

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKER'S COMPENSATION APPEALS PANEL
AT JACKSON
June 28, 2005 Session

**CHARLES H. SHELL, ET AL. v. CATERPILLAR PRECISION
MACHINED CASTINGS, ET AL.**

**Direct Appeal from the Chancery Court for Dyer County
No. 02C 521 J. Steven Stafford, Chancellor**

No. W2004-01155-WC-R3-CV- Mailed December 12, 2005; Filed January 19, 2006

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 asserts the trial court erred in finding that the employee's back surgery and resulting disability were not causally related to the February 28, 2002, work injury. We conclude that the evidence presented supports the findings of the trial judge and, in accordance with Tennessee Code Annotated §50-6-225(e)(2), affirm the judgment of the trial court.

**Tenn. Code Ann. §50-6-225(e)(1999) Appeal as of Right; Judgment of the Trial Court
Affirmed**

RON E. HARMON, SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and CLAYBURN L. PEEPLES, SP. J., joined.

Jeff Mueller, Jackson, Tennessee, for the appellant, Charles H. Shell.

R. Dale Thomas, and Geoffrey A. Lindley, Jackson, Tennessee, for the appellees Caterpillar Precision Machined Castings.

MEMORANDUM OPINION

I. FACTUAL BACKGROUND

Mr. Charles H. Shell filed his worker's compensation lawsuit on November 4, 2002, seeking benefits for a back injury he alleges to have sustained on February 28, 2002, while working for the defendant, Caterpillar Precision Machined Castings.

As a result of this event at work, Plaintiff was provided with medical care by the Defendant. Later Plaintiff became dissatisfied with the treatment provided by Defendant's nurse

practitioner and sought treatment from Drs. Ralph Reynolds and Michael Glover. (Plaintiff was also being treated simultaneously by his wife, a physical therapist.) Plaintiff told Dr. Reynolds the injury for which he was being treated occurred at home two or three days earlier while putting on his shoes or picking up his shoes. He then later told Dr. Micael Glover that the injury occurred at home and at work; however, he at no time advised Dr. Glover this was a worker's compensation injury.

The proof further revealed that immediately prior to Plaintiff's surgery, the Human Resource Manager for Caterpillar and the plant manager, met with Plaintiff specifically asking Plaintiff if this was a worker's compensation claim and were assured by Plaintiff that it was not. Plaintiff stated he was going to handle it on his health insurance policy. Eventually Plaintiff returned to work on full duty without restrictions and continued to work for a month or so before being temporarily laid off with a group of other people, then some months later being permanently laid off.

II. RULING OF THE TRIAL COURT

The trial court found that the Plaintiff elected to forego his worker's compensation injury and follow his own course of treatment, filing the injury on his health insurance policy. The trial judge further found the Plaintiff's decision was conscious and, in fact, both he and his wife testified they discussed and knew what they were doing and that they did not want this to be involved in worker's compensation because of the procedures and the doctors they might be required to see. In the furtherance of this goal, Plaintiff collected short term disability benefits on a policy that was provided in part by Caterpillar rather than electing to proceed with the worker's compensation claim.

The trial court found based on the proof that Plaintiff had prior back injuries, having injured himself working on a farm with his father-in-law. The court made further finding that based upon the proof, Plaintiff had failed to show the injury was causally connected to his employment or that the work incident aggravated the injury suffered by Plaintiff.

Plaintiff had been seen by Dr. Boyles for evaluation and received a 23% whole body impairment. He was also evaluated by Dr. Riley Jones who opined that Plaintiff had suffered a 23% impairment to the body as a whole. Dr. Jones did not relate this to a work related injury. The trial court made an alternative finding that if Plaintiff was entitled to any benefits, the court then found he suffered a 30% whole body impairment.

III. STANDARD OF REVIEW

The standard of review on issues of fact is de novo upon the record of the trial court accompanied by a presumption of correctness in the findings, unless a preponderance of evidence is otherwise. *Lollar vs. Wal-Mart Stores, Inc.*, 767 S.W.2d 143, 149 (Tenn. 1989); Tenn. Code Ann. §50-6-225(e)(2). However "when issues regarding credibility of witnesses and the weight to be given their testimony are before a reviewing court, considerable deference must be accorded the trial court's factual findings." *Clark v. Nashville Machine Elevator*, 129 S.W.3d 42, 46 (Tenn. 2004) (citing *Krick v. City of Lawrenceburg*).

In a worker's compensation case, the burden of proving causation is upon the employee and must generally be established by expert medical testimony. *Tindall vs. Waring Park Ass'n*, 725 S.W. 2d935 (Tenn. 1987).

IV. ANALYSIS.

In order to be eligible for worker's compensation benefits, an employee must suffer "an injury by accident arising out of and in the course of employment which causes either disablement or death." Tenn. Code Ann.§50-5-102 (12). The phrase "arising out of" refers to causation. The causation requirement is satisfied if the injury has a rational, causal connection to the work. *Reeser v. Yellow Freight Systems*, 938 S.W. 2d 690,692 Tenn. 1997). Although causation cannot be based upon merely speculative or conjectural proof, absolute certainty is not required. Any reasonable doubt in this regard is to be construed in favor of the employee. *Id.*

It is well-settled in this state that a plaintiff in a worker's compensation case has the burden of proving every element of his or her case by a preponderance of the evidence. *Elmore v. Travelers Ins. Co.*, 824 S.W.2d 541, 543 (Tenn. 1992). With these principles in mind, we review the record to determine whether the evidence preponderates against the findings of the trial court.

None of the physicians seen by the Plaintiff could determine whether the injury complained of occurred in the course of Plaintiff's employment or at home as Plaintiff himself said. Plaintiff stated to his physicians, his employer, and his health insurance carriers that the injury which is the subject of this lawsuit occurred outside his employment. Based on the evidence presented, the trial court found that the injury was not compensable.

CONCLUSION

Because we find the trial court's determination to be clearly supported by a preponderance of the evidence, we affirm the trial court's judgment and tax the costs of this appeal to the appellant, Charles H. Shell, and his sureties for which execution may issue if necessary.

RON E. HARMON, SPECIAL JUDGE

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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 on appeal are taxed to the Appellant, Charles H. Shell, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM