

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT KNOXVILLE  
May 24, 2001 Session

**GLEN WILLIAMSON v. SENTRY INSURANCE COMPANY, ET AL.**

**Direct Appeal from the Chancery Court for Campbell County  
No. 13,556 Billy Joe While, Chancellor**

---

**No. E2000-01639-WC-R3-CV - Mailed - July 31, 2001  
FILED: September 6, 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 judge found the plaintiff sustained a 44 percent permanent disability to the body as a whole. Further, the trial court awarded the plaintiff temporary disability benefits from February 16, 1994, until January 5, 1996. We affirm the judgment of the trial court.

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

JOHN K. BYERS, SR. J., delivered the opinion of the court, in which WILLIAM M. BARKER, J. and WILLIAM H. INMAN, SR. J., joined.

James T. Shea IV, Knoxville, Tennessee, for appellant, Sentry Insurance Company.

David H. Dunaway, LaFollette, Tennessee, for the appellee, Glen Williamson.

**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 court in workers' compensation cases. *See Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988).

## Facts

The plaintiff, who was forty-four years of age at the time of trial, has an eleventh grade education and has worked only as a laborer.

The plaintiff sustained an injury to his neck and back on May 7, 1993. He underwent surgery for the injury and received compensation benefits as a result of the accident. The plaintiff returned to work on February 8, 1994.

The plaintiff testified that on February 17, 1994, he hurt the left side of his neck as he was lifting rolls of fabric into racks.

## Medical Evidence

The plaintiff was treated by Dr. Fred Killeffer, a neurosurgeon, for the May 7, 1993, injury. After considerable treatment, Dr. Killeffer performed a laminectomy, forenectomy and decompression of the nerve root at the C5-C6 level on the right side.

On February 17, 1994, the plaintiff returned to Dr. Killeffer. According to Dr. Killeffer the plaintiff did not relate to him that he had sustained another accidental injury. Dr. Killeffer was of the opinion the plaintiff's complaints of pain were just a continuation of the previous injury. He found no anatomical changes that would indicate a new injury had occurred. Dr. Killeffer testified the plaintiff did not tell him about the event of February 17, 1994.

Dr. William E. Kennedy, an orthopedic surgeon, examined the plaintiff on July 27, 1994, to evaluate the injuries to the plaintiff. He was of the opinion the plaintiff had sustained a separate injury on February 14, 1994, which was different from the injury of May 7, 1993. Dr. Kennedy found the symptoms to be different from those of the May 7, 1993, injury and that the left side of the plaintiff's neck and shoulder was involved after the February 14, 1994, injury whereas the right side was involved in the May 7, 1993, injury.

Dr. Kennedy found the plaintiff had sustained an 8 percent medical impairment rating to the body as a whole as a result of the injury.

Dr. Joe D. Beals, a neurosurgeon, saw the plaintiff on July 21, 1995, on referral from Dr. Burgin Wood, the plaintiff's family doctor. Dr. Beals reviewed Dr. Killeffer's records and conducted various procedures to determine the plaintiff's condition. Dr. Beals was aware of the previous injury of May 7, 1993.

Dr. Beals found the plaintiff had limited motion of his neck on the left side with muscle spasms. Further, he found weakness in the plaintiff's left upper arm. An MRI showed a defect at C5 on the left and a subsequent myelogram showed a defect at C6 on the left. Dr. Beals concluded that surgery was the most obvious option for treatment of the plaintiff. A cervical laminectomy was

performed on September 14, 1995.

Dr. Beals was of the opinion the injury to the plaintiff for which he treated him was as a result of the injury of February 14, 1994, which was separate and distinct from the injury of May 7, 1993.

Dr. Beals continued to see the plaintiff for several months after surgery. He released him on January 5, 1996. He was of the opinion that plaintiff would be unable to work in the labor market because of his injuries. He found the plaintiff had suffered an 11 percent medical impairment to the body as a whole.

### **Discussion**

The trial judge had the testimony of three doctors concerning whether the plaintiff had sustained a separate injury on February 17, 1994, as opposed to the injury he received on May 7, 1993. Dr. Killeffer was of the opinion the plaintiff had not suffered a new injury. Drs. Beals and Kennedy were of the opinion the plaintiff suffered a new and distinct injury on February 17, 1994.

The trial judge has the discretion to accept the opinion of one or more medical experts over the opinion of another or others. *Kellerman v. Food Lion Inc.*, 929 S.W.2d 333 (Tenn. 1996). The trial judge accepted the opinions of Drs. Beals and Kennedy over that of Dr. Killeffer. The record supports this finding of the trial judge.

When the medical evidence is presented by deposition, we may make an independent assessment of the medical proof to determine where the preponderance of the evidence lies. *Cooper v. INA*, 884 S.W.2d 446 (Tenn. 1994). We have done so in this case and find the evidence preponderates in favor of the judgment of the trial court.

### **Temporary Total Disability**

\_\_\_\_\_The defendant insists the plaintiff should only have received temporary total benefits from February 16, 1994, until June 9, 1994, and for five and one-half month following the surgery of September 15, 1995, until January 5, 1996, if at all.

The defendant contends the plaintiff's right to temporary total benefits were interrupted on June 4, 1994, when Dr. Killeffer released the plaintiff until Dr. Beals did surgery on September 15, 1995.

The plaintiff testified he was unable to return to work after he was released by Dr. Killeffer. This, along with the medical evidence in the case, supports the judgment of the trial court on fixing temporary total benefits to which the plaintiff was entitled.

We affirm the judgment of the trial court in all things.

The cost of the appeal is taxed to the defendant.

---

JOHN K. BYERS, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE  
AT KNOXVILLE, TENNESSEE

**GLEN WILLIAMSON V. SENTRY INSURANCE COMPANY, ET AL**  
**Campbell County Chancery Court**  
**No. 13,556**

**No. E2000-001639-WC-R3-CV - Filed: September 6, 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 appellant, Sentry Insurance and surety, James T. Shea IV. for which execution may issue if necessary.

09/06/01