IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE

JERRY J. ROBERTS, Plaintiff/Appellant	No. 01S01-9710-CH-00216
v.	DAVIDSON COUNTY CHANCERY
GEORGE BEELER, individually and d/b/a GEORGE BEELER AUTO DELIVERY, and CIGNA INSURANCE COMPANY, and STATE OF TENNESSEE SECOND INJURY FUND, Defendants/Appellees	IRVIN H. KILCREASE, JR., CHANCELLOR

FILED

July 1, 1998

Cecil W. Crowson
Appellate Court Clerk

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MEMORANDUM OPINION

MEMBERS OF PANEL

JANICE M. HOLDER, ASSOCIATE JUSTICE, SUPREME COURT
WILLIAM H. INMAN, SENIOR JUDGE
WILLIAM S. RUSSELL, SPECIAL JUDGE

AFFIRMED RUSSELL, SP. J.

This appeal 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.

Jerry J. Roberts filed suit on December 7, 1993, seeking compensation benefits for herniated thoracic spine discs at T 8-9 and T 6-7 which he contends were injured on October 30, 1990. On that date he had fallen from a vehicle hauler a distance of 10 to 12 feet, and was in pain from his neck to his buttocks. He was treated by Dr. Larry Laughlin, an orthopaedic surgeon. Dr. Laughlin returned the plaintiff to work on February 4, 1991. All compensation benefits due as a result of the known injuries from that fall were timely paid.

Mr. Roberts suffered another fall at work on June 15, 1993, but did not seek medical attention. The next month, while on a trip to Ohio, he began to complain of pain in his left arm, neck, shoulder and chest. He sought treatment by a cardiologist and was referred to a neurologist. MRI scans were obtained and they revealed that he had two herniated discs of the thoracic spine. A claim for compensation was made, grounded upon the contention that the discs had been herniated by the October 30, 1990, fall.

The claim was denied and this suit followed. The Second Injury Fund was added as a defendant, because the employee had injured his low back and legs at work in Kentucky in 1978, and had received a vocational disability rating of 27.7% to the body as a whole.

The trial court recognized the dispositive issue to be causation, and appreciated the burden which the law places upon the employee to prove causation by a preponderance of the evidence by expert testimony. Tindall v. Waring Park Association, 745 S.W. 2d 934, 937 (Tenn. 1987); Dorris v. INA Insurance Company, 764 S.W. 2d 538 (Tenn. 1989). Weighing the expert and other testimony, the court dismissed the case because in the court's judgment causation for the disc herniations found in 1993 was not established by the greater weight of the evidence to have been the fall in 1990.

We review the judgment of the trial court de novo upon the trial court record, accompanied by a presumption of the correctness of the judgment unless the evidence preponderates to the contrary. T.C.A. Sec. 50-6-225 (e). That review of factual findings and conclusions is required to be in depth. Humphrey v. David Witherspoon, Inc., 734 S.W. 2d 315 (Tenn. 1997).

Dr. Larry Laughlin is the orthopaedic surgeon who treated Mr. Roberts after his 1990 fall. He testified that Mr. Roberts' complaints at that time did not suggest an injury to the thoracic spine. He testified that complaints of pain radiation into the abdomen or chest area are indication of a thoracic spine injury and that Mr. Roberts complained of no such pains during eight

months of treatment by Dr. Laughlin. This physician released the plaintiff to return to work on February 4, 1991, with no restrictions. When he last saw Mr. Roberts on July 9, 1991, the employee was not permanently disabled. He saw no relationship between the injuries from the 1990 fall for which he treated Mr. Roberts and the herniated discs found in 1993. He opined that the new problem could be a result of the degenerative process.

Dr. Richard S. Lisella is a neurologist who saw the plaintiff in 1990 upon referral by Dr. Laughlin. None of Mr. Roberts' symptoms at that time could be related to the thoracic area, according to Dr. Lisella. He testified to the opinion, to a reasonable degree of medical certainty, that there was no relationship between the thoracic spine disc problems and the fall in 1990.

Dr. James P. Anderson, a neurologist, conducted a single examination of the plaintiff on May 18, 1995, at the request of plaintiff's attorney. He stated that the plaintiff's condition was, more probable than not, cased by the 1990 fall. He assigned a 15% anatomical impairment to the whole body, and said that Mr. Roberts is capable of working but should avoid heavy lifting and truck driving.

Dr. Anthony Maresse, an orthopaedic surgeon practicing in Indiana and Illinois, treated the plaintiff for a low back condition between 1977 and 1979. He saw Mr. Roberts on July 24, 1995, regarding his present complaints. He opined that his present condition was caused by the 1990 fall, and that he had a 10-20% anatomical impairment.

The trial judge concluded that the opinions of Drs. Laughlin and Lisella were not overcome by a preponderance of the expert medical evidence. It is within the discretion of the trial judge to conclude that the opinion of certain experts should be accepted over that of other experts and that it contains the more probable explanation. Hinson v. Wal-Mart Stores, Inc., 654 S.W. 2d 675, 676-77 (Tenn. 1983); Kellerman v. Food Lion, Inc., 929 S.W. 2d 333, 335 (Tenn. 1996).

While the presumption of correctness that otherwise attaches to the trial judge's findings of fact does not attach to the findings of fact vis a' vis expert medical testimony presented by depositions, Hensen v. City of Lawrenceburg, 851 S.W. 2d 809, 812 (Tenn. 1993), our careful review of that testimony in this case leads us to the same conclusions as expressed by the trial judge in his comprehensive findings of fact.

We affirm the judgment of the trial court. Costs on appeal are assessed to the appellant.

WILLIAM S. RUSSELL, SPECIAL JUDGE

CONCUR:

JANICE M. HOLDER, ASSOCIATE JUSTICE

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WILLIAM H. INMAN, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

JERRY J. ROBERTS,	}	*DAVIDSON CHANCERY*
	}	*No. 93-3597-I Below*
Plaintiff/Appellant	}	
	}	*Hon. Irvin H. Kilcrease, Jr.,*
vs.	}	*Chancellor*
	}	
GEORGE BEELER, individually and	}	
d/b/a GEORGE BEELER AUTO	}	
DELIVERY, and CIGNA INSURANCE	}	
COMPANY, and STATE OF TENN.	}	
SECOND INJURY FUND,	}	*No. 01S01-9710-CH-00216*
	}	
Defendants/Appellees.	}	*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 Plaintiff/Appellant and Surety, for which execution may issue if necessary.

IT IS SO ORDERED on July 1, 1998.

PER CURIAM