

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

DALE CARLSON,	:	APPEAL NO. C-060737
	:	TRIAL NO. A-0506569
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
AVON PRODUCTS, INC.,	:	
Defendant-Appellant,	:	
and	:	
JAMES CONRAD, Administrator,	:	
Ohio Bureau of Workers'	:	
Compensation,	:	
Defendant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Plaintiff-appellee Dale Carlson injured his back while working as a mechanic technician for defendant-appellant Avon Products, Inc. (“Avon”). On December 1, 2003, Carlson had been working on a nonfunctioning machine. Another employee requested Carlson’s assistance; as Carlson was walking to help this employee, he bent over to pick up a wrench that he had dropped. Carlson injured his back as he stood up. Carlson visited a doctor the next day, and he has since received treatment and therapy

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R.12.

for the injury. But he is no longer able to work for Avon. Carlson had previously injured his back while working for Avon in 1993. But this prior injury was not permanently debilitating, and Carlson had been able to return to work.

Carlson filed an application for benefits with the Ohio Bureau of Workers' Compensation following his 2003 injury. Carlson's claim for a lumbar strain was allowed. But the Industrial Commission denied his claim for an additional allowance due to an aggravation of an L5-S1 central disc protrusion and the aggravation of pre-existing degenerative disc disease of the lumbar spine at L5-S1. Carlson appealed to the court of common pleas, which determined that he was entitled to participate in the workers' compensation system for these additional claims.

Avon has appealed, arguing in three assignments of error that the trial court's judgment should be reversed because, under the workers' compensation system, (1) injuries caused primarily by natural deterioration are not compensable; (2) idiopathic injuries resulting from a pre-existing weakness or disease are not compensable; and (3) an exacerbation of a pre-existing injury, unlike an aggravation of a pre-existing injury, is not compensable as a new injury.

Avon is essentially attacking the weight of the evidence supporting the trial court's conclusions that Carlson's injury was not caused by natural deterioration and was not idiopathic, and that it was an aggravation of a pre-existing injury. We must affirm the trial court's judgment if it is supported by some competent, credible evidence.²

Avon correctly asserts that injuries caused primarily by natural deterioration are not compensable.³ But in this case, the record contains competent evidence to support a determination that Carlson's injury was not primarily caused by natural deterioration.

² See *Cole v. Complete Auto Transit, Inc.* (1997), 119 Ohio App.3d 771, 777, 696 N.E.2d 289.

³ See R.C. 4123.01(C)(2).

Carlson provided deposition testimony from Dr. Stephen Autry, an orthopedic surgeon who had treated him. Dr. Autry testified that Carlson's injury was causally related to the incident at work. Dr. Autry did testify that natural deterioration might have contributed to the injury. And although he could not allocate specific percentages of causation between the event at work and natural deterioration, he stated that natural deterioration was not the primary cause of the injury. Dr. Autry further testified that "the onset, the incremental increase that precipitated treatment at that point was related to the bending event that occurred at work," and that "I think that the onset with this specific event and the necessity for additional care at that point there was a relationship there." Competent, credible evidence supported the trial court's determination that Carlson's injury was not primarily caused by natural deterioration. Avon's first assignment of error is overruled.

Avon next asserts that Carlson's injury did not arise out of his employment with Avon, but rather was an idiopathic injury. For purposes of workers' compensation, "idiopathic refers to an employee's pre-existing physical weakness or disease which contributes to the accident."⁴ Generally, in workers' compensation cases a claimant has the burden of eliminating idiopathic causes of an injury.⁵ In this case, Carlson met such a burden. Dr. Autry testified that Carlson's injury was not caused by the weakened state of his back, but rather was primarily caused by bending over to pick up the wrench. Dr. Autry's testimony provided competent, credible evidence to support a determination that Carlson's injury was not idiopathic. The second assignment of error is overruled.

In its third and final assignment of error, Avon argues that an aggravation of a pre-existing injury and an exacerbation of a pre-existing injury are not equivalent, and

⁴ *Waller v. Mayfield* (1988), 37 Ohio St.3d 118, 121, 524 N.E.2d 458, fn. 3, citing 1 Larson, *The Law of Workmen's Compensation* (1985) 3-308, Section 12.00.

⁵ *Id.* at 125.

that Carlson suffered a noncompensable exacerbation of a pre-existing injury. We first note that an aggravation of a pre-existing injury is covered under workers' compensation.⁶ And to recover, a claimant need not prove that an aggravation is substantial.⁷

Dr. Autry testified numerous times that Carlson had suffered an aggravation of pre-existing degenerative disc disease, as well as an aggravation of a pre-existing disc protrusion. He also described Carlson's injury in terms of an exacerbation, but explained that, in his opinion, the terms exacerbation and aggravation were "a distinction without a difference" and were the same thing.

Avon primarily argues that Carlson could not have suffered an aggravation of a pre-existing injury because he did not have any anatomical change in his condition, and because he had previously experienced similar pain. But an anatomical change is not always required, and "a claimant may prove an aggravation of a pre-existing condition by establishing symptoms that debilitated the claimant more after the accident than before the accident."⁸ Carlson testified that, following his injury in 2003, he experienced a toe drag, his right foot was constantly numb, and he suffered shooting pains across his back and through his hip. And although Carlson had experienced several of these symptoms in the past, he had not experienced such pain in the time preceding the 2003 injury. Further, whereas medication had helped to relieve these symptoms in the past, it was no longer effective following the 2003 injury.

We conclude that competent, credible evidence supported the trial court's determination that Carlson suffered an aggravation of a pre-existing injury. The third assignment of error is overruled, and the judgment of the trial court is affirmed.

⁶ *Schell v. Globe Trucking, Inc.* (1990), 48 Ohio St.3d 1, 2, 548 N.E.2d 920.

⁷ *Id.*

⁸ *Dunn v. Honda of Am., Mfg. Inc.*, 3rd Dist. No. 17-06-02, 2006-Ohio-6686, ¶¶7-8.

OHIO FIRST DISTRICT COURT OF APPEALS

A certified copy of this Judgment Entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

SUNDERMANN, P.J., HENDON and CUNNINGHAM, JJ.

To the Clerk:

Enter upon the Journal of the Court on August 22, 2007

per order of the Court _____.

Presiding Judge