

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

**FILED**

**November 25, 1996**

**Cecil W. Crowson  
Appellate Court Clerk**

TERRY CAMPBELL, Plaintiff-Appellee	)	GRUNDY CHANCERY
	)	
	)	
v.	)	HON. JEFFREY F. STEWART, CHANCELLOR
	)	
OLD REPUBLIC INSURANCE COMPANY, Defendant/Appellant	)	No. 01S01-9511-CH-00213 (No. 4371 below)
_____	)	

FOR APPELLANT:

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FOR APPELLEE:

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MEMORANDUM OPINION

MEMBERS OF PANEL:

ADOLPHO A. BIRCH, JR., CHIEF JUSTICE, SUPREME COURT  
JOHN K. BYERS, SENIOR JUDGE  
WILLIAM S. RUSSELL, RETIRED JUDGE

AFFIRMED

RUSSELL, SPECIAL JUDGE

This appeal from the judgment of the trial court in a workers' compensation case has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated Section 50-6-225 (e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

#### THE CASE

Terry Campbell suffered an injury by electrocution while working in the mine of Kelly's Creek Resources on September 14, 1991. The defendant/appellant, Old Republic Insurance Company, insured the employer's liability under the Worker's Compensation Act of Tennessee.

The trial judge determined that Campbell suffered permanent partial vocational disability in the amount of 30% to the whole body as a result of lumbar and cervical strains resulting from the electrocution. Dr. Martin Redish, M.D., a board certified orthopaedic surgeon, testified that the employee reached maximum medical improvement prior to later subsequent on-the-job injuries, and that the subject accidental injuries resulted in a 10% anatomical impairment to Campbell's whole body.

#### THE ISSUE

The sole issue before this court is whether or not the trial

court erred in considering the deposition testimony of Dr. Redish in the face of the defendant's motion to exclude his expert opinion testimony on the ground that it was based upon underlying facts and data that was shown to be lacking in trustworthiness.

#### THE TRIAL COURT'S RULING

This issue was directly dealt with upon the trial, as the defendant/appellant then moved that Dr. Redish's testimony not be considered. The trial judge opined his conclusion in this language:

The central issue in the case at hand revolves around the medical testimony presented. There seems to be no dispute about the testimony of the plaintiff and his witnesses concerning his condition subsequent to the September 14, 1991 injury. The defendant disputes the use by the plaintiff of Dr. Martin Redish's deposition to establish that the plaintiff sustained a permanent impairment of 5% to the lumbar spine for a total of 10% disability to the body as a whole according to the latest edition of the AMA Guidelines. The defendant has objected to the use of Dr. Redish's deposition on the basis that it lacks trustworthiness. The Court has deferred ruling on the plaintiff's motion until reading all the medical testimony presented in this case. After reading all of the medical testimony presented, the Court is of the opinion the testimony of Dr. Redish is in fact credible and trustworthy.

#### APPELLANT'S CONTENTIONS RE UNTRUSTWORTHINESS

Appellant relies upon the fact that Dr. Redish was not the primary treating physician, that his opinion as to the proximate cause of the employee's disability was based upon the history given to him by the patient, and a litany of other complaints that basically go to the weight of Dr. Redish's testimony.

APPLICABLE LAW

We review the factual findings of the trial court de novo, accompanied by a presumption of correctness, to be overturned only if the preponderance of the evidence is otherwise. Tennessee Code annotated Section 50-6-225 (e)(2)(1991).

Rule 703 of the Tennessee Rules of Evidence provides that expert opinion evidence is to be excluded where based upon facts or data lacking trustworthiness.

CONCLUSION AND JUDGMENT

We have carefully reviewed all of the evidence and find that the trial judge's factual findings are adequately supported.

We do not find the complaints regarding Dr. Redish's testimony to rise to the level of untrustworthiness, rendering his opinions inadmissible; nor is the weight of his testimony substantially diminished by the criticisms relied upon.

The single issue before us is without merit. The judgment of the trial court is affirmed. Costs are assessed to the appellant. The case is remanded for all necessary purposes.

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WILLIAM S. RUSSELL, SPECIAL JUDGE

CONCUR:

ADOLPHO A. BIRCH, JR.,  
CHIEF JUSTICE

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JOHN K. BYERS, SENIOR JUDGE

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TERRY CAMPBELL,	(	
	(	
Plaintiff-Appellee,	(	
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	(	
	(	
v.	(	Grundy Chancery
	(	No. 4371
	(	
	(	Hon. Jeffrey F. Stewart,
OLD REPUBLIC INSURANCE COMPANY,	(	Chancellor
	(	S. Ct. No. 01S01-9511-CH-00213
	(	
Defendant-Appellant.	(	AFFIRMED.

**JUDGMENT ORDER**

This case is before the Court upon motion for review pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), 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 motion for review is not well taken and should be denied; 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 and surety, for which execution may issue if necessary.

IT IS SO ORDERED this 25th day of November, 1996.

PER CURIAM

Birch, J. - Not participating.