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

CHARLES PENDLETON, Plaintiff/Appellee, vs. KNOXVILLE COMMUNITY DEVELOPMENT CORPORATION, Defendant/Appellant.	)	KNOX CHANCERY NO. 03S01-9812-CH-00147 HON. JOHN F. WEAVER, CHANCELLOR

For the Appellant:

John T. Batson, Jr.
Watson, Hollow & Reeves
Plaza Tower, Suite 1700
Knoxville, Tennessee 37929

For the Appellee:

James L. Milligan, Jr.
607 Market Street
10th Floor
Knoxville, Tennessee 37902

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 Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The employer, Knoxville Community Development Corporation

(hereafter "KCDC") appeals an award of 20 percent disability to the body. We affirm. Review of the findings of fact of 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). Where the trial judge has made a determination based on the testimony of witnesses he has seen and heard, great deference must be afforded that finding. Humphrey v. David Witherspoon, Inc., 734 S.W.2d 315 (Tenn. 1987).

Charles Pendleton is age 37, went to the 9th grade and does not have a G.E.D. Prior to working for KCDC, he worked in a metal shop, drove a truck, and worked as a gas station attendant and as a warehouse order-picker. His job for KCDC was to perform maintenance at an apartment complex and included removing and replacing air conditioning and heating units, replacing windows and window screens, repairing tile, replacing water heaters and hanging doors. He had worked for ten years at KCDC and had received four different maintenance-training classes.

On February 27, 1997, he was on a ladder drilling overhead into a ceiling when his neck "popped." Within ten hours of the injury, he saw Dr. Hubert Hill. He subsequently saw Dr. Fred Killeffer, a neurosurgeon, one time. Dr. Kay then treated him with therapy and injections without success. He was terminated by KCDC in September 1997 for violation of his employer's rules. He then went to work for Jim Cogdill Dodge doing detail work on vehicles. He continued to complain of pain and went to Dr. Maguire on his own and had surgery on March 30, 1998. He worked for another detail shop after the surgery, and he now works for Art-Tech where he fabricates countertops for $8.50 per hour. He was earning $9.01 per hour when he left KCDC. He complains that he still has pain in the neck area with a burning sensation and swelling. He testified he has to have help with his yard work, cannot do anything overhead and has to have help with lifting at home and at work. Debra Pendleton, his wife, testified that he still has constant pain, had to cancel trips with their children because he was not able to travel, and that she rubs his neck to try to give him some relief.

Dr. Fred Killeffer, saw Mr. Pendleton on June 2, 1997 on referral from Dr. Hubert Hill, and testified that Mr. Pendleton did not sustain any permanent injury from the incident in February 1997. Dr. Joseph H. Kay, a physiatrist, saw Mr. Pendleton six times between October 6, 1997 and February 18, 1998 and again on May 26, 1998 for an impairment rating. He testified that Mr. Pendleton had an impairment of four percent to the body as a result of the injury. Dr. James Kimbro Maguire, Jr. performed an anterior cervical diskectomy and fusion by removing the disk between C5 and C6 and grafting a bone from the pelvis in its place. Dr. Maguire testified that Mr. Pendleton reached maximum medical improvement on July 9, 1998 and that he has a ten percent medical impairment to the body, but the impairment is not disabling in his opinion.

In making determinations of disability, the court "shall consider all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's disabled condition." Tenn. Code Ann. § 50-6-241(a)(1); Robertson v. Loretto Casket Co., 722 S.W.2d 380, 384 (Tenn. 1986). Once causal connection and permanency of the injury is established by expert medical testimony, the trial judge is not required to accept the doctor's opinion of the employee's disability, but is entitled to consider lay testimony bearing on loss of earning capacity. Trane Co. v Morrison, 566 S.W.2d 849 (Tenn. 1978); Employers Ins. Co. of Alabama v. Heath, 533 S.W.2d 341 (Tenn. 1976). The trial judge made reference to his consideration of the testimony of Mr. and Mrs. Pendleton in making the award of twenty percent permanent partial disability to the body as a whole. He observed both of them as they testified and we find no error in his reliance on their testimony in making the award. The judgment of the trial court is affirmed and the costs of the appeal are assessed to the Appellant.

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Howell N. Peoples, Special Judge

CONCUR:

_____
William M. Barker, Justice

John K. Byers, Senior Judge

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

CHARLES PENDLETON,	)	KNOX CHANCERY
Plaintiff/Appellee,	)	No. 136976-1
	)	No. E 1998-00440-WC-R3 CV
v.	)	
	)	Hon. John F. Weaver,
	)	Chancellor
KNOXVILLE COMMUNITY DEVELOPMENT CORPORATION	)	
Defendant-Appellant.	)	

JUDGMENT ORDER

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 Judgment of the Court.

Costs on appeal are taxed to the defendant-appellant, Knoxville Community Development Corporation and John T. Batson, Jr., surety, for which execution may issue if necessary.

02/24/00