

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

FILED
December 19, 1996
Cecil Crowson, Jr.
Appellate Court Clerk

TIMOTHY CRABTREE,)
)
Plaintiff/Appellee)
)
v.)
)
APAC TENNESSEE, INC.,)
)
Defendant/Appellant)

KNOX CHANCERY
Hon. H. David Cate
Chancellor
NO. 03S01-9603-CH-00035
(No. 118369-2 Below)

For the Appellant: _____

For the Appellee:

Janet L. Hogan
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P.O. Box 51545.
Knoxville, TN 37901

MEMORANDUM OPINION

Members of Panel:

Justice E. Riley Anderson
Senior Judge John K. Byers
Senior Judge William H. Inman

**AFFIRMED
AND REMANDED**

BYERS, Senior Judge

_____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 trial judge found the plaintiff had sustained an injury to his knee and back arising out of and in the course of his employment with the defendant. The trial court awarded the plaintiff 30% permanent partial disability to the leg as a result of the knee injury and 25% permanent partial disability to the body as a whole as a result of the back injury.

The defendant says the trial judge erroneously found the plaintiff had given notice of an accidental injury to his back and says, also, that the awards for the injuries were erroneous.

We affirm the judgment of the trial court.

Injury to the Knee

During March 1992, the plaintiff injured his right knee. He was treated by Dr. Paul Naylor for this injury. Dr. Naylor performed surgery on the plaintiff's knee on October 13, 1992 to repair the damage sustained by the plaintiff. Dr. Naylor testified the plaintiff had a 12% medical impairment to his knee as a result of the accident, which the defendant does not dispute. We find the evidence does not preponderate against the evidence of 30% permanent partial disability to the leg found by the trial judge, and we affirm the judgment thereon. T.C.A. § 50-6-225(e)(2).

Injury to the Back

The plaintiff testified he injured his back in April 1993 when he reached back to lock the tailgate of a truck he was driving in the course of his employment. He testified he gave notice of the injury to his supervisor, James Hawkins, and the safety director, Steve Bell. Hawkins and Bell testified the plaintiff did not give them notice of an accidental injury as he testified. They testified the plaintiff related that the back pain he was having was connected to, or was a result of, the knee injury.

Medical reports submitted to Steve Bell by Dr. Naylor addressed the matter of the plaintiff's back injury. The plaintiff testified he discussed the trial injury with Steve Bell by phone after being seen by Dr. Naylor concerning his back injury. Mr. Bell testified the plaintiff again related that the back pain was caused by the knee injury. Dr. Naylor testified the injury to the plaintiff's back was a separate and distinct injury from the injury to his knee. Dr. Naylor testified the plaintiff had sustained a ten percent permanent medical impairment to the body as a whole as a result of the back injury. Dr. Naylor was of the opinion the plaintiff would have difficulty bending, stooping, climbing and sitting or standing for long periods of time because of the back injury.

Dr. Steven Sanders saw the plaintiff also as a result of the injury to his back and found he retained a four percent neurological impairment to the back.

The only significant issue raised in this case is whether the plaintiff gave notice to the defendant that he had sustained a back injury. The testimony on this issue is in direct conflict as shown by the testimony of the plaintiff who says he gave notice and by the testimony of James Hawkins and Steve Bell who say he did not give notice.

The trial judge found the plaintiff had given notice of the injury as he testified. Thus, the trial judge accredited the plaintiff's testimony. In *Clarendon v. Baptist Memorial Hosp.*, 796 S.W.2d 685, 689 (Tenn. 1990), the Tennessee Supreme Court noted:

In *Humphrey v. David Witherspoon, Inc.*, 734 S.W.2d 315, 315 (Tenn. 1987), this Court held, "Where the trial judge has seen and heard witnesses, especially where issues of credibility and weight of oral testimony are involved, on review considerable deference must still be accorded to those circumstances." See also *Tenn-Tex Properties v. Brownell-Electro, Inc.*, 778 S.W.2d 423, 426 (Tenn. 1989) ("Where the issue for decision depends on the determination of the credibility of witnesses, the trial court is the best judge of the credibility and its findings of credibility are entitled to great weight.") *Clarendon v. Baptist Memorial Hosp.*, 796 S.W.2d 685, 689 (Tenn. 1990).

We do not re-weigh the credibility of witnesses seen and heard by the trial judge. That duty lies with, and remains with, the trial judge. We review a case de

novo with the presumption of the correctness of the trial court's findings of fact, T.C.A. § 50-6-225(e)(2), and, in determining where the preponderance of the evidence lies, we receive as established those facts found by the trial judge that are based upon the credibility of the witnesses whom the trial judge saw and heard testify. We conclude the evidence does not preponderate against the finding of the trial judge that the plaintiff gave notice to the defendant of the injury to his back.

We see no need to go into further analysis of the medical testimony in this case in the matter of the injury to the plaintiff's back. The evidence supports the trial judge's award of 25% permanent partial disability to the body as a whole as a result of the back injury.

The judgment of the trial court is affirmed, and we remand the case for assessment of the costs, which are taxed against the defendant/appellant.

John K. Byers, Senior Judge

CONCUR:

E. Riley Anderson, Justice

William H. Inman, Senior Judge

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TIMOTHY CRABTREE)	KNOX CHANCERY
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APAC TENNESSEE, INC.)	
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Defendant/Appellant)	

JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Worker' Compensation 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 act 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 and surety, Janet L. Hogan, for which execution may issue if necessary.

12/19/96