

IN THE SUPREME COURT OF TENNESSEE  
AT KNOXVILLE

**FILED**  
August 4, 1999  
Cecil Crowson, Jr.  
Appellate Court  
Clerk

RONALD TATE )  
KNOX CHANCERY ) No. 131792-1 Plaintiff-Appellee,  
)  
) No. 03S01-9809-CH-00106  
v. )  
)  
TRAVELERS INSURANCE )  
COMPANY ) Hon. Frederick D. McDonald  
) Chancellor  
Defendant-Appellant )

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, Travelers Insurance Company and Weldon E. Patterson, surety, for which execution may issue if necessary.

08/04/99

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
KNOXVILLE, MAY 1999 SESSION

**FILED**  
August 4, 1999  
Cecil Crowson, Jr.  
Appellate Court  
Clerk

RONALD TATE ) KNOX CHANCERY  
)  
Plaintiff/Appellee )  
)  
V. ) Hon. Frederick D.  
) McDonald, Chancellor  
TRAVELERS INSURANCE COMPANY )  
)  
Defendant/Appellant ) No. 03S01-9809-CH-00106

**For the Appellant:**

**For the Appellee:**

Weldon E. Patterson  
Spicer, Flynn & Rudstrom  
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Knoxville, Tenn. 37929

**MEMORANDUM OPINION**

**Members of Panel:**

Frank F. Drowota III, Justice  
John K. Byers, Senior Judge  
Roger E. Thayer, Special Judge

AFFIRMED.

THAYER, Special 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.

Travelers Insurance Company has appealed from the action of the trial court in awarding plaintiff, Ronald Tate, 30% permanent partial disability to the body as a whole.

The sole issue on appeal is whether the evidence preponderates against the conclusion of the trial court.

Plaintiff was 49 years of age and is a high school graduate. He was employed by Luxury Townhouses as a maintenance worker. During October 1995 he injured his right shoulder while attempting to move a hot water tank. He was taking therapy treatments during November 1995 when he sustained an injury to his low back. He stated he was taking a new exercise which required him to arch his back and pull down on some weights. He heard his back snap and he could not get up. The appeal only involves the back injury.

He testified he had not recovered from this injury and could not stand very long or sit for a lengthy period of time. At the trial below, he was working part-time (4 hours week) as a custodian at a church.

All of the expert medical testimony was presented by deposition.

Dr. Gregory Mathien, an orthopedic surgeon, testified he saw plaintiff concerning his shoulder injury; that Dr. James K. Maguire, Jr. referred the patient to him and that he performed surgery on his shoulder for a rotator cuff injury; and that Dr. Maguire was treating him for his back injury. Dr. Maguire's records were introduced as an exhibit to the deposition and indicated he did not have any objective findings concerning the back injury.

Dr. Gilbert Hyde, an orthopedic surgeon, examined plaintiff on March 18, 1997 for evaluation purposes. He testified plaintiff had surgery during 1986 on his back and that a 15% impairment resulted from this injury and surgery. His diagnosis

was that plaintiff had sustained an aggravation of his lumbar spine and he based his conclusion on his findings of tenderness, muscle spasms and moderate restrictions in the motion of the lumbar spine. He opined plaintiff had an additional 5% medical impairment as a result of the aggravation injury and stated he should observe restrictions on lifting, bending and stooping.

Dr. W. Kevin Bailey, a physical medicine and rehabilitation doctor, testified he treated plaintiff for his last back injury. His diagnosis was an aggravation of a prior herniated disc surgery and subsequent degenerative disc disease. He imposed restrictions on prolonged standing, sitting, etc. On direct examination, he stated the aggravation of the old back injury resulted in a 2% medical impairment. However, on cross-examination, he withdrew this impairment rating saying the impairment rating for the old back injury prohibited a new or additional rating of impairment.

A vocational rehabilitation witness testified orally before the trial court and was of the opinion plaintiff had a 70% vocational disability as a result of his back injury.

The trial court accepted the testimony of Dr. Bailey over other conflicting medical testimony and capped the award at six times the 5% medical impairment rating. In computing the award, the trial court stated his legal disability actually exceeded the statutory cap.

The case is to be reviewed de novo accompanied by a presumption of the correctness of the findings of fact unless we find the preponderance of the evidence is otherwise. T.C.A. § 50-6-225(e)(2).

If there is conflicting medical testimony, the trial judge has discretion to conclude that the opinion of a particular expert should be accepted over that of another expert and that one expert's testimony contains a more probable explanation than another expert's testimony. *Thomas v. Aetna Life & Cas. Co.*, 812 S.W.2d 278 (Tenn. 1991).

While a treating doctor's testimony is entitled to considerable weight, the trial court is not bound by the testimony of any expert witness. *Orman v. Williams-Sonoma, Inc.*, 803 S.W.2d 672, 676 (Tenn. 1991); *Johnson v. Midwesco, Inc.*, 801 S.W.2d 804, 806 (Tenn. 1990).

We have reviewed the case under these rules and cannot say the evidence preponderates against the conclusion of the trial court. Therefore, the judgment is affirmed. Costs of the appeal are taxed to the defendant.

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Roger E. Thayer, Special Judge

CONCUR:

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Frank F. Drowota III, Justice

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John K. Byers, Senior Judge

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