

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS COMPENSATION APPEALS PANEL  
AT KNOXVILLE  
OCTOBER 9, 2002

**GARY LINDSEY V. PHILIPS ELECTRONICS, N.A.C.**

**Direct Appeal from the Jefferson County  
No. 17,806-IV O. Duane Sloan, Circuit Judge**

**Filed April 23, 2003**

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**No. E2002-00396-WC-R3-CV**

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This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with Tenn. Code Ann. § 50-6-225(e) for hearing and reporting of findings of fact and conclusions of law. The employer appeals a finding of permanent and total disability asserting that the injury is to a scheduled member. We affirm.

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

HOWELL N. PEOPLES, SP. J., delivered the opinion of the court, in which WILLIAM M. BARKER, JUSTICE, and JOHN K. BYERS, SR. J., joined.

Arthur G. Seymour, Jr., Robert L. Kahn, Frantz, McConnell and Seymour, Knoxville, Tennessee, for the Appellant, Philips Electronics, N.A.C.

Robert L. Ogle, Jr., Ogle and Campbell, P.C., Sevierville, Tennessee, for the Appellee, Gary Lindsey.

**MEMORANDUM OPINION**

## Facts

Gary Lindsey was employed by Philips Electronics, N.A.C. (“Philips”) at its Factory Service Branch in Knoxville, Tennessee where he did in-home repair of electronic equipment. During the course of an in-home repair job on March 21, 1997, he experienced an electrical shock. The electricity entered at Mr. Lindsey’s left arm and exited at the right side of his head. He was rendered unconscious and has no independent recall of the injury. He was initially treated at University of Tennessee Hospital and released the next day. He had follow-up treatment with a trauma surgeon for several months and was subsequently seen for the first time on October 21, 1997 by Dr. Robert Chironna at the Patricia Neal Brain Injury Center. Dr. Chironna testified that Mr. Lindsey

“told me basically that he had sustained an injury on March 21, 1997. He was repairing a TV and experienced an electrical shock. It was at a customer’s house. He was unconscious. Then at that point the history that he gives is what he got from that customer, who told him later, I assume, that he was having movements that sounded like seizure activity and was unconscious at that time, then taken by ambulance to the hospital. He’d been told that he had heart arrhythmia called atrial fibrillation. He was admitted to UT Hospital.”

Dr Chironna treated Mr. Lindsey and concluded that he had, as a result of the electrical shock, developed (1) an anxiety problem that related to electricity severe enough that he could not be an electrician again, (2) a condition with his vision called Motion Induced Nystagmus, where the eye movements do not remain steady and which induces stomach sickness and nausea, and (3) mental problems including comprehension, memory, problem-solving, and paying attention. Because Mr. Lindsey complained of numbness and pain in his right arm and there were “some findings with sensation, especially from his left leg and foot not being normal,” Dr. Chironna ordered an MRI which revealed a bulging disc in the neck. Dr. Chironna attributed the disc problem to convulsive movements at the time of the electrical shock. Dr. Chironna assigned a permanent impairment rating of 24 percent to the body, with 17 percent being for the problems of cognitive dysfunction, residual anxiety and nystagmus and dizziness, and an additional seven percent for the problems from the bulging disc in his neck.

Richard P. Boyer, M.D., a neurosurgeon, saw Mr. Lindsey on one occasion and offered to perform surgery on the bulging disc, which Mr. Lindsey declined. Dr. Boyer assigned a 15 percent permanent impairment for the cervical radiculopathy.

Mr. Lindsey and his wife, Cheryl Lindsey, testified to the severe changes in Mr. Lindsey since the injury including his inability to perform routine physical activities such as loading a dishwasher or turning a screwdriver, the inability to concentrate and to deal with routine stresses of life, and the frustration and anger he suffers as a result of his limitations. Julian M. Nadolsky, Ed.D., a vocational expert testified that Mr. Lindsey was 100 percent disabled for work.

Philips offered no evidence other than that offered through the witnesses called by Mr. Lindsey.

The trial court found that Mr. Lindsey “sustained injuries to various parts of his body including the cervical area of his spine and his brain as a result an on-the-job accident” that occurred on March 21, 1997, and awarded permanent and total disability benefits to age 65.

### Standard of Review

Review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2); *Tucker v. Foamex, L.P.*, 31 S.W.2d 241, 242 (Tenn. 2000). The application of this standard requires this Court to weigh in more depth the factual findings and conclusions of the trial courts in workers’ compensation cases to determine where the preponderance of the evidence lies. *Cleek v. Wal-Mart Stores, Inc.*, 19 S.W.3d 770, 773 (Tenn. 2000). “When the trial court has seen the witnesses and heard the testimony, especially where issues of credibility and the weight of testimony are involved, the appellate court must extend considerable deference to the trial court’s factual findings.” *Richards v. Liberty Mut. Ins. Co.*, 70 S.W.3d 729, 732 (Tenn. 2002). However, this Court is in the same position as the trial judge in evaluating medical proof that is submitted by deposition, and may assess independently the weight and credibility to be afforded to such expert testimony. *Id.*

### Issue

The issue is whether the injury sustained by the employee is an injury to the body as a whole or a scheduled injury to mental faculties.

### Discussion

Philips asserts that the only competent evidence presented at the trial demonstrates that Mr. Lindsey’s injury was a “loss of mental faculties,” which is a scheduled member under Tenn. Code Ann. § 50-6-207(3)(A)(ii)(ff). We note that Dr. Chironna testified, without contradiction, that the cervical problems were also caused by the injury Mr. Lindsey suffered. His opinion was based in part on the patient’s history of “movement that sounded like seizure activity” that was related during the doctor’s first examination on October 21, 1997. Dr. Chironna testified about his concerns when he first saw Mr. Lindsey on October 21, 1997 as follows:

With an electrical injury such as he had, especially when it crosses from one side of the body to another, there is a possibility of a spinal cord injury resulting from the electrical charge. That usually does not present right away. It can present more likely a year later; it seems to develop. I did raise that possibility at this time that we need to watch for that. There was also the possibility of nerve root injuries in his neck or his arms because of the numbness and pain he was having there.

This was well before Mr. Lindsey was diagnosed with a bulging disc in the cervical area, and it seems unlikely that Mr. Lindsey would have fabricated the history in anticipation of the later diagnosis. In addition, there is no testimony or evidence, from the customer or others, to establish (a) that Mr. Lindsey did not have seizure movements at the time of the electrical shock, or (b) any other cause of the bulging disc. The evidence does not preponderate against the finding of the trial court that the electrical shock resulted in injuries to Mr. Lindsey's spine and brain. Nor does the evidence preponderate against the finding that Mr. Lindsey is permanently and totally disabled as a result of the electrical shock he sustained on March 21, 1997 in the course and scope of his employment.

#### Disposition

The judgment of the trial court awarding Gary Lindsey permanent and total disability benefits to age 65 is affirmed. Costs of this appeal are taxed against Philips Electronics, N.A.C. and its surety.

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Howell N. Peoples, Special Judge

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AT KNOXVILLE

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**ORDER**

This case is before the Court upon motion for review 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, which are incorporated herein by reference;

Whereupon, it appears to the Court that the motion for review is not well-taken and should be denied 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 Philips Electronics, N.A.C.

IT IS SO ORDERED this 23<sup>rd</sup> day of April, 2003.

PER CURIAM

Barker, J. - Not participating.