

EV 08-0144-C Y/H Zimmerman v CSX
Judge Richard L. Young

Signed on 05/15/09

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

CHARLES B. ZIMMERMAN,)	
)	
Plaintiff,)	
vs.)	NO. 3:08-cv-00144-RLY-WGH
)	
CSX TRANSPORTATION, INC.,)	
)	
Defendant.)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

CHARLES B. ZIMMERMAN,)
Plaintiff,)
)
vs.) 3:08-cv-144-RLY-WGH
)
CSX TRANSPORTATION, INC.,)
Defendant.)

ORDER GRANTING DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

Plaintiff, Charles Zimmerman (“Plaintiff”), is a former locomotive engineer of CSX Transportation, Inc. (“CSX”). He alleges that on June 22, 2004, he was injured during the course of his employment when the locomotive he was operating stalled in a tunnel, forcing him to inhale carbon monoxide and diesel fumes. At the time of the incident, he suffered, and continues to suffer, from obstructive sleep apnea and narcolepsy.

In Counts I and II of Plaintiff’s Complaint, Plaintiff alleges that his respiratory system was injured when he was exposed to smoke, carbon monoxide, diesel exhaust, and diesel fuel fumes when his locomotive was stopped for approximately 44 minutes in “Bakers Tunnel” near Greenbrier, Tennessee. (*See generally* Complaint, Counts I and II). Plaintiff further alleges that his “sleeping condition” was aggravated by the June 22, 2004, incident. (Deposition of Charles B. Zimmerman at 119-20). In Count III, Plaintiff alleges repetitive trauma injuries to Plaintiff’s wrists, including tendonitis, incurred “throughout the time he was employed” by CSX. (*See* Complaint, Count III). Counts I and III are brought under the Federal Employers’ Liability Act (“FELA”), 45 U.S.C. § 51 *et seq.*, and Count II is brought under the Locomotive Inspection Act, 49 U.S.C. § 20702 *et seq.*

Pursuant to the court's Scheduling Order,¹ the Plaintiff's expert disclosures, along with written reports, were due on May 31, 2008. Plaintiff did not submit expert disclosures on that date. On March 16, 2009, more than 9 months after the May 31, 2008, deadline for disclosure of Plaintiff's expert witnesses, Plaintiff filed his Motion to Disclose Experts Out of Time. CSX filed a response to that motion and also filed a Motion for Sanctions Pursuant to Federal Rule of Civil Procedure 37. In the motion for sanctions, CSX asked the court to preclude the Plaintiff from offering any expert evidence "at trial, at a hearing or on a motion" due to Plaintiff's failure to timely disclose his experts. Magistrate Judge William G. Hussmann denied Plaintiff's Motion to Disclose Experts Out of Time and granted CSX's Motion for Sanctions in an Order dated May 8, 2009. Accordingly, as the record stands, Plaintiff has failed to respond to CSX's motion for summary judgment, and, more to the point, is now precluded from presenting any evidence – expert or otherwise – to prove an essential element of his case, causation. *See Coffey v. Northeast Illinois Reg'l Commuter R. Corp.*, 479 F.3d 472, 476-77 (7th Cir. 2007) (Under both the FELA and the Locomotive Inspection Act, the plaintiff must prove causation). As Plaintiff has submitted no evidence of causation in support of his claims, the court finds it appropriate to grant CSX's motion for summary judgment. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986) ("[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."). **IT IS THEREFORE ORDERED, ADJUDGED**

¹ The Scheduling Order was signed by Magistrate Judge Donald G. Wilkerson of the Southern District of Illinois. This case was transferred to the Southern District of Indiana on September 29, 2008.

AND DECREED that Defendant's Motion for Summary Judgment (Docket # 44) is
GRANTED.

SO ORDERED this 15th day of May 2009.

s/ *Richard L. Young*
RICHARD L. YOUNG, JUDGE
United States District Court
Southern District of Indiana

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