IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
September 22, 2008

ROY SAMUEL BATSON v. INTERSTATE BRANDS CORP. et al.

Appeal from the Circuit Court for Rutherford County
No. 50760 Royce Taylor, Judge

No. M2007-02754-WC-R3-WC - Mailed - January 12, 2009
Filed - February 19, 2009

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel 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 trial court denied appellant Roy Samuel Batson's claim for workers' compensation benefits on the basis that Mr. Batson failed to establish that his disability was caused by his work. Mr. Batson has appealed. After our review of the record, we agree with the trial court that Mr. Batson has failed to carry his burden of proof with respect to causation. Accordingly, we affirm the judgment of the trial court denying Mr. Batson's claim for benefits.

Tenn. Code Ann. § 50-6-225(e) (2008) Appeal as of Right;
Judgment of the Circuit Court Affirmed

JON KERRY BLACKWOOD, SR. J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., J., and ALLEN W. WALLACE, SR. J., joined.

D. Russell Thomas and Herbert M. Schaltegger, Murfreesboro, Tennessee, for the appellant, Roy Samuel Batson.

Kitty Boyte (on appeal) and Patrick A. Ruth (at trial), Nashville, Tennessee, for the appellees, Interstate Brands Corporation and Indemnity Insurance Company of North America.

MEMORANDUM OPINION

Factual and Procedural Background

Appellant Roy Samuel Batson ("Employee") testified that he was 61 at the time of trial. He has a high school education. He worked for appellee Interstate Brands Corporation ("Employer") for 38 years as a delivery truck operator delivering food products to grocery stores. He drove and loaded and unloaded the trucks. He also set up and stocked store displays.

Employee described his past health as "real good" and stated that he had always stayed active. His typical work day lasted about 12 hours. He carried trays and baskets of food product to and from the truck. Sometimes he carried as much as 100 pounds.

On September 19, 2002, he was loading trays onto a rack in his truck. One of the trays slid off a rack and hit him in the head. He jerked his neck trying to avoid the tray. He did not suffer a permanent injury from this incident and did not have any restrictions placed on him as a result. He did not receive a workers' compensation award from this injury. On January 7, 2003, he sustained another accident when he slipped off the bumper of his truck and fell on his left side. He had surgery for three hernias in the groin area resulting from this fall.

Employee testified that he had not been experiencing any neck pain or headaches during the four to five month period prior to October 31, 2003, other than sinus trouble. On October 31, 2003, he was making a delivery to Kroger's and was standing on a two-step ladder. He was stocking cases of Twinkies and was stretching his arms out and overhead. He testified that, as he was doing this,

> It felt like I had some kind of a burning, crawling, somebody hit me in the side of the head with a hammer right in my ear, and my neck. And most of my headache was just in the side of my head, you know. It really wasn't in my – in the top of my head or anything. And I got down off the ladder because it made me feel dizzy.

He also stated that his ears rang. He clarified that it was the right side of his neck and head where he felt the pain.

Employee testified that, in addition to feeling dizzy, he felt like he was "going to regurgitate." He walked outside, explaining to "the back door guy" that he was "feeling bad." Another vendor came by and explained that he had previously been an EMT. He took Employee's pulse and "determined [Employee] was having a heart attack."

Employee was transported to the hospital. He did not have a heart attack. A "brain scan" was run which was negative for a brain aneurysm. Employee was given medication for his pain and discharged after about two hours. Bob Dozier, one of Employee's supervisors, followed him to the hospital and stayed with him for over an hour. Employee had passed his Department of Transportation physical a week to ten days prior to this event.

Employee called in sick the day after his visit to the emergency room and sought additional

medical care. Eventually, he saw Doctors Beuchel, Powell, Helton, Benson, Susskind, Gaw, and Morton. He visited Tennessee Urgent Care, Southern Hills, and had some physical therapy. He was evaluated by Doctors Bernet and Sieveking. According to Employee, "a lot of the doctors didn't know what was wrong" with him.

Employee reported back to work on the first Monday in February 2004. He "was feeling pretty good" and "made it through the day." Although he was expecting a helper, he was not provided one. By the time he got home, his neck had started "bothering" him. He explained that it was the right side of his neck and that it "pulls all these muscles up here." A knot forms and "[t]he more pain [he] get[s], that knot gets bigger." If he lays in bed for three or four days, the knot goes away. If he then gets up and picks up something heavy, "you can feel it." The bigger the knot gets, the worse his headaches become. He explained that he has learned that, once the pain starts in his neck, he has to stop whatever he is doing and lay down in order to avoid a "full-blast headache." Employee said that he had to take eight pills at night in order to sleep. Employee stated that, if he picks something up and pushes it away from his body and then raises it up, it makes his neck start hurting.

Employee testified that he had planned on working until he was 62. Had he been able to retire at that age, his pension would have been "almost double" what he was currently drawing.

Employee raises game chickens as a hobby. He does not fight them but sells them to other breeders. He has five different strains that he has developed. Before his injury, he fed them out of buckets that held about 38 pounds. He now uses buckets that hold about 10 pounds. He has had to reduce the number of chickens he raises since his injury. Employee stated that he is "completely down" with the neck pain and unable to do anything about six or seven times a month.

Employee testified that he had been the union shop steward and that he had "locked horns" with management over an issue about one year before he returned to work after his injury and was not given a helper.

On cross-examination, Employee acknowledged that he knew how to file reports for work-related injuries. In response to questions about whether he woke up on the morning of October 31, 2003, with a headache that got worse over the course of his day, he replied, "I don't think so." He said that Dr. Helton had treated him for "a lot of things" but not headaches.

Employee acknowledged drawing short-term disability benefits from Nov. 8 through May 25, 2004. With respect to the paperwork that was filled out, he told his supervisor that he did not know if he was sick or if he was injured, that they were still trying to determine the cause of his problem. He spoke with Bob Dozier several times while he was off, keeping him informed about how he was doing. Employer paid for his medical care as well as accident and sickness benefits. The union started his pension and he started drawing his disability. On redirect, Employee stated that he did not know why Bob Dozier did not fill out a report of work injury and treat his incident as a workers' compensation claim.

Randall Stover testified that he was Employee's direct supervisor. He learned about

Employee's problems on October 31, 2003, by a phone call from Bob Dozier, the district manager. Mr. Stover assumed that Mr. Dozier was going to decide on whether to treat this as a workers' compensation claim because Mr. Dozier was "the one that was initially investigating the accident." Mr. Stover stated that he had "no explanation" as to why the incident was not set up as a workers' compensation claim.

Mr. Stover recalled the day on which Employee was returning to work in early 2004. He testified:

> I made the comment to Dozier that should – "Am I supposed to go with him?" You know, he says, "No. He's been released. He's not supposed to have any help."
>
> And I kind of questioned him on it because I felt like that it was always customary when someone was out of work any length of time like that, irregardless of what kind of injury it was, we always had taken it upon ourselves to send someone with them to kind of get them back in the swing of things and kind of evaluate them and make sure they were going to be okay on the route and stuff because you don't want them getting back out there and injuring themselves. But it was his call on that, and so that's what transpired with that[.]

Mr. Stover stated that he did not know of another instance where someone was sent out alone after returning to work from an injury.

Mr. Stover described Employee's job:

> At times it can be one of the most difficult jobs you've ever done in your life. It's a lot of physical lifting, twisting, turning, bending, walking, climbing in and out of the truck, climbing in and out of the truck approximately–you're climbing in and out of it four times per stop. And if your stop list number is 30 stops, you're looking at 120 times in and out of that truck a day, less, you know, whatever–you know, in addition to the fact you're getting in and out of the truck and loading it and everything else.
>
> When you're loading the truck, depending upon the location that you're loading at, you're either loading from the floor to the truck or you're having to bend over and stoop and pick up stuff and pick up the product in trays and put it into the truck, physically put it into the truck, or you're loading straight from the dock. And then you're still leaning over, picking up stuff, turning, and putting stuff into the truck or putting it up over your head up on the upper rails of the truck.

He added that "you're constantly working overhead."

Mr. Stover praised Employee's work ethic, stated that he "followed all the company rules and regulations," and noted that he had never had a customer complaint on Employee.

Dianne Batson, Employee's wife, testified that, prior to October 31, 2003, Employee had not

had "any kind of chronic, long-term, day-in/day-out complaints of headaches." Nor, prior to that time, had he had "long-term or repeated complaints about neck pain." She stated that "he can't lift up and he can't bend down that it doesn't hurt him."

On cross-examination, Mrs. Batson stated that "the headache that [Employee] had that day was more than a headache because [she] had never seen him like that before." Previous headaches had been treated with "like sinus medicine is usually about it."

