

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT NASHVILLE  
August 26, 2002 Session

**AVIS ESTES, ETC. v. EDGAR MEEK**

**Direct Appeal from the Chancery Court for Dickson County  
No. 5880-99 Leonard Martin, Chancellor**

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**No. M2001-02695-WC-R3-CV - Mailed - November 1, 2002  
Filed - January 22, 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 employer questions the trial court's finding that the death of Walter B. Estes was caused by a work related accidental injury. As discussed below, the panel has concluded the judgment should be affirmed.

**Tenn. Code Ann. § 50-6-225(e) (2001 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 WILLIAM H. INMAN, SR. J., joined.

Blakely D. Matthews and Jay N. Chamness, Cornelius & Collins, Nashville, Tennessee, for the appellant, Edgar Meek

Jerred A. Creasy, Vandivort & Creasy, Charlotte, Tennessee, for the appellee, Avis Estes, surviving spouse of Walter B. Estes

**MEMORANDUM OPINION**

The claimant, Avis Estes, initiated this civil action to recover workers' compensation benefits for the allegedly work related death of the employee, her late husband, Walter Estes. By its answer, the employer, Edgar Meek, admitted the employee suffered a compensable injury by accident on July 10, 1998, but denied that his death on September 29, 1998 was causally related to that accident. After a trial on the merits, the trial court found the accident to be the cause of Mr. Estes's death and awarded benefits to Mrs. Estes. The employer has appealed.

For injuries occurring on or after July 1, 1985, 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) (2001 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 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, 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, 177 (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). The appellate tribunal, however, is as well situated to gauge the weight, worth and significance of deposition testimony as the trial judge. Walker v. Saturn Corp., 986 S.W.2d 204, 207 (Tenn. 1998).

On July 10, 1998, the employee, while working on a barn at work, fell from the roof. He landed on his feet but then fell backward and hit his head on a timber, suffering, among others, a shoulder injury. He was immediately treated at Goodlark Hospital and released. After seeing a number of other physicians, he was finally referred to Dr. Tom Davis at Vanderbilt University Medical Center. After extensive testing, Dr. Davis diagnosed Creutzfeldt-Jakob disease, or CJD, an infectious neurological condition. The employee died on September 29, 1998. On the death certificate, Dr. Davis listed trauma and CJD as the causes of death. He testified by deposition that the trauma listed was the work related injury of July 10, 1998. Although somewhat equivocal, the thrust of Dr. Davis's testimony is that there was a definite causal connection between that accident and the employee's death. Another medical expert, Dr. Joseph Berger, who studied the deceased employee's medical records, disagreed. The chancellor accredited testimony by the deceased employee's family that he exhibited no symptoms of CJD before the accident.

Under the Tennessee Workers' Compensation Act, the right of an employee who suffers a work-related injury to recover compensation benefits from his employer is governed by the statutes in effect at the time of the injury. Nutt v. Champion Intern. Corp., 980 S.W.2d 365, 368 (Tenn. 1998). Such statutes are part of the contract of employment and the rights and responsibilities of such injured employee and his employer can only be ascertained from a consideration of those statutes as construed by the courts. Hudnall v. S. & W. Constr. Co. of Tenn., Inc., 60 Tenn. App. 743, 451 S.W.2d 858, 862 (1969). Injuries by accident arising out of and in the course of employment which cause either disablement or death of the employee are compensable. Tenn. Code Ann. § 50-6-103(a). The controverted issue in the present case is whether the employee's death arose out of the admittedly compensable accidental injury. Generally, an injury arises out of and in the course of employment if it has a rational causal connection to the work and occurs while the

employee is engaged in the duties of his employment; and any reasonable doubt as to whether an injury arose out of the employment or not is to be resolved in favor of the employee. Hall v. Auburntown Industries, Inc., 684 S.W.2d 614, 617 (Tenn. 1985). If a covered employee dies as a result of a compensable injury, the employer is required to pay benefits to the dependents of the deceased employee. Tenn. Code Ann. § 50-6-210(e).

In order to establish that an employee's injury or death arose out of the employment, the cause of the death or injury must be proved. Hill v. Royal Ins. Co., 937 S.W.2d 873, 877 (Tenn. 1996). In all but the most obvious cases, causation may only be established through expert medical testimony. Thomas v. Aetna Life & Cas. Co., 812 S.W.2d 278, 283 (1991). When the medical testimony differs, the trial court must choose which view to believe. In doing so, the court is allowed, among other things, to consider the qualifications of the experts, the circumstances of their examination, the information available to them, and the evaluation of the importance of that information by other experts. Orman v. Williams Sonoma, Inc., 803 S.W.2d 672, 676 (Tenn. 1991). Moreover, it is within the discretion of the trial court to conclude that the opinion of certain experts should be accepted over that of other experts and that it contains the more probable explanation. Story v. Legion Ins., Co., 3 S.W.3d 450, 455 (Tenn. 1999). Absolute certainty on the part of a medical expert is not necessary to support a workers' compensation award, for expert opinion must always be more or less uncertain and speculative. GAF Building Materials v. George, 47 S.W.3d 430, 433 (Tenn. 2001). Where equivocal medical evidence combined with other evidence supports a finding of causation, such an inference may nevertheless be drawn under the case law. Tindall v. Waring Park Assoc., 725 S.W.2d 935, 937 (Tenn. 1987). Any reasonable doubt concerning the cause of the injury should be resolved in favor of the employee. Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 168 (Tenn. 2002).

The appellant contends the trial court erred in accepting the opinion of the treating physician, with respect to causation, over that of its expert, who disagreed, questioning the qualifications of Dr. Davis. Dr. Davis is licensed in Tennessee and certified by the American Board of Psychiatry and Neurology. He presently serves as director of the GCRC Core Laboratory, Vanderbilt University General Clinical Research Center, and as associate professor and director of clinical research, Department of Neurology, Division of Movement Disorders, at The Vanderbilt University Medical Center. He is a neurological consultant at Stallworth Rehabilitation and Veterans Administration Hospitals in Nashville. He was Mr. Estes's treating physician. Dr. Berger's credentials are not questioned. However, under all the circumstances, we cannot say the trial court abused its discretion by choosing to accept the opinion of Dr. Davis with respect to causation.

Giving due deference to the findings of the trial court, the preponderance of the evidence is not otherwise. The judgment of the trial court is accordingly affirmed. Costs are taxed to the appellant.

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JOE C. LOSER, JR.

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

**AVIS ESTES, SURVIVING SPOUSE OF WALTER B. ESTES  
v. EDGAR MEEK**

**Chancery Court for Dickson County  
No. 5880-99**

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**No. M2001-02695-SC-WCM-CV - Filed - January 22, 2003**

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**ORDER**

This case is before the Court upon the motion for review filed by Edgar Meek 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.

It appears to the Court that the motion for review is not well-taken and is therefore denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to Edgar Meek, for which execution may issue if necessary.

PER CURIAM

BIRCH, J - NOT PARTICIPATING