

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY

EARL JORDAN

Appellant,

Vs.

ADMINISTRATOR, OHIO BUREAU  
OF WORKER'S COMPENSATION

Appellee.

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JUDGMENT AND OPINION

CASE NO. 604043

Shirley Strickland Saffold, J.:

JUDGMENT

Appellant was employed by Aircraft Services International as an airplane fueler. Appellant's position required a great deal of physical labor. He was required to drive a fuel truck out to the airplane, climb a ladder up to the airplane's wing, and manually pull a hose in order to fill the airplane. On January 28, 2004 while fueling airplanes at Cleveland Hopkins Airport, Appellant fell backwards on a patch of ice, striking his head and sustaining injuries to both his neck and back. Appellant was rushed by ambulance to Southwest General Hospital where he was treated for his injuries.

Appellant filed a claim with the Bureau of Workers' Compensation. His claim was allowed for injuries to the head, neck, and lower back. Appellant additionally claimed the accident caused a C5-6 disc protrusion and an aggravation of a pre-existing cervical degenerative disease at C5-6. This additional claim was denied. Appellant appealed to this Court on October 11, 2006.

In order for Appellant to recover for aggravation of his pre-existing condition he must demonstrate that the accident caused the aggravation by a preponderance of the

evidence. *Harris v. Custom Graphics*, Cuyahoga Appeal No. 84326, 2005 Ohio 285 at p.10; *Starcher v. Chrysler Corporation*, Summit App. No. 11062, 15 Ohio App. 3d 57 at 58 (1984). In *Harris v. Starcher*, the Eighth District Court of Appeals stated, “an employer takes an employee as he finds him and assumes the risk of having a weakened condition aggravated by some injury which might not hurt or bother a perfectly normal, healthy person.” *Harris* at p. 9.

The parties stipulated to a bench trial that was held October 29, 2007. Appellant, Mr. Earl Jordan, was the only live witness. Appellant submitted the deposition testimony of his expert, Dr. Edward Gabelman. After considering the testimony of Appellant as well as reviewing the deposition of Dr. Gabelman, the Court finds there is sufficient evidence to demonstrate Appellant’s disc protrusion and pre-existing condition was aggravated by his fall on January 28, 2004.

Appellant fell backwards on the ice with such force that he sustained a concussion. Dr. Gabelman stated the accident was the cause of Appellant’s aggravated condition because Appellant had not previously experienced pain. Dr. Gabelman stated Appellant’s condition was quiet until the fall. He concluded that the disc herniation and aggravation of the pre-existing disc disease were consistent with a fall where the head and neck were subject to violent movements, as Appellant’s had been when he fell at work.

Based upon the testimony and exhibits presented at trial, it is the decision of this Court that Appellant, Earl Jordan, did sustain the condition of C5-6 disc protrusion and aggravation of pre-existing cervical degenerative disc disease at C5-6 as a direct and proximate result of the January 28, 2004 work accident. As such, Appellant, Earl Jordan,

is entitled to participate under the laws of the workers' compensation system for these conditions.

IT IS SO ORDERED

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Date

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Judge Shirley Strickland Saffold