

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

JAMES E. FLEENOR,)	
)	WASHINGTON CHANCERY
Plaintiff/Appellee)	
)	NO. 03S01-9905-CV-00061
vs.)	
)	HON. G. RICHARD JOHNSON
GRAND PIANO AND FURNITURE)	
COMPANY,)	
)	Decided: May 25, 2000
Defendant/Appellant.)	
)	

For the Appellant:

J. Eddie Lauderback
Herndon, Coleman, Brading & McKee
104 E. Main Street
P.O. Box 1160
Johnson City, Tennessee 37605-1160

For the Appellee:

Robert Payne Cave
104 North College Street
Greeneville, Tennessee 37743

MEMORANDUM OPINION

Members of Panel

Justice William M. Barker
Senior Judge John K. Byers
Special Judge Howell N. Peoples

AFFIRMED

PEOPLES, SPECIAL JUDGE

OPINION

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. Grand Piano and Furniture Company (hereafter "Grand Piano") has appealed an award to James E. Fleenor of 80 per cent disability to the body as a whole. The sole issue is whether the trial court erred in finding that Mr. Fleenor sustained a compensable injury.

Review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). *Stone v. City of McMinnville*, 896 S.W.2d 548, 550 (Tenn. 1995). The application of this standard requires this Court to weigh in more depth the factual findings and conclusions of the trial courts in workers' compensation cases. *Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988).

James E. Fleenor, age 47, has a 5th grade education. His tested I.Q. is 49 and he reads at a 2nd grade level and can do arithmetic at the 1st grade level. He began work at Grand Piano in 1995. He had worked as a furniture mover for most of his life. He drove a truck for Grand Piano and loaded and delivered furniture. He had hurt his back approximately 15 years before when a co-worker dropped the end of a couch; and while he had pain in his back for many years, he testified that the pain at Grand Piano became worse than the pain he had working for previous employers. He told his supervisor at Grand Piano that the work was "getting to me." He never had any specific incident at Grand Piano that caused sudden pain. He testified, "the more I worked, the more I picked up, the worser it got. And I just, I just had to give it up."

Grand Piano asserts that Mr. Fleenor suffered from a pre-existing back condition and that the employment at Grand Piano only resulted in increased pain. Compensation is not available if the pre-existing condition is not “advanced” or if there is no “anatomical change.” *Sweat v. Superior Indus., Inc.*, 966 S.W.2d 31, 32 ((Tenn. 1998); *Cunningham v. Goodyear*, 811 S.W.2d 888, 890 (Tenn. 1991); *Talley v. Virginia Ins. Reciprocal*, 775 S.W.2d 587, 591 (Tenn. 1989); *Smith v. Smith’s Transfer Corp.*, 735 S.W.2d 221, 225-6 (Tenn. 1987). John Morgan Marshall, M.D., who practices physical and rehabilitation medicine, saw Mr. Fleenor on February 11, 1999 at the request of Grand Piano for evaluation. He found lumbosacral spondylosis or degenerative disc disease with osteoarthritis, and testified he could not pinpoint employment at Grand Piano as a cause. William Elderbrook, M.D., who has a family practice, first saw Mr. Fleenor on May 22, 1997 and diagnosed osteoarthritis with chronic degenerative changes. He found that plaintiff had a permanent impairment to his back and imposed restrictions against lifting, bending, and sitting for more than 15 minutes. Asked if heavy lifting at Grand Piano from September 25, 1995 to May, 1997 would have advanced the underlying condition of arthritis or degenerative changes, Dr. Elderbrook answered: “Yes. I feel that definitely that kind of activity would cause his condition to progress and become worse.”

In rendering a bench opinion, the trial judge noted the conflict between the testimony of the doctors. After considering the entirety of the proof, the trial judge found that “even though the Plaintiff may have been suffering pain from his pre-existing condition or disability, but his employment at Grand Piano caused an actual progression or aggravation of the prior disabling condition or disease which produced increased pain.” When the medical testimony is presented by deposition, as it was in this case, this Court is able to make its own independent assessment of

the medical proof to determine where the preponderance of the evidence lies. *Cooper v. INA*, 884 S.W.2d 446, 451 (Tenn. 1994); *Landers v. Fireman's Fund Ins. Co.*, 775 S.W.2d 355, 356 (Tenn. 1989). We find nothing to cause us to disagree with the trial court's reliance on the testimony of Dr. Elderbrook in determining causation to be related to Mr. Fleenor's employment at Grand Piano.

The judgment of the trial court is affirmed. The costs of the appeal are taxed to the Appellant.

Howell N. Peoples, Special Judge

William M. Barker, Justice

John K. Byers, Senior Judge

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE, TENNESSEE

JAMES E. FLEENOR VS. GRAND PIANO AND FURNITURE COMPANY

Washington Chancery for Washington County
No. 18997

No. E1999-01431-WC-R3-CV -Decided May 25, 2000

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 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 facts and conclusions of law are adopted and affirmed and the decision of the Panel is made the Judgement of the Court.

Costs on appeal are taxed to the defendant/appellant, Grand Piano and Furniture Company and J. Eddie Lauderback, surety, for which execution may issue if necessary.

05/25/00