

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT KNOXVILLE
(December 3, 1996 Session)

FILED
February 21, 1997
Cecil Crowson, Jr.
Appellate Court Clerk

ALAN LEE PRESSLEY,)	ROANE CHANCERY
)	
Plaintiff-Appellee,)	Hon. Frank V. Williams, III,
)	Chancellor.
v.)	
)	No. 03S01-9606-CH-00058
UNITED STATES FIDELITY AND)	
GUARANTY COMPANY,)	
)	
Defendant-Appellant.)	

For Appellant:

Daryl R. Fansler
Fansler & Williams
Knoxville, Tennessee

For Appellee:

Jennifer P. Craig
Moore & Smith
Knoxville, Tennessee

MEMORANDUM OPINION

Members of Panel:

E. Riley Anderson, Associate Justice, Supreme Court
Roger E. Thayer, Special Judge
Joe C. Loser, Jr., Special Judge

AFFIRMED

Loser, Judge

MEMORANDUM 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. section 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. In this appeal, the employer's insurer contends the evidence preponderates against the trial court's finding that the employee has suffered an injury arising out of the employment. As discussed below, the panel has concluded the judgment should be affirmed.

The employee or claimant, Pressley, was thirty-eight years old at the time of the trial. He has an eighth grade education, but had to repeat the second, fifth and seventh grades. He has worked as a bag boy and service station attendant. He began working as a mechanic for The Auto Place in 1988. On the afternoon of October 4, 1994, he was attempting to install a gasoline tank on a vehicle when his back made a popping noise and he felt low back pain.

Later the same day, he reported to the emergency room at Harriman City Hospital. The history recorded by the admitting clerk reflects the claimant had been suffering back pain for about a year, but the claimant's wife testified at trial that she told the clerk about the injury that had occurred at work the same day. The claimant did not return to work the next day because of back pain.

Four days later, the claimant reported to the emergency room at Oak Ridge Methodist Medical Center. The clerk's notes at this hospital indicate the pain began five days earlier as the claimant was getting out of bed, although the claimant's live testimony is that he explained to the person taking his history about the injury at work.

He was thereafter treated by Dr. Hardigree, who released him to return to work after a conservative treatment and a short period of disability.

We do not find in the record the testimony of Dr. Hardigree, but his office notes, which were read into the record by Dr. Bell, state that the claimant gave Dr. Hardigree a history of having suffered a sharp pain in his back and left leg while lifting a gas tank. Moreover, the claimant's own testimony is corroborated in part by Barry Wright, a part owner of the employer.

The claimant returned to work, but was unable to perform his duties satisfactorily, because of pain. In November of the same year, he was referred to Dr. John Bell, who ordered diagnostic tests and diagnosed low back strain with a small disc herniation and possible left lumbar nerve root irritation.

Dr. Bell expressed two different opinions as to whether the claimant's injury was work-related. On the Standard Form Medical Report for Industrial Injuries, which was based on information provided by the claimant, he indicated the injury, more probably than not, was one arising out of the claimant's employment. In response to cross-examination, in his deposition, he opined on the basis of the emergency room reports that the condition was probably not work related. Both sides contend the issue of causation turns on the testimony of Dr. Bell.

The trial court found in favor of the claimant. Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. section 50-6-225(e)(2). This tribunal is required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. Wingert v. Government of Sumner County, 908 S.W.2d 921 (Tenn. 1995). 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. McCaleb v. Satum Corp., 910 S.W.2d 412 (Tenn.

1995).

Unless admitted by the employer, the employee has the burden of proving, by competent evidence, every essential element of his claim. Oster v. Yates, 845 S.W.2d 215 (Tenn. 1992). In order to establish the element that the injury was one arising out of the employment, the cause of the injury must be proved. Causation may only be established by expert medical testimony, except in the most obvious cases. Kellerman v. Food Lion, Inc., 929 S.W.2d 333 (Tenn. 1996).

It is implicit in the trial court's finding that he accepted the testimony of the claimant and his corroborating witnesses, who testified orally, as to when and how the injury occurred. It follows that Dr. Bell's report establishes the necessary causal connection.

The judgment of the trial court is therefore affirmed. Costs on appeal are taxed to the defendant-appellant.

Joe C. Loser, Jr., Judge

CONCUR:

E. Riley Anderson, Associate Justice

Roger E. Thayer, Judge

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ALAN LEE PRESSLEY,)	ROANE CHANCERY
)	No. 12,662
Plaintiff/Appellee,)	
)	
vs.)	Hon. Frank V. Williams, III
)	Chancellor
)	
)	03S01-9606-CH-00068
UNITED STATES FIDELITY AND)	
GUARANTY COMPANY,)	
)	
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, United States Fidelity And Guaranty Company, for which execution may issue if necessary.

02/21/97