

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT NASHVILLE  
April 2003 Session

**ROMACH, INC. v. ANTHONY RAY COLE**

**Direct Appeal from the Chancery Court for Williamson County  
No. 28048 Russ Heldman, Chancellor**

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**No. M2002-02399-WC-R3-CV - Mailed - July 1, 2003  
Filed - August 4, 2003**

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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. In this appeal, the employee insists the trial court erred in admitting evidence of prior criminal convictions and in dismissing his claim. As discussed below, the panel has concluded the trial court committed no reversible error.

**Tenn. Code Ann. § 50-6-225(e) (2002 Supp.) Appeal as of Right; Judgment of the Chancery Court Affirmed**

JOE C. LOSER, JR., SP. J., delivered the opinion of the court, in which ADOLPHO A. BIRCH, JR., J., and ALLEN W. WALLACE, SR. J., joined.

Clifton B. Sobel, Jr., Nashville, Tennessee, for the appellant, Anthony Ray Cole

Clancy J. Covert and Frederick R. Baker, Wimberly, Lawson, Seale, Wright & Daves, Cookeville, Tennessee, for the appellee, Romach, Inc.

**MEMORANDUM OPINION**

The employer, Romach, initiated this civil action to determine its rights and liabilities with respect to a claim by the employee or claimant, Mr. Cole, for workers' compensation benefits. The employee served a counterclaim demanding such benefits for an allegedly work related injury. After a trial, the trial court disallowed the claim because the claimant was not a credible witness. The claimant has appealed.

Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn.

Code Ann. § 50-6-225(e)(2) (2002 Supp.). The reviewing court is required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. Wingert v. Government of Sumner County, 908 S.W.2d 921, 922 (Tenn. 1995). The standard governing appellate review of findings of fact by a trial court requires the Special Workers' Compensation Appeals Panel to examine in depth a trial court's factual findings and conclusions. GAF Bldg. Materials v. George, 47 S.W.3d 430, 432 (Tenn. 2001). Where the medical testimony in a workers' compensation case is presented by deposition, the reviewing court may make an independent assessment of the medical proof to determine where the preponderance of the proof lies. Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 167 (Tenn. 2002).

Conclusions of law are subject to de novo review on appeal without any presumption of correctness. Nutt v. Champion Intern. Corp., 980 S.W.2d 365, 367 (Tenn. 1998). Issues of statutory construction are solely questions of law. Bryant v. Genco Stamping & Mfg. Co., 33 S.W.3d 761, 765 (Tenn. 2000).

During cross examination of the claimant, he was asked about a 1990 burglary conviction, two 1995 burglary convictions and a 1996 conviction for receiving stolen property over the value of \$300.00. The claimant did not dispute the convictions. There was no corroboration of the claimant's testimony that he suffered a work related injury. At the conclusion the trial court filed a memorandum in which he said, "After considering all the evidence as well as the entire record,... the Court is of the opinion that the (employee) lacks credibility and that the evidence preponderates against finding (the employee) suffered an injury compensable under the Tennessee workers' compensation law."

The employee contends the trial court erred in admitting evidence of his criminal convictions. The employer responds that it commenced this action within ten years of the date the claimant was released from confinement. For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime may be admitted if certain procedures and conditions are satisfied. Tenn. R. Evid. 609. Moreover, a final judgment from which relief is available and otherwise appropriate may not be set aside by this tribunal unless, considering the whole record, error involving a substantial right more probably than not affected the judgment or would result in prejudice to the judicial process. TRAP 36(b). If any errors were committed with respect to procedures and conditions required for the admission of criminal convictions, they were harmless because the trial court considered other factors, including the manner and demeanor of the witness in determining that he was unworthy of belief, and the error did not affect the judgment or result in prejudice to the judicial process. The issue is resolved in favor of the appellee.

The appellant next contends the trial court erred in discrediting him. Where the trial judge has seen and heard the witnesses, especially if issues of credibility and weight to be given oral testimony are involved, considerable deference must be accorded those circumstances on review, McCaleb v. Saturn Corp., 910 S.W.2d 412, 414 (Tenn. 1995), because it is the trial court which had the opportunity to observe the witnesses' demeanor and to hear the in-court testimony. Long v. Tri-Con Ind., Ltd., 996 S.W.2d 173, 178 (Tenn. 1999). The trial court's findings with respect to

credibility and weight of the evidence may generally be inferred from the manner in which the court resolves conflicts in the testimony and decides the case. Tobitt v. Bridgestone/Firestone, Inc., 59 S.W.3d 57, 61 (Tenn. 2001). Giving due deference to the trial court's finding, we find no reversible error in dismissing the appellant's claim based on his lack of credibility.

For the above reasons, the judgment is affirmed. Costs on appeal are taxed to the appellee.

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JOE C. LOSER, JR.

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**JUDGMENT**

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 appellee, Romach, Inc., for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM