

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
March 15, 2001 Session

**MICHAEL T. BURUM v. BNFL, INCORPORATED AND HARTFORD
INSURANCE COMPANY ET AL.**

**Direct Appeal from the Circuit Court for Anderson County
No. 99LA0109 James B. Scott, Judge**

**No. E2000-01383-WC-R3-CV - Mailed - May 9, 2001
FILED: JUNE 25, 2001**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The trial court awarded the plaintiff, who fell at work, permanent partial disability of 50 percent to the left leg. We affirm the decision of the trial court.

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

JOHN K. BYERS, SR. J., delivered the opinion of the court, in which E. RILEY ANDERSON, C. J., and ROGER E. THAYER, SP. J., joined.

Robert R. Davies, Knoxville, Tennessee, for the appellants, BNFL, Inc. and Hartford Insurance Company.

Roger L. Ridenour, Clinton, Tennessee, for the appellee, Michael T. Burum.

MEMORANDUM OPINION

Review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the findings, 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. *See Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988).

Plaintiff's History

The plaintiff, thirty-nine years of age at the time of trial, is a high school graduate. He attended classes at Tennessee Technical Institute and the University of Tennessee where he studied computer science. The plaintiff also served for eight years in the United States Armed Forces working in communications, computers, radios and electrical repair. The plaintiff's job history consists of work as a machine operator, a service desk employee and a paper technician with a large paper manufacturer.

The plaintiff worked for the defendant, who contracted with the K-25 facility for waste management, as a waste management employee. On November 20, 1998, the plaintiff was carrying out his duties for the defendant when he fell and twisted his knee. The plaintiff eventually underwent surgery on the left knee. He testified the knee still causes him problems, and he can no longer participate in activities or work as before the injury.

Discussion

The trial court's decision in this case appears to be based mainly on the testimony of the plaintiff. Where the trial judge has made a determination based upon the testimony of witnesses whom he has seen and heard, great deference must be given to that finding in determining whether the evidence preponderates against the trial judge's determination. *See Humphrey v. David Witherspoon, Inc.*, 734 S.W.2d 315 (Tenn. 1987). When the trial judge sees and hears the witnesses, it is not for this Court to determine whether a witness has so far destroyed his credibility by inconsistent statements that the trial judge is unable to give credence to any of the witness' testimony. The trial judge's finding of fact in this regard is conclusive if there is any evidence to support it. *Walls v. Magnolia Truck Lines, Inc.*, 622 S.W.2d 526 (Tenn. 1981). In this case, the trial court made no specific finding regarding the plaintiff's credibility or lack thereof. We find nothing in the record to undermine the trial court's decision to credit the testimony of the plaintiff.

Both parties in this action agreed at trial that a worker does not have to show vocational disability or loss of earning capacity to be entitled to the benefits for the loss of use of a scheduled member. *Duncan v. Boeing Tenn., Inc.*, 825 S.W.2d 416 (Tenn. 1992). However, the plaintiff may provide such proof to the court as a factor for the court to consider when determining loss of use. In this case, the plaintiff testified as to the loss of use of his leg. He stated he did not believe he could do jobs he had previously done; he also testified he could no longer participated in sports—baseball, basketball, softball—as he had previously done. The plaintiff testified he could neither sit nor walk for long periods of time without pain and told the trial court that the injury bothered him “pretty much all the time.” The plaintiff's testimony is unrefuted; the defendants offered no rebuttal proof at trial regarding the plaintiff's testimony about his vocational prospects

or the extent of his loss of use of the leg—as stated previously, the plaintiff’s credibility is within the provenance of the trial court to the degree the evidence supports the trial court’s findings. We do not believe the evidence preponderates against the trial court’s finding of 50 percent and, therefore, affirm the decision of the trial court.

The costs of this appeal are taxed to the defendants.

JOHN K. BYERS, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE, TENNESSEE

**MICHAEL T. BURUM V. BNFL, INCORPORATED AND HARTFORD
INSURANCE COMPANY, ET AL**
Anderson County Circuit Court
No. 99LA0109

No. E2000-001383-WC-R3-CV - Filed: June 25, 2001

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 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 defendants, BNFL, Inc. and Hartford Insurance Company and Robert R. Davies, surety, for which execution may issue if necessary.

06/25/01