

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
March 25, 2003 Session

**JOHNNY RAY ARNOLD, SR. v. CORRECTIONS CORPORATION OF
AMERICA (WHITEVILLE FACILITY)**

**Direct Appeal from the Chancery Court for Madison County
No. 57790 Joe C. Morris, Chancellor**

No. W2002-02299-WC-R3-CV - Mailed July 3, 2003; Filed August 14, 2003

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code. Ann. Section 50-6-225(e)(3) for hearing and reporting to the Supreme Court of finding of facts and conclusion of law. The trial court found the plaintiff suffered a 75 percent disability to his body as a whole, and awarded permanent partial disability benefits, the cost of medical treatment, and temporary total disability benefits pursuant to the Workers' Compensation Act of the State of Tennessee. As discussed below, the panel has concluded the evidence does not preponderate against the trial court's findings and we affirm.

**Tenn. Code Ann. § 50-6-225(e) (2000 Supp.) Appeal as of Right; Judgment of the Chancery
Court Affirmed**

ALLEN W. WALLACE, Sr. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and ROBERT L. CHILDERS, SP. J., joined.

K. Michelle Booth, Jackson, Tennessee, for appellant, Corrections Corporation of America (Whiteville Facility).

George Lee Morrison, III, Jackson Tennessee and Mary Dee Allen, Cookeville, Tennessee, for appellee, Johnny Ray Arnold, Sr.

MEMORANDUM OPINION

The claimant, or employee, Johnny Ray Arnold, Sr. initiated this action to recover Workers' Compensation benefits for injuries received within the course and scope of his employment. On December 21, 1999, while working with appellant employer, he participated in a forced extraction of two (2) inmates from a cell, who refused to come out of the cell, and would not back up and "cuff up." A team of personnel of the employer, including the employee, went into the cell to remove the

inmates. During the extraction the employee fell and injured his back, shoulder and leg. He reported his injury to Johnny Covington, a supervisor, and went to the medical department to be examined. Employee had pain about his knee and shoulder, however, he did not believe his injuries were serious, especially his shoulder injury. About one week later, employee reported to Mr. Covington that his shoulder was still hurting. His pain worsened, and on June 1, 2000, he sought medical treatment.

Employee testified that his condition continued to worsen, and in June of 2000, he sought the services of Dr. Eric W. Muir. Dr. Muir referred him to Dr. Glen Barnett, who saw the employee on July 14, 2000. Dr. Barnett performed surgery on the employee's back and did an anterior cervical discectomy and allograft fusion of the C5-6 disk, with microscopic decompression of the neutral elements. He then had a plating system placed from C5 to C7. Dr. Barnett assigned employee a 15% impairment rating to the body as a whole.

Later, the employee was referred to Dr. Garth Bradford Wright for additional evaluation of his left shoulder pain and, on November 19, 2001, Dr. Wright performed a distal clavicle resection where a portion of the end of his collar bone was removed. Dr. Wright opined that the employee retained a 10% partial impairment to the right upper extremity as a result of the condition.

The appellant employer contests the compensability of this claim, and also insists there is an independent intervening cause, and incident in which the employee was wrestling with his son. The employer also insists the trial judge was in error in not applying the statutory cap and in relying on the testimony of Dr. Boals.

ANALYSIS

The employer insists that the trial court was in error in finding that the employee's injury arose out of and in the course and scope of his employment. Employer insists that, on his initial examination with Dr. Barnett, employee reported that he was in a mild wrestling match with his son and hurt his back. Dr. Barnett testified that,

It is very difficult, as you are aware, to assign causation to medical problems. Either the events, that being the wrestling match with his son, or the injury reported at work could have been a precipitating factor. However, it would appear that a forced cell extraction would be more force on his neck than a "gentle" wrestling match with his son.

Dr. Barnett went on to say that the injury could have been caused by either, or both, or something that happened in the interim between them, that he had no way of specifically knowing the cause of the injury and the cause is not "terribly clear."

On November 26, 2001, the employee saw Dr. Joseph Boals, an orthopedic surgeon in Memphis, for an independent medical evaluation. Dr. Boals opined that employee had a 34% permanent partial impairment to the body as a whole as a result of the multiple level fusion. Dr. Boals was of the opinion that employee's injuries grew out of and in the course and scope of his employment.

Appellate review is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the findings of facts, 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 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). 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). Where the trial court has seen and heard witnesses, especially where the issues of credibility and weight of oral testimony are involved, considerable deference must be accorded the trial court's factual findings. *Humphreys v. David Witherspoon, Inc.*, 734 S.W.2d 315 (Tenn. 1987). 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 issues involve expert medical testimony which is contained in the record by deposition, as it is in this case, then all impressions of weight and credibility must be drawn from the contents of the deposition, and the reviewing court may draw its own impression as to the weight and credibility of the contents of the deposition. *Ormon v. Williams Sonoma, Inc.*, 803 S.W.2d 672, 676-77 (Tenn. 1991).

Further, any reasonable doubt as to whether an injury arose out of the course and scope of one's employment is to be resolved in favor of the employee. *Tapp v. Tapp*, 192 Tenn. 1, 236 S.W.2d 977 (1951); *Hall v. Auburntown Industries, Inc.*, 684 S.W.2d 614, 617 (Tenn. 1985). Once permanency has been established, the second step involves determining the amount of vocational disability suffered by the plaintiff by reason of his work injury. In making this determination the trial court must determine how much the injury impairs the employee's earning capacity considering the degree of anatomical impairment. *Black v. Liberty Mutual Ins. Co.*, 4 S.W.3d 182 (Tenn. 1999). The trial court must consider a variety of factors, both medical and non-medical, expert and non-expert, in reaching this determination. Non-medical factors include the employee's age, education, skills and training, local job opportunities and the capacity to work at a type of employment available in the employee's disabled condition. *Orman v. Williams Sonoma, Inc.*, 803 S.W.2d 672, 678 (Tenn. 1991); *Miles v. Liberty Mutual Insurance Co.*, 705 S.W.2d 665, 666 (Tenn. 1990). The assignment of errors cited by employer as to compensability, independent intervening cause, and the statutory cap, lends itself mainly in this case to the credibility of witnesses. Considerable deference must be

accorded the trial court's factual findings. *Humphreys v. David Witherspoon, Inc.*, 734 S.W.2d 315 (Tenn. 1987).

The employer also insists that the trial court erred in accrediting the testimony of Dr. Boals. Where there is a conflict between medical experts, a trial court has the discretion to accept the opinion of one medical expert over another unless evidence preponderates against a medical opinion. *Kellerman v. Ford Lion, Inc.*, 920 S.W.2d 333, 335 (Tenn. 1996); *Johnson v. Midwesco*, 801 S.W.2d 804, 806 (Tenn. 1990). Dr. Boals' qualifications include a board certification in the use of the AMA Guidelines. The trial court was certainly within its discretion in accepting the testimony of Dr. Boals in this case.

After considering all the relevant factors in this case, we find the evidence in this case does not preponderate against the trial judge's award.

CONCLUSION

The judgment of the trial court is affirmed. The costs of this appeal are taxed to the appellant, Corrections Corporation of America (Whiteville Facility).

ALLEN W. WALLACE, SENIOR 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, Corrections Corporation of America (Whiteville Facility), for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM