IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
(July 12, 1999 Session)

BOBBY WHITE

Plaintiff/Appellee,

v.

GOODYEAR TIRE & RUBBER

Defendant/Appellant

OBION COUNTY CIRCUIT

No. 02S01-9810-CV00101

HONORABLE WILLIAM B. ACREE
JUDGE

For the Appellee:

Gary C. McCullough
McCullough & McCullough
200 Jefferson Avenue
Memphis, TN. 38103

For the Appellant:

Randy N. Chism
Elam & Glasgow
P. O. Box 250
Union City, TN. 33281

MEMORANDUM OPINION

MEMBERS OF PANEL:

JUSTICE JANICE M. HOLDER
SENIOR JUDGE F. LLOYD TATUM
SPECIAL JUDGE C. CREED MCGINLEY

AFFIRMED

MCGINLEY, SPECIAL JUDGE

OPINION

This worker's compensation appeal has been referred to the Special Worker's Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann.§ 50-6-22-255(e) for hearing and reporting of findings of fact and conclusions of law. In this appeal, the defendant appeals the award of 55% disability to the body as a whole.[1] After a thorough review of the record, this panel finds this award of permanent partial disability should be affirmed.

The defendant raises three issues on appeal:

I. Whether the plaintiff met the burden of proof in establishing that the plaintiff's injuries and impairment were causally connected to his work related accident.

II. Whether the defendant's inability to produce a signed copy of a notice of controversy would prohibit it from contesting compensability.

III. Whether the evidence preponderates against the trial court's finding that the plaintiff sustained a 55% vocational impairment rating.

FACTS

The plaintiff employee was at the time of trial a 41 year old [2] male with an 11th grade education. The plaintiff has not obtained a GED. The plaintiff has no vocational training and has been employed by the defendant since 1978. His job history is very limited. He has held only one unskilled factory job prior to his employment with the defendant. The plaintiff injured his back on September 23, 1993. This injury occurred when the plaintiff was attempting to dislodge tires that had become "balled up" on a conveyor belt at Goodyear. While attempting to clear the tire jam the plaintiff fell from a conveyor belt approximately 3 ½ feet to the concrete floor below. The plaintiff heard a popping noise in his back after falling

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1 The trial court originally awarded 60% permanent partial disability to the body as a whole but the judgment was subsequently amended when it was determined that the defendant's liability would be limited to 55% permanent partial disability to the body as a whole due to a prior worker's compensation award. The second injury fund was not a party to this action.

2 There was no testimony during the trial concerning the plaintiff's age, however, reference to multiple exhibits containing date of birth would confirm his age.

backwards when the tire was dislodged. The accident was properly reported and the plaintiff embarked upon a course of medical treatment through an authorized physician, Dr. Anthony Segal, a board certified neurosurgeon, who testified through two separate depositions concerning the plaintiff's treatment.

The medical testimony of Dr. Segal is briefly summarized as follows. The plaintiff was first seen on October 6, 1993, giving a history of the work related accident and complaining of pain in the lower thoracic and lumbar region. He was treated conservatively through 1994. The injury never totally resolved and there was no history of any new injury. Dr. Segal testified that the disc at L5-S1 actually ruptured on September 25, 1994, when the plaintiff was unable to get out of bed because of severe pain. Dr. Segal saw the plaintiff fifteen to twenty times from October 1993 through September of 1994. The defendant was consistently treated for lower back symptomatology from November 3, 1993, until the time of his surgery for herniated disc in October 1994. During the plaintiff's visits there were objective medical findings, including an MRI test in March of 1994 which indicated mild bulges at L4 - 5. Dr. Segal did not attribute great significance to these bulges. Dr. Segal testified that in early September 1994 the plaintiff was doing well with only a mild ache and pain and the doctor was ready to discharge him. He was next seen September 28, 1994, with acute symptoms and was diagnosed with a ruptured disc. Following the plaintiff's surgery he was released by his physician with an anatomical disability of 10% to the body as a whole. The following restrictions were issued by Dr. Segal: limited twisting, turning, stooping, bending and stair climbing. The plaintiff is not to be on his feet for more that six hours a day. These restrictions were the same restrictions that had previously been placed on the plaintiff following a prior disc surgery.

The plaintiff returned to his employment on March 10, 1995, and attempted several different jobs. On December 6, 1996, he was put on medical layoff and has not returned to work.

The plaintiff and his wife both testified as to the plaintiff's limitations and how they affect his life. According to their testimony, the plaintiff is incapable of

performing employment and classifies himself as 100% disabled. The plaintiff occupies himself with watching T.V. and sometimes "riding around" because he can not perform activities that he previously enjoyed.

Review of findings of fact made by the trial court is *de novo* upon the record 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). Under this standard of review, we are required to conduct an in-depth examination of the trial court's findings of fact and conclusions of law to determine where the preponderance of the evidences lies. *See,* Thomas v. Aetna Life & Cas. Co., 812 S.W.2d 278, 282 (Tenn. 1991) (quoting *Humphrey v. Witherspoon, Ind*., 734 S.W.2d 315 (Tenn. 1987); *King v Jones Truck Lines*, 814 S.W.2d 23, 25 (Tenn. 1991). When oral testimony is presented at trial, we must give particular deference to the trial court's assessment of such live testimony; however, when medical testimony is presented by deposition, this Court may draw its own conclusions about the weight, credibility, and significance of such testimony. See *Seiber v. Greenbier Indus., Inc.*, 906 S.W.2d 444, 446 (Tenn. 1995); *Townsend v State*, 826 S.W.2d 434, 437 (Tenn. 1992); *Thomas*, 812 S.W.2d at 283. As previously indicated, the plaintiff raises three issues for appeal.

I.

Whether the plaintiff met his burden of proof in establishing that his injuries and impairment were causally related to his work accident. The defendant contends that the proof preponderates against the trial court's finding that the plaintiff received a compensable injury as a result of the September 23, 1993, accident at Goodyear. It is their insistence that the plaintiff has failed to carry his burden of proof in demonstrating that the ruptured disc of September 1994 was causally connected to the accident of September 1993. The trial court issued detailed written findings of fact finding that the plaintiff sustained an injury arising out of his employment. The trial court classified the injury as one which gradually worsened over a period of time until the ultimate rupture which occurred at the plaintiff's home. This case was originally tried on September 29, 1997. At the

conclusion of that hearing the trial court ordered the parties to submit additional medical evidence because of the equivocal nature of the first deposition of Dr. Segal. Dr. Segal's second deposition did little to clear up the equivocal nature of the proof. During portions of Dr. Seigel's deposition he causally related the plaintiff's disability to the work related accident within a reasonable degree of medical certainty. However during cross examination the doctor retreated from this position. When asked his opinion based upon a reasonable degree of medical certainty, Dr. Segal testified as follows:

> He had had back pain. He started off with what seemed to be a lumbar tear, a lumbar thoracic tear, high up in the back in September 1993. That settled down, but over the next year he continued to have low back pain, which is hard to characterize. He didn't do anything to injure it the day he got the rupture. He was just turning in bed. But it seems reasonable because he had been in to see me so many times and he continued to have disc problems. In other words, he was having mild disc problems with back pain and intermittent spasm during that year. And that injury, as far as I can tell from the evidence, was incurred at work and then the disc finally ruptured out in September of 1994.

As earlier noted Dr. Segal seems to retreat somewhat from this position in other parts of the deposition. He candidly testifies that causation is of interest only to the legal community because physicians are primarily interested in treatment rather than legal causation.

If equivocal medical evidence combined with other evidence supports a finding of causation, such an inference may be drawn by the trial court. See, *Tindall v. Waring Park Association*, 725 S.W.2d 935 (Tenn. 1987). A trial judge may properly predicate an award on medical testimony to the effect that a given incident "could be" the cause of the plaintiff's injury, when he also has before him lay testimony in which it may reasonably be inferred that the incident was the cause of the injury. See *P & L Construction Co. Inc. v Lankford,* 559 S.W.2d 793, 794 (Tenn. 1978). In reviewing all the medical and lay testimony in this case and affording the trial court the statutory presumption of correctness, we cannot say that the evidence preponderates against a finding of causation. To the contrary, there is ample evidence, both lay and medical, that would support the trial court's finding that the plaintiff's ruptured disc and resulting anatomical disability are related to the accident at Goodyear.

II.

Whether the defendant's inability to produce a signed copy of a notice of controversy would prohibit them from contesting compensability. The trial court found that the defendant failed to show that it filed a notice of controversy as required by Tenn. Code Ann. § 50-6-205-(d) and that such failure would preclude it from contending that the accident and resulting injury were not covered under the Workers' Compensation Act. This issue is pretermitted due to this panel's findings in affirming the trial court on the issue of causation.

III.

Whether the evidence preponderates against the trial court's finding that the plaintiff sustained a 55% vocational impairment rating. The appellant insists that the trial court's award of 55% permanent partial disability is excessive. First the defendant contends that the plaintiff's award should be no greater than 2 ½ times the anatomical impairment or 25% permanent partial disability. Tenn. Code Ann. § 50-6-241(a) (1) provides;

> For injuries arising on or after August 1, 1992, in cases where an injured employee is eligible to receive any permanent partial disability benefits, pursuant to §50-6-207(3)(A)(I) and (F), and the pre-injury employer returns the employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of injury, the maximum permanent partial disability award that the employee may receive is two and one-half (2½) times the medical impairment rating determined pursuant to the provisions of the American Medical Association Guides to the Evaluation of Permanent Impairment (American Medical Association), the Manual for Orthopedic Surgeons in Evaluating Permanent Physical Impairment (American Academy of Orthopedic Surgeons), or in cases not covered by either of these, an impairment rating by any appropriate method used and accepted by the medical community. In making determinations, the court shall consider all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's disabled condition.

The trial court by awarding the plaintiff 55% permanent partial disability implicitly found that there was no meaningful return to work as contemplated by this statute. The trial judge made specific findings that there were no jobs at the defendant's plant the plaintiff was capable of performing. This panel cannot say that the evidence preponderates against this findings.

Secondly, the appellant insists that the award should be reduced because the trial judge did not make the specific findings mandated by Tenn. Code Ann. §

50-6-241(c), which provides as follows:

> The multipliers established by subsections (a) and (b) are intended to be maximum limits. If the court awards a multiplier of five (5) or greater, then the court shall make specific findings of fact detailing the reasons for awarding the maximum impairment. In making such determinations, the court shall consider all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's disabled condition.

The trial court is not required to go through any litany or find a specific number of factors, but is required to make specific findings in conformity with the general principles of our worker's compensation law enunciated in this statute. In this case the court made certain specific, albeit brief, findings in conformity with this statute. The trial judge found that the plaintiff has an eleventh grade education, no job skills other than skills developed at the defendant's plant and is medically restricted to the extent that there is no work at the defendant's plant which the plaintiff was capable of performing. Affording the trial judge the presumption of correctness, this panel does not find that the evidence preponderates against these findings. It is obvious that the trial court took into consideration, as required by statute, the lay and expert testimony that indicates the plaintiff is significantly vocationally impaired.

CONCLUSION

After a thorough *de novo* review of the findings made by the trial court, accompanied by statutory presumption of correctness, this panel finds that the 55% permanent partial disability to the body award should be affirmed.

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C. CREED MCGINLEY, SPECIAL JUDGE

CONCUR:

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JANICE M. HOLDER, JUSTICE

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F. LLOYD TATUM, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

FILED

March 6, 2000

Cecil Crowson, Jr.
Appellate Court Clerk

BOBBY WHITE,	)	Obion County
	)	No. 9589
Plaintiff/Appellee,	)	
	)	Hon. William B. Acree,
vs.	)	Judge
	)	
GOODYEAR TIRE & RUBBER,	)	NO. W1998-00604-WC-R3-CV
	)	
Defendant/Appellant.	)	AFFIRMED

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 fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by the Defendant/Appellant, for which execution may issue if necessary.

IT IS SO ORDERED this 6th day of March, 2000.

PER CURIAM