Dr. T. Michael Helton, a family physician, testified by deposition. He initially saw Employee in April 2003 and became his primary care physician at that time. He saw Employee on November 3, 2003, to follow up on Employee's visit to the emergency room. Dr. Helton stated that Employee was still having pain in his neck. Dr. Helton's examination revealed that Employee "was tender on the right in the right cervical region and the posterior auricular region." Dr. Helton "felt like he was having some sort of neurologic event because of the severity of the pain he was experiencing." Accordingly, Dr. Helton referred Employee to a neurologist.

Dr. Helton explained that he was concerned that Employee was having "either some severe musculoskeletal problems or . . . migraine-type problems from this neck injury." After Employee saw several doctors, the consensus was that Employee "had a chronic neck pain, muscular in nature, like basically the initial injury had developed into a chronic problem for him." This neck pain triggers Employee's headaches. The condition is not correctable by surgery. Dr. Helton considered Employee's condition of chronic pain to be permanent. The current course of treatment is "just restriction of activity, avoidance of any heavy lifting, no overhead activity, and medications as needed for pain relief." Dr. Helton opined that Employee is permanently disabled from doing any kind of manual labor where lifting is involved.

Dr. David Gaw, orthopedic surgeon, also testified by deposition. He performed an independent medical examination on Employee on January 11, 2005. He took a history from Employee and performed a physical examination. He testified:

> He was five foot nine; weighed 155 pounds. To look at his upper neck and upper back, there was no deformity just to look at the structures. He had the normal curves to his spine.
>
> He did have limited movement of the neck. He had 45 degrees of flexion; normal would be 55. He had 35 degrees of extension; normal would be 60. Rotation, he had 60 to the right and 65 to the left; normal would be 65. Lateral flexion, he had 30 to the right and 25 to the left; normal would be 45. He has pain to move the neck against resistance in flexion, but there is no weakness noted.
>
> There is moderate soreness over the intersinous ligaments at the lower cervical and upper thoracic area. There is a lot of tenderness over the sternocleidomastoid muscles, worse on the right, as well as in the paracervical muscles. No specific spasm noted. Moderate soreness in the brachial plexus and in the interscalene area on both sides but no paresthesias noted.

Dr. Gaw opined that all of these findings were "consistent with a soft tissue injury such as a muscle sprain, irritation, ligament irritation or strain." Dr. Gaw's diagnosis was "degenerative cervical disk disease with a chronic cervical and thoracic strain." As to causation, Dr. Gaw opined: "Based on his history, I think all the three incidents at work 9/19/02, 1/7/03, and 10/31/03 are the likely cause of his condition. But based on his history, the incident on 10/31/03 would be the most disabling or the most important cause of his problems." Dr. Gaw also testified that persons with chronic neck pain often have headaches "especially the occipital type." Dr. Gaw assigned a 5 percent whole person impairment.

On cross-examination, Dr. Gaw acknowledged that Employee's x-rays did not reveal any trauma or specific pathology in his neck. Employee's MRI and CT scan were also normal. EMG and nerve conduction tests revealed no lesions affecting the nerves. Dr. Gaw stated that persons over 50 have degenerative disk disease in some degree. He stated that not everyone suffers pain therefrom, however. Dr. Gaw found no muscle spasms in Employee's neck. On redirect, Dr. Gaw opined that Employee's lifting and pushing and pulling weight overhead was the most likely cause of his soft tissue injury.

Dr. Nicholas A. Sieveking, clinical psychologist, also testified by deposition. He specializes in employment issues. He saw Employee for a vocational analysis. In conjunction with the analysis, he interviewed Employee and Mrs. Batson and Employee underwent testing. Employee's test results indicated that he reads at about a sixth-grade level. According to Dr. Sieveking, "he certainly is not malingering" and "the tests suggest that he is believable." Dr. Sieveking also reviewed Employee's medical records.

In Dr. Sieveking's opinion, "[a]ltogether before he was injured, he was able to perform only 4 percent of the work in Davidson County according to my calculation and my judgment. Subsequent to his injuries, . . . he should not work in any capacity which involved lifting." Dr. Sieveking continued:

> If you look at those issues along with the findings or the gleanings that I had from testing and interviewing, the conclusion that this man is reliable in his self report, that he does have to rest very frequently throughout the day in order to manage his pain or it gets out of control, and that he is forgetful and has some problems concentrating and so forth and so on, there basically is no work that he can do.

Dr. Sieveking opined that Employee is 100 percent permanently and totally disabled.

Dr. William Bernet, psychiatrist, testified by deposition. He saw Employee on September 5, 2006, for an independent medical evaluation. He reviewed Employee's medical records and the depositions of Drs. Gaw and Helton. He conducted psychological testing. The tests were negative for malingering. Dr. Bernet testified, "on all of these tests [Employee] was consistent with a person in a pain clinic and not consistent with a person who was exaggerating or malingering." As to diagnosis, Dr. Bernet testified that Employee suffers from "dysthmic disorder" which "reflects the mild to moderate depression that he's experienced" plus "pain disorder associated with both psychological factors and a general medical condition, chronic." Dr. Bernet opined that the pain

disorder is permanent.

Dr. Bernet also testified that Employee's cervical strain causes pain and that Employee is "the kind of person who, when he feels that [pain], he becomes moody or depressed. He develops psychological symptoms. The psychological symptoms seem to aggravate the pain and the pain gets even worse, and then that causes the psychological symptoms to get worse." Accordingly, Dr. Bernet predicted that, so long as Employee suffered from chronic pain, he would suffer from some degree of depression. Dr. Bernet stated that he thought Employee's psychiatric conditions originated with Employee's October 2003 injury. Dr. Bernet opined that Employee is permanently and totally disabled.

On cross-examination, Dr. Bernet testified in response to questions about headaches Employee had suffered before October 2003:

> Well, I think he's had different headache–he's had different headache-type problems, and he appeared to have a new kind of pain that day because it radiated into his neck and it appeared to be related to muscle spasm, so I think he's had headaches for different reasons, in the past from sinus problems, and now from this muscle spasm.
>
> It's my understanding that [the chronic head and neck pain] starts with a muscle spasm. If you turn in a certain way or stretch muscles in a certain way it causes spasm which then–and then the spasm can secondarily irritate the nerves in some way.

Many of Employee's medical records were introduced into evidence via the various doctors' depositions. The records from his visit to the emergency room on October 31, 2003, prepared by Dr. Bradley W. Hoover, reflect the following "history of present illness":

> This is a 57-year-old gentleman who presents after experiencing a near syncopal event at his place of work. He did not fall but was up on a ladder when it occurred and had to be helped to the ground and brought here for evaluation. *Prior to this he had the onset of right retro-orbital headache that radiated down to his right neck area. This headache had begun when he woke up this morning in a fairly mild fashion but it has gotten worse as the day has progressed.* The patient initially related that he has never experienced a headache like this in the past but had been seen by ENT physicians for problems which were felt related to sinusitis conditions. He has not had any fever and has not had any congestion symptoms prior to this event. He denied chest pain. He did have nausea present. He denied light sensitivity. No "thunder clap" onset. The headache was definitely one-sided. [Emphasis added].

This record also states the following with respect to the physical examination of Employee's neck:

> Supple without meningismus. He did, however, have palpable spasm

posterior sternocleidomastoid musculature right neck which triggered his pain, more or less.

The "Medical Decision Making" portion of the record provides the following:

> This is a 57-year-old gentleman with a headache with right neck radiation. I have discussed this in full with him and his family members who are very helpful with relating that *this was not a new problem for him. He has had similar headaches in the past and was evaluated by ENT physicians. To the best of their knowledge, he has not seen a neurologist. He does seem to have the recurrent neck spasms either side which seem to, in turn, trigger headaches.* Based on this knowledge I do not feel that further testing is indicated, i.e., LP, although this thought was entertained before I gathered this history. He is discharged in improved condition. [Emphasis added].

The "Final Impression" is "acute cephalgia, near syncope, spasm, right neck." The "Plan" set forth is:

> Discharged to home. To follow headache instructions and return precautions. I gave him instructions for both tension headache and migraine headache as I feel he likely has a mixed presentation going on. Followup with his doctor on Monday is strongly encouraged. He can certainly return for any worsening or new symptoms that happen to occur.

Employee's medical records also include notes by Dr. Paul C. Buechel, who saw Employee on November 19, 2003, for a neurological consult. Dr. Buechel's notes about Employee's history reflect that Employee "injured his neck at work two years [previously], and since then has had intermittent significant pain and tightness in the muscles of his neck and shoulders." On the basis of his exam and Employee's history, Dr. Buechel opined that Employee "is having muscular tension headaches . . . rather than vascular/migraine headaches" and that the previous injury (in September 2002) caused a strain to Employee's cervical muscles "and that these have simply never been rehabilitated appropriately."

A report regarding x-rays taken in December 2003 reflects "no evidence of acute injury."

In January 2004, Employee signed a "Medical History Information" sheet from Tracy Caulkins Physiotherapy indicating that his "stiffness-sore neck" did not result from a work-related accident.

According to Dr. Gary Powell's notes from Employee's visits in February 2004, Employee had "no spinal cord compression present" and no manifestation of myelopathy. Dr. Powell recorded that Employee "notes that his pain has been present for the past two years, but has been worsening steadily over the past several months." A cervical MRI performed in February 2004 reflected "mild degenerative disk changes without evidence of nerve root or spinal cord impingement."

Employee initially saw neurologist Dr. Cynthia Susskind on May 4, 2004, "for Neck pain and

Headache." According to Dr. Susskind's report, Employee told her that

> He had hurt his neck at work on several occasions and that his neck pain had started and worsened within the past several years. Symptoms began following an injury 2 to 3 years [previously] at which time he began having neck pain until he incurred a second injury approximately 1 year [previously].
>
> Both of these apparently had led to symptoms of neck pain starting in the region where the muscles of his neck attach to the head. The pain and headaches varied and had fluctuations in terms of symptoms, but frequently became incapacitating.
>
> *Overall, however, he stated with certainty that his neck pain and headaches began in September of 2002.*
>
> . . . .
>
> [W]e found congenital fusion of his cervical vertebrae with spinal stenosis being present. This would increase his risk for spine injury following certain kinds of excessive force or injuries arising on his job. *Specifically, there is one injury of September 2002 that he was hit in the head and he could have received a neck injury from that. He continues to complain of neck pain since that time. This is also a part of his current complaints.* [Emphasis added].

Records from Tennessee Urgent Care Associates dated September 19, 2002, reflected that Employee reported the following injury: "Unloading truck + hurt neck, upper back + R shoulder." He was diagnosed with neck strain and neck and back pain. At his recheck on September 23, 2002, he reported that his injury was improving. The diagnosis was neck pain and strain and back pain. At recheck on September 27, 2002, Employee reported that his symptoms were worse. The diagnosis was unchanged. Employee was discharged with restrictions, an estimated length of disability of one to two weeks, and a referral to an orthopedist.

Upon considering this evidence, the trial court took the matter under advisement and later issued a comprehensive written analysis of Employee's claim. The trial court denied Employee's claim after concluding that his injury "was not work related." In so finding, the trial court relied on, among other things, the notes prepared in conjunction with Employee's admission to the Summit Medical Center emergency room; Employee's decision to take non-work-related disability; Employee's indication to the Physiotherapy Center that the injury was not work related; and the histories he gave to Drs. Powell, Buechel, and Susskind indicating that his cervical pain had been present for a significant period of time prior to October 31, 2003. The trial court also noted specifically that Employee "admitted that he had received workers' compensation benefits in the past, was a union steward, and knew the process for reporting a work-related injury."

STANDARD OF REVIEW

We review factual issues in a workers' compensation case de novo upon the record of the trial court, accompanied by a presumption of correctness of the trial court's factual findings, unless the preponderance of the evidence is otherwise. See Tenn. Code Ann. § 50-6-225(e)(2) (2008); see also Rhodes v. Capital City Ins. Co., 154 S.W.3d 43, 46 (Tenn. 2004); Perrin v. Gaylord Entm't Co., 120 S.W.3d 823, 825 (Tenn. 2003). This standard requires us to weigh carefully the trial court's factual findings and conclusions against the proof in the record in order to determine where the preponderance of the evidence lies. See Vinson v. United Parcel Serv., 92 S.W.3d 380, 383-84 (Tenn. 2002). When the trial court has seen the witnesses and heard the testimony, especially where issues of credibility and the weight of testimony are involved, the court on appeal must extend considerable deference to the trial court's factual findings. Houser v. Bi-Lo, Inc., 36 S.W.3d 68, 71 (Tenn. 2001). When expert medical testimony differs, it is within the trial judge's discretion to accept the opinion of one expert over the other. Hinson v. Wal-Mart Stores, Inc., 654 S.W.2d 675, 676-77 (Tenn. 1983). This Court, however, may draw its own conclusions about the weight and credibility to be given to expert medical testimony when it is presented by deposition. Krick v. City of Lawrenceburg, 945 S.W.2d 709, 712 (Tenn. 1997). With these principles in mind, we review the record to determine whether the evidence preponderates against the findings of the trial court.

ANALYSIS

Tennessee's Workers' Compensation Act provides for the payment of benefits to workers who suffer an injury "arising out of and in the course of employment." Tenn. Code Ann. §50-6-103(a) (2008). "Although both of these statutory requirements seek to ensure a connection between the employment and the injuries for which benefits are being sought, they are not synonymous." Wait v. Travelers Indem. Co. of Ill., 240 S.W.3d 220, 225 (Tenn. 2007). The "arising out of" criterion refers to the cause or origin of the injury. Id. The requirement that the injury arise "in the course of" the employee's employment refers to the time, place, and circumstances of the injury. Id.

Employee has the burden of proving every element of his case by a preponderance of the evidence. Elmore v. Travelers Ins. Co., 824 S.W.2d 541, 543 (Tenn. 1992). With regards to the element of causation, an employee carries his burden when the proof establishes that the "injury has a rational, causal connection to the work." Braden v. Sears, Roebuck & Co., 833 S.W.2d 496, 498 (Tenn. 1992). Our courts have "consistently held that an award may properly be based upon medical testimony to the effect that a given incident 'could be' the cause of the employee's injury, when there is also lay testimony from which it reasonably may be inferred that the incident was in fact the cause of the injury." Reeser v. Yellow Freight Sys., Inc., 938 S.W.2d 690, 692 (Tenn. 1997). Although absolute certainty is not required for proof of causation, Clark v. Nashville Mach. Elevator Co., 129 S.W.3d 42, 47 (Tenn. 2004), "medical proof that the injury was caused in the course of the employee's work must not be speculative or so uncertain regarding the cause of the injury that attributing it to the plaintiff' s employment would be an arbitrary determination or a mere possibility." Tindall v. Waring Park Ass'n, 725 S.W.2d 935, 937 (Tenn. 1987). "If, upon undisputed proof, it is conjectural whether disability resulted from a cause operating within [the employee's] employment, or a cause operating without [his] employment, there can be no award." Tibbals Flooring Co. v. Stanfill, 410 S.W.2d 892, 897 (1967).

This Court has also made clear that an aggravation of a pre-existing condition that results in

increased pain but no anatomical change is not a compensable injury. See Cunningham v. Goodyear Tire & Rubber Co., 811 S.W.2d 888, 891 (Tenn. 1991). "If a work injury aggravates a pre-existing condition merely by increasing pain, but does not otherwise 'injure or advance the severity' of the employee's condition the claimant did not sustain an injury by accident within the meaning of the Workers' Compensation Act and is not entitled to compensation." NPS Energy Serv., Inc. v Jernigan, No. M2000-00229-WC-R3-WC, 2001 WL 1173305, *5 (Tenn. Workers' Comp. Panel Oct. 4, 2001) (quoting Cunningham, 811 S.W.2d at 891).

In this case, it is clear that Employee's "near syncopal event" occurred while he was working. The underlying condition appears, however, to have commenced before Employee reported to work that day. As noted in the records of Employee's emergency room visit, his headache that day had begun when he woke up that morning and progressed as the morning wore on. The emergency room notes describe Employee's condition as "the onset of right retro-orbital headache that radiated down to his right neck area." The notes also reflect that this headache was "not a new problem" and that he had had "recurrent neck spasms."

The record reflects the possibility that the headache with which Employee awoke on October 31, 2003, was in some way connected with the injury he suffered in September 2002. Employee has not proceeded on that theory, however. Moreover, he has not demonstrated any anatomical change to his neck occurring during the period from September 2002 to October 2003. In short, Employee has failed to demonstrate by a preponderance of the evidence that his headache and neck pain on October 31, 2003, were so causally related to his work as to be compensable under our workers' compensation law.

The trial court, after hearing testimony, reviewing trial exhibits, and weighing the evidence, determined that Employee failed to prove that the medical emergency he suffered on October 31, 2003, was work-related. After a careful review of the record before us, we conclude that the evidence does not preponderate against the trial court's findings. According, we affirm the decision of the trial court in this case.

CONCLUSION

We affirm the judgment of the trial court denying Employee's claim for workers' compensation benefits. The costs of this cause are taxed to Employee, for which execution may issue if necessary.

_____

JON KERRY BLACKWOOD, Senior Judge

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

SEPTEMBER 22, 2008 SESSION

ROY SAMUEL BATSON v. INTERSTATE BRANDS CORP., et al

Circuit Court for Rutherford County

No. 50760

No. M2007-02754-WC-R3-WC - Filed -February 19, 2009

JUDGMENT

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 appeals 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 the Employee, Roy Samuel Batson, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM