---

DONALD P. HARRIS, SR. J.