

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

**MICHAEL STORY v. THE HOLLAND GROUP OF TENNESSEE d/b/a  
THE HOLLAND GROUP, ET AL.**

**Direct Appeal from the Circuit Court for Humphreys County  
No. 8934 Allen W. Wallace, Judge**

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**No. M2001-03078-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 and its insurer question the trial court's finding relative to the extent of the employee's permanent disability, as being excessive. 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 Circuit  
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.

Kenneth M. Switzer, Ruth, Howard, Tate & Sowell, Nashville, Tennessee, for the appellants, The Holland Group of Tennessee d/b/a The Holland Group and CGU Insurance Group

Charles L. Hicks, Camden, Tennessee, for the appellee, Michael Story

**MEMORANDUM OPINION**

The employee or claimant, Mr. Story, initiated this civil action to recover workers' compensation benefits for a work related injury. The employer, The Holland Group, denied liability. After a trial on October 26, 2001, the trial court awarded, among other things, permanent partial disability benefits based on 50 percent to the body as a whole. The employer and its insurer have 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) (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 extent of an injured worker's vocational disability is a question of fact. Seals v. England/Corsair Upholstery Mfg., 984 S.W.2d 912, 915 (Tenn. 1999). 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).

The claimant is twenty-four years old with a high school education and experience as a laborer and construction worker. He began working for the employer a few days before his claimed injury and was assigned to work at Jim Marvin Company, a wholesale warehouse, putting together orders. On December 9, 1999, while lifting a fifty pound box to place it on a high shelf, he felt an immediate sharp pain in his right testicle. He was referred to Dr. Clyde Collins, whom he visited the next day.

Dr. Collins diagnosed acute, traumatic epididymal orchitis, for which he prescribed bed rest, scrotal support and medication. The condition did not immediately improve, but in fact worsened. Dr. Collins referred him to Dr. Robert Edwards, a urologist, who diagnosed epididymitis. When conservative care failed to relieve the condition, Dr. Edwards performed an epididymectomy. The claimant was released to full duty on February 28, 2000, just over two and one-half months after the injury. The claimant continued to take antibiotics after the surgery.

The claimant sought out Dr. Grafton Thurman, certified independent medical examiner, for an evaluation. At the time he was examined by Dr. Thurman, he was having pain and swelling in his right testicle when lifting and for several days following ejaculation. The doctor estimated his permanent medical impairment to be 21 percent to the whole person. Dr. David M. Schull, another urologist, confirmed the claimant was permanently impaired, but declined to assign any percentage to it.

The claimant attempted to return to work but was unable to continue because of the pain and

swelling brought on by the nature of his work. He was fired for absenteeism. He has had difficulty maintaining a job since the injury and continues to suffer from the above symptoms. His testimony was corroborated by that of his wife and one post-injury employer.

The appellants contend the award is excessive because the claimant is able to work and earn money, despite his painful and swollen testicle. In determining the extent of an injured worker's permanent vocational disability, the trial courts are to consider all pertinent factors, including lay and expert testimony, the employee's age, education, skills and training, local job opportunities for the disabled, and capacity to work at types of employment available in the claimant's disabled condition. Tenn. Code Ann. § 50-6-241(a)(1). Moreover, trial courts are not bound to accept physicians' opinions regarding the extent of a claimant's disability, but should consider all the evidence, both expert and lay testimony, to decide the extent of an employee's disability. Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 170 (Tenn. 2002). From our independent examination of the record, considering the pertinent factors to the extent they were established by both lay and expert testimony, we cannot say the evidence preponderates against the findings of the trial court.

The judgment is therefore affirmed. Costs are taxed to the appellants.

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JOE C. LOSER, JR.

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No. M2001-03078-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 *The Holland Group of Tennessee d/b/a The Holland Group and CGU Insurance Group* 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 appellant, for which execution may issue if necessary.

PER CURIAM