

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

November 3, 2000 Session

**JAMES EAKES v. GOODYEAR TIRE & RUBBER COMPANY**

**Direct Appeal from the Chancery Court for Obion County  
No. 19,876 William Michael Maloan, Chancellor**

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**No. W2000-00142-WC-R3-CV - Mailed December 14, 2000; Filed February 28, 2001**

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This workers' compensation appeal has been referred to the Supreme Court's Special Workers' Compensation Appeals Panel pursuant to Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. In this appeal, the employee contends the evidence preponderates against the trial court's finding that the preponderance of the evidence fails to establish a causal connection between his injury and his employment. As discussed below, the panel has concluded the judgment should be affirmed.

**Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Chancery Court  
Affirmed.**

JOE C. LOSER, JR., SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and C. CREED MCGINLEY, SP. J., joined.

Mike H. White, Cordova, Tennessee, and John E. Dunlap, Memphis, Tennessee, for the appellant, James Eakes.

James M. Glasgow, Union City, Tennessee, for the appellee, Goodyear Tire & Rubber Company.

**MEMORANDUM OPINION**

The employee or claimant, Eakes, is 34 years old and a high school graduate. He served three years in the United States Marine Corps and has worked as a police officer and production worker. At the time of his claimed accidental injury, he was employed by Goodyear. He testified at trial that, while working in production at Goodyear, he stepped from a "lateral" to the floor with his full weight on his right heel, suffering immediate and severe pain, on January 5, 1996.

Two days after that date, however, he saw Dr. John Hale, but did not give a history of any work-related injury. Dr. Hale examined the claimant and diagnosed plantar fasciitis. The claimant

was referred to Dr. Stephen Raines, whom he saw on January 19, 1996.

The claimant told Dr. Raines he had been having pain in his right heel for about two months. Dr. Raines also diagnosed plantar fasciitis, which he attributed to repetitive trauma from weight lifting and running.

On July 16, 1996, about six months after the claimed injury, the claimant saw an orthopedic surgeon, Dr. David St. Clair. He told this doctor that he had been having pain for about a year. On the encounter form, he gave no history of any accidental injury at work or otherwise. Dr. St. Clair testified that he did not know the cause of the claimant's condition, but conceded it could have been caused by some trauma.

On April 9, 1999, more than three years after the claimed injury at work, and while this case was pending, he gave to Dr. Robert Christopher the same history that he later related to the trial judge. Dr. Christopher, on the basis of that history, opined that the injury was work-related and estimated the claimant's permanent impairment at 10 percent to the right foot.

Upon the above summarized evidence, the trial court, being unable to reconcile the discrepancies between the claimant's live testimony and the testimony by deposition of three treating physicians, concluded that the evidence failed to establish medical causation by a preponderance of the evidence. The appellant contends that this panel is free to discredit the depositions of the three treating physicians and accredit the testimony of the claimant and Dr. Christopher.

Our review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the trial court's findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). This standard requires this tribunal to examine in depth a trial court's factual findings and conclusions. The reviewing court is not bound by a trial court's factual findings but instead conducts an independent examination of the record to determine where the preponderance of the evidence lies. Galloway v. Memphis Drum Serv., 822 S.W.2d 584 (Tenn. 1991). However, where the trial judge has seen and heard the witnesses, especially if issues of credibility and weight to be given oral testimony are involved, considerable deference must be accorded those circumstances on review, because it is the trial court which had the opportunity to observe the witness's demeanor and to hear the in-court testimony. Long v. Tri-Con Ind., Ltd., 996 S.W.2d 173 (Tenn. 1999). The appellate tribunal, however, is as well situated to gauge the weight, worth and significance of depositions as the trial judge. Walker v. Saturn Corp., 986 S.W.2d 204, 207 (Tenn. 1998).

The trial judge obviously did not believe the claimant, whose demeanor the trial judge observed, whose testimony the trial judge heard and whose testimony conflicted with not one but three medical experts, who testified by deposition. We have examined the testimony of the three medical experts and find no reason to reject their testimony. They appear, from their written testimony, to be well qualified, honest and knowledgeable.

For the above reasons, the panel has concluded that the evidence fails to preponderate against the findings of the trial court, whose judgment is affirmed. Costs on appeal are taxed to the appellant.

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JOE C. LOSER, JR., SPECIAL JUDGE

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**JUDGMENT**

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 fact 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 Appellant, James Eakes, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM