

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
April 2003 Session

MARGIE KELLY v. WHITE CONSOLIDATED INDUSTRIES, INC.

**Direct Appeal from the Chancery Court for Montgomery County
No. 2000-08-0114 Carol Catalano, Chancellor**

**No. M2002-01755-WC-R3-CV - Mailed - July 1, 2003
Filed - August 4, 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. § 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 insists the trial court erred in dismissing her claim for insufficient evidence of a causal connection between her employment and her medical condition. As discussed below, the panel has concluded the evidence fails to preponderate against the finding of the trial court.

Tenn. Code Ann. § 50-6-225(e) (2002 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 ALLEN W. WALLACE, SR. J., joined.

Lucius P. Hawes, Jr., Hopkinsville, Kentucky, for the appellant, Margie Kelley

William R. Goodman, III, Goodman & Walker, Springfield, Tennessee, for the appellee, White Consolidated Industries, Inc., d/b/a Electrolux Home Products

MEMORANDUM OPINION

The employee or claimant, Ms. Kelly, initiated this civil action to recover workers' compensation benefits for an allegedly work related accidental injury. The employer, White Consolidated Industries, Inc., denied liability. After a trial on the merits, the trial court dismissed her complaint for lack of medical proof of a causal connection between her condition and her employment. The claimant has 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) (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 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). 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 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).

The claimant worked on the employer's assembly line. Her duties there required her to move one pound objects approximately every twenty minutes. She testified that one day while she was working her neck started hurting and that she went to the nurse's station to complain. Later, she could not get out of bed because of the pain in the left side of her neck and her left shoulder. She was treated by Dr. Steve Salyers.

Dr. Salyers testified that it was possible that the claimant's injury, a herniated cervical disc, could have been work related, but that it was equally possible that it was not work related. Dr. Salyers provided the only medical proof in the case, but he referred to a note from the operating surgeon ascribing her condition to degenerative disc disease.

The appellant contends the trial court erred in failing to award benefits because the above summarized evidence establishes a probability that the injury was one arising out of her employment. We have conducted an independent examination of the record to determine where the preponderance of the evidence lies.

Under the Tennessee Workers' Compensation Law, 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). In order to establish that an injury was one arising out of the employment, the cause of the death or injury must be proved. Hill v. Royal Ins. Co., 937 S.W.2d 873 (Tenn. 1996). In all but the most obvious cases, causation and permanency may only be established through expert medical testimony. Thomas v. Aetna Life & Cas. Co., 812 S.W.2d 278, 283 (Tenn. 1991). An award may not be based on conjecture or speculation. Reeser v. Yellow Freight System, Inc., 938 S.W.2d 690 (Tenn. 1997). The trial court found the above evidence of causation to be too speculative to form the basis for an award.

From our independent examination of the record, giving due deference to the finding of the trial court, we are unable to say that the preponderance of the evidence is otherwise. The judgment is therefore affirmed. Costs are taxed to the appellant.

JOE C. LOSER, JR.

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JUDGMENT

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 will be paid by the appellant, Margie Kelly, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM