

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

FILED

June 16, 1998

Cecil Crowson, Jr.
Appellate Court Clerk

CHARLES O. WRIGHT,)	SHELBY CIRCUIT
)	
Plaintiff/Appellant)	NO. 02S01-9704-CV-00039
)	
v.)	HON. GEORGE H. BROWN, JR.,
)	JUDGE
MILLER TRANSPORTER, INC.)	
and THE HOME INSURANCE CO.,)	
)	
Defendants/Appellees)	
)	
v.)	
)	
LARRY BRINTON, JR.,)	
DIRECTOR)	
DIVISION OF WORKERS')	
COMPENSATION, TENNESSEE)	
DEPARTMENT OF LABOR,)	
SECOND INJURY FUND,)	
)	
Defendant/Appellee)	

For the Appellees

For the Appellant

**Miller Transporters
and Home Ins. Co.:**

For the Appellee

Second Injury Fund:

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MEMORANDUM OPINION

Members of Panel:

Justice Janice Holder
Senior Judge John K. Byers
Senior Judge William H. Inman

REVERSED and REMANDED

BYERS, Senior Judge

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. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

The trial judge found the plaintiff had failed to show that injuries he received on November 2, 1990 arose out of and in the course of his employment, and the plaintiff's suit was dismissed.

We reverse the judgment of the trial court and remand this case thereto for further proceedings.

FACTS

On November 2, 1990, the plaintiff began work for the defendant as a probationary truck driver. On November 8, 1990, the plaintiff commenced the first over-the-road drive for the defendant. The truck was equipped with a sleeper and the plaintiff was accompanied by a man named Barnett.

Barnett initially drove the truck from Memphis to Forrest City, Arkansas. Barnett and the plaintiff ate in Forrest City and the plaintiff began to drive. The plaintiff drove from Forrest City to Texarkana, Texas where he became ill. The plaintiff stopped in the roadway and vomited. The vomiting lasted for 10 to 15 minutes before the plaintiff and Barnett could continue their route. The plaintiff got into the sleeper but continued to vomit.

The plaintiff and Barnett pulled into Houston, Texas the following morning. Barnett told the plaintiff he would have to change clothes. As the plaintiff was changing, he held onto the truck. The plaintiff's hand slipped off the handle and he fell backwards and injured his neck and back. He was treated at Beltway Community Hospital by Dr. Bart N. Ibarra and found to have ulcers.

The plaintiff testified he was under a lot of stress on the trip because he was on the 29th day of probation with the defendant and if anything went wrong he would not keep his job. The plaintiff further testified his anxiety was heightened because the truck rode unusually rough and jolted him considerably.

MEDICAL TESTIMONY

Dr. Ibarra testified that the stress of the job caused the plaintiff to develop ulcers, which bled and caused the plaintiff to become weak. Dr. Ibarra was of the opinion this weakness caused the plaintiff to fall as he was changing his clothes. Dr. Ibarra testified the plaintiff's ulcers had developed about two weeks prior to his fall.

Dr. Rommel G. Childress, an orthopedic surgeon, commenced to treat the plaintiff on November 17, 1991 for injuries to his neck. Dr. Childress was still treating the plaintiff on February 9, 1995 for back problems and was to see him again in April 1995.¹

Dr. Childress testified the plaintiff had a long history of medical problems with his lower back which pre-dated the fall of 1990. Further, Dr. Childress found the plaintiff had no history of injury to his neck prior to the fall. Dr. Childress was of the opinion the plaintiff had sustained an injury to his neck as a result of the fall and that he had aggravated the pre-existing back problem. Dr. Childress found the plaintiff had a permanent partial impairment of 18 percent to the body as a whole. He related six to seven percent of this to the neck injury received from the fall in 1990.

Dr. Childress found the plaintiff had major restrictions as a result of his injuries and was of the opinion he was totally impaired from driving as an over-the-road truck driver because his physical condition would make it impossible for him to do so safely.

The burden of showing a causal connection between the plaintiff's injury and his employment is upon the employee. *Tapp v. Tapp*, 236 S.W.2d 977 (Tenn. 1951). This requirement is satisfied if the hazard to which an employee is exposed caused the injury. This requirement is satisfied if the injury has a rational connection to the work, and any reasonable doubt on the question must be resolved in favor of the employee. *Braden v. Sears, Roebuck and Co.*, 833 S.W.2d 496 (Tenn. 1992); *Hall v. Auburntown Indus., Inc.*, 684 S.W.2d 614 (Tenn. 1985).

All of the medical evidence in this case is that the injuries to plaintiff's neck were caused by the fall on November 9, 1990 while he was in the course of his

¹ Dr. Childress' deposition was taken on April 12, 1995.

employment with the defendant. Further, the fall aggravated previous problems the plaintiff had with his back. Dr. Ibarra, who diagnosed the plaintiff's ulcers, was of the opinion the ulcers were caused by the anxiety of driving the truck and that the loss of blood caused him to fall.

At any rate, the plaintiff was doing what he was required by the defendant to do when he fell and was injured. The injuries arose out of and in the course of the employment of the plaintiff for the defendant and are compensable.

We remand this case to the trial court for a determination of what benefits the plaintiff is entitled to recover under the workers' compensation act.

The cost of this appeal is taxed to the defendant.

John K. Byers, Senior Judge

CONCUR:

Janice Holder, Justice

William H. Inman, Senior Judge

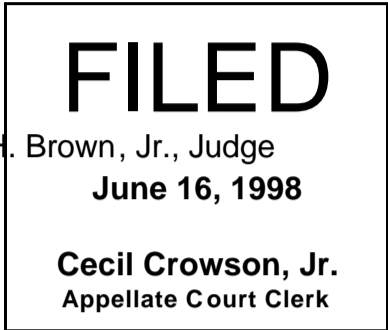
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 LARRY BRINTON, JR., DIRECTOR)
 DIVISION OF WORKERS)
 COMPENSATION, TENNESSEE)
 DEPARTMENT OF LABOR, SECOND)
 INJURY FUND,)
)
 Defendant-Appellee.)

Shelby Circuit
No. 61629

Hon. George H. Brown, Jr., Judge



NO. 02S01-9704-CV-00039

Reversed and Remanded

JUDGMENT ORDER

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 are taxed equally between Miller Transporter, Inc. and the Second Injury Fund, for which execution may issue if necessary.

It is so ordered this _____ day of June, 1998.

PER CURIAM

Holder, J., Not Participating