IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT KNOXVILLE

GEORGE EDWARD FREEMAN, CHANCERY	)	CAMPBELL
	)	
Plaintiff/Appellee	)	NO. 03S01-9803-CH-00023
	)	
v.	)	
	)	
AMERICAN MOTORIST INSURANCE COMPANY,	)	HON. BILLY JOE WHITE, CHANCELLOR
	)	
Defendant/Appellant	)	

For the Appellant:

Steven B. Johnson
Vonda M. Laughlin
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Knoxville, TN 37901-2649

For the Appellee:

Roger L. Ridenour
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P. O. Box 530
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M E M O R A N D U M O P I N I O N

Members of Panel:
Justice Adolpho A. Birch, Jr.
Senior Judge William H. Inman
Special Judge Joe C. Loser, Jr.

AFFIRMED

INMAN, 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.

George Edward Freeman (employee), sustained an injury to his left eye while grinding metal at work, when a piece of metal penetrated his safety glasses and lodged in his cornea.

The trial court awarded 70 percent permanent partial disability to the left eye, which the employer appeals as excessive.

We affirm the judgment of the trial court.

Employee had worked for Vinylex Corporation (employer), as a machine technician and maintenance fabricator for eleven years when he was involved in the above-described industrial accident on February 18, 1995. He was taken to an emergency room, where examination by Dr. Leslie Cunningham revealed a central corneal laceration, with inflammation, and a triangular metallic foreign body in his left eye.

Dr. Cunningham surgically removed the foreign body, cleansed the wound and patched Mr. Freeman's eye. She advised the employee to leave the patch on the eye and to remain off work for six weeks. Mr. Freeman testified that he went back to work three days later owing to family financial responsibilities requiring him to earn his full salary.

Dr. Cunningham assessed three to five percent permanent partial impairment to the left eye, but opined that if the employee works in bright sunlight or under bright lights or drives at night, then his medical impairment to the left eye would be 16 to 18%, and that he retains a permanent corneal scar.

Employee testified that he now has a "milky and very blurry" view from his left eye, must close his left eye in order to read, and must constantly strain to see. He now works at Eagle Bend Manufacturing on the third shift, with work hours from 10:30 p.m. to 7:00 a.m. He must drive at night and has difficulty when he encounters the headlights of oncoming cars, or in the daytime when he is in bright sunlight or bright light of any kind. Although he is now earning a higher hourly wage than he earned while working for the defendant employer, the unrebutted testimony of the employee and the treating physician indicates that he retains substantial impairment to his left eye.

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 finding, 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). In this case, as in all workers' compensation cases, the claimant's own assessment of his physical condition and resulting disabilities is competent testimony and cannot be disregarded. *Tom Still Transfer Co. v. Way,* 482 S.W.2d 775, 777 (Tenn. 1972).

We find the preponderance of the evidence supports the trial court's findings, which are affirmed.

Appellee asserts that because there is no proof in the record to rebut his evidence, this appeal is frivolous, and he asks this court to award him damages against the appellant under Tenn. Code Ann. § 50-6-225(i), which provides:

> When a reviewing court determines pursuant to motion or sua sponte that the appeal of an employer or insurer is frivolous, or taken for purposes of delay, a penalty may be assessed by such court, without remand, against the appellant for a liquidated amount.

The standard for determining whether an appeal is frivolous is whether the appellant presents *any evidence or rule of law* which would entitle him to a

reversal or other relief from the decree of the trial court. *Wells v. Sentry Ins. Co.*, 834 S.W.2d 935, 939 (Tenn. 1992) [emphasis added]. While we agree with the appellee that the trial court correctly determined the issues in this case, the appellant has presented several prior cases which, if determined to be controlling, could have resulted in a reduction in the amount of the permanent partial disability award.[1] Therefore, we find this appeal was not frivolous and decline to award damages to appellee on that basis.

The judgment of the trial court is affirmed at the costs of the appellant.

_____
William H. Inman, Senior Judge

CONCUR:

_____
Adolpho A. Birch, Jr., Justice

_____
Joe C. Loser, Jr., Special Judge

[1]For instance, *Hinkle v. City of Elizabethton*, 1992 WL 109427 (Tenn. 1992); *Johnson v. Ameri-Flow*, 1992 WL 31294 (Tenn. 1992).

IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE

GEORGE EDWARD FREEMAN	)	CAMPBELL CHANCERY
	)	
Plaintiff/Appellee	)	No. 14,036
	)	
	)	
	)	No. 03S01-9803-CH-00023
v.	)	
	)	
	)	Hon. Billy Joe White
AMERICAN MOTORIST INSURANCE COMPANY	)	Chancellor
	)	
	)	
Defendant/Appellant	)	

FILED

February 18, 1999

Cecil Crowson, Jr.
Appellate Court
Clerk

JUDGMENT ORDER

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 defendant, American Motorist Insurance company and Steven B. Johnson, Jr., surety for which execution may issue if necessary.

02/18/99