

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
January 2004 Session

**CLETUS M. THETFORD v. AMERICAN MANUFACTURERS MUTUAL
INSURANCE COMPANY, ET AL.**

**Direct Appeal from the Chancery Court for Gibson County
No. 15821 George R. Ellis, Chancellor**

No. W2003-01904-SC-WCM-CV - Mailed February 7, 2005

JAMES L. WEATHERFORD, SR.J., Dissenting.

I respectfully dissent from the opinion filed by the other members of the Panel.

Mr. Thetford had a pre-existing arthritic condition. I find the evidence presented in this case preponderates against a finding that his pre-existing condition was advanced and anatomically changed by his work for Tower.

In pre-existing conditions, an increase in pain alone is not compensable: “[T]o be compensable, the pre-existing condition must be ‘advanced,’ or there must be an ‘anatomical change’ in the pre-existing condition, or the employment must cause an ‘actual progression ... of the underlying disease.’” *Sweat v. Superior Indus.*, 966 S.W.2d 31, 32 (Tenn. 1998).

In *Cunningham v. Goodyear Tire & Rubber Co.*, 811 S.W.2d 888 (Tenn. 1991), the claimant had a history of osteoarthritis in his neck. Although asymptomatic before working for Goodyear, claimant almost immediately began experiencing pain in his hands, wrists, and shoulders, resulting in repeated visits to the plant first aid station. The claimant did not report any specific injury or accident.¹ *Id.* At 890. This Court held that “Mr. Cunningham’s work for Goodyear aggravated his

¹ See *Loope v. Institutional Jobbers, Inc.*, 2001 WL 20919 (Tenn. January 9, 2001) (award upheld to employee with pre-existing arthritic changes and degenerative disc disease when there was a work-related incident of lifting mail bag and that medical testimony “show[ed] the work-related incident could have “tripped the balance” causing nerve impingement.”); *Kobus v. Colonial Moving Co.*, 2000 WL 361949 (Tenn. April 10, 2000) (award upheld to employee with pre-existing degenerative knee condition when 300-400 pound tabletop fell on his knees at work and resulting in two knee replacements. Physician testified that incident caused an actual progression and advancement in disease in

preexisting condition by making the pain worse but it did not otherwise injure or advance the severity of his osteoarthritis. Plaintiff did not sustain an injury by accident within the meaning of the Worker's Compensation Act and is not entitled to compensation...." Id. at 891.

The only medical testimony presented in support of causation was that of Dr. Boals. Mr. Thetford presented to him with complaints of multiple joint arthritis that he alleged was aggravated by his work.

According to Ms. Gordon, Mr. Thetford worked a total of 8 days as a producer in the heavy truck press department between December 10, 2001 and prior to Christmas shutdown which lasted 12-13 days. On January 2, 2002, Mr. Thetford was unable to continue his job when the plant reopened.²

Dr. Boals did not appear to be aware of when or how long Mr. Thetford had the producer job when he recited the patient history in his deposition. He testified that Mr. Thetford's condition developed gradually and inferred that he switched to the producer job that aggravated his arthritis after a few years working at Tower:

This was a 60-year-old man that had worked for Tower Automotive in Milan, and he told me that he had begun working there when he was in his 40s, so that means he was there approximately 15 to 20 years. **As he described it, the first few years of work at Tower did not result in any complaints.** After he was given the job of a producer which required handling parts, picking them off the press, moving them to a basket over an eight-hour period of time he **gradually** began to develop increasing symptoms of pain. This involved the right knee, both hands, both feet, and his back.

There is also no evidence in the record as to what Mr. Thetford's previous job duties were and how they differed from those of a producer in the heavy truck press department. He did state that the press job was faster. According to Mr. Thetford, he had held "just about every producer job out there" during his employment with Tower.

Dr. Boals x-rayed the left hand and right foot which showed marked degenerative arthritis and narrowing of the intertarsal joints. He reviewed Dr. Aelion's 6-13-2000 x-rays of the knees and spine which documented arthritis. But he did not x-ray these same areas as part of his August 8, 2002 exam:

I reviewed the nerve conduction study of the lower extremities on 10-30-2002

addition to increased pain. Even though there was no objective medical evidence to show advancement physician stated it was less than speculative and "that there was no way to measure it but something went on.")

²Although he complained of increasing pain like the employee in the *Cunningham* case, he did not report a specific injury or accident.

which was normal. I did also review Dr. Aelion's records of 6-13-2000 and these showed severe joint space narrowing in the medial compartment of the right knee, mild arthritic change in the opposite knee, and arthritic change present in the lumbosacral spine. **Now, I might say to you that after reviewing those records I did not x-ray those parts of the body since Dr. Aelion had already documented the presence of arthritis in those areas.** I focused my x-rays on the other complaints which did not have substantiation by x-ray.

Dr. Boals established the presence of arthritis in other areas but he did not review or present any x-ray evidence of arthritic changes, advancement, or anatomic change caused by employment upon which to base his testimony regarding causation.

According to Dr. Boals: "Well, I made a diagnosis of multi-joint degenerative arthritis and, secondly, assuming his history to be accurate, that this joint arthritis in multiple areas was aggravated by his work with increased symptomatology." He later refers to this as increased symptoms of pain. Dr. Boals stated that his impairment rating was based on the assumption that "all of these increased symptoms of pain in multiple joints were after changing to the job at Tower and working as a producer."³

While all the x-rays reviewed or ordered by Dr. Boals confirm arthritis, none show an advancement or anatomical change in the disease.

At one point Dr. Boals acknowledges: "The only reason impairment is given here is assuming that that work at Tower while being a producer has caused increased symptomatology **and joint changes** that weren't there before." But Dr. Boals points to no medical evidence to support the assumption that the work at Tower caused joint changes. When a physician assumes that a patient history is correct in order to give an impairment rating, this still allows the trial judge to evaluate the plaintiff's credibility at trial. Assuming that joint changes occurred due to his work at Tower without medical evidence of such goes beyond witness credibility and assumes facts not in evidence.

Based on the above, I do not find the testimony of Dr. Boals to be credible and would have found that the evidence preponderates against the finding of the trial court that Mr. Thetford's pre-existing arthritic condition was advanced and anatomically changed by his work for Tower.

JAMES L. WEATHERFORD, SR.J.

³When asked about his charge for an independent medical evaluation Dr. Boals indicated: "It will vary depending on the evaluation some of those, after the records are reviewed are not charged if they turn out not to be qualifying for impairment."