

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE

September 19, 2003 Session

JIMMY H. SPURLOCK v. BOILER & HEAT EXCHANGE SYSTEMS, INC.

**Direct Appeal from the Chancery Court for Hamilton County
No. 00-1051 W. Frank Brown III, Chancellor**

Filed January 22, 2004

No. E2002-02842-WC-R3-CV

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. The Plaintiff alleges he suffers from an occupational disease within the definition thereof contained in Tenn. Code Ann. § 50-6-301. The trial judge found the plaintiff failed to show that his lung disease was caused by or arose from his occupation as a welder with the Defendant and dismissed the case. We affirm the judgment of the trial court.

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

JOHN K. BYERS, SR. J., delivered the opinion of the court, in which E. RILEY ANDERSON, J., and ROGER E. THAYER, SP. J., joined.

Ronald J. Berke, Chattanooga, Tennessee, attorney for the Appellant, Jimmy H. Spurlock.

C. Douglas Dooley, Charles W. Poss and Michael D. Newton, Chattanooga, Tennessee, attorneys for Appellee, Boiler & Heat Exchange Systems, Inc.

MEMORANDUM OPINION

Facts

There is no dispute concerning the fact the Plaintiff is totally disabled as a result of interstitial pulmonary fibrosis. Further, the evidence shows the Plaintiff worked for the Defendant for ten years before his illness caused him to be unable to work.

The Plaintiff worked as a welder for the defendant. He and other employees testified they and the Plaintiff were exposed to a significant amount of metal particles and dust caused by the

welding work they did. There is no evidence to dispute this.

Charles N. Adams, Jr., a mechanical engineer conducted a study of the work done in the Defendant's plant and found some thirty substances to which the Plaintiff would have been exposed. These included metal particles and other substances. These findings were not disputed.

There is little dispute in the medical evidence in this case except the significant and controlling issue of whether the Plaintiff's illness is a result of a hazard of his occupation with the Defendant.

Medical Evidence

There was extensive medical proof introduced in the record by oral testimony of expert witnesses and various reports from other experts. Additionally, several studies concerning interstitial pulmonary fibrosis was introduced. Amongst this evidence, the most significant evidence was presented by Dr. Suresh Enjeti, a pulmonary specialist, Dr. James D. Snell, Jr., a pulmonary disease specialist, and Dr. William F. McGann Jr., a specialist in internal medicine. Further there were reports from four highly qualified pathologists found in the record.

Dr. Enjeti, who testified in person, testified that the Plaintiff's lung disease was caused by the exposure to the metal dust, et al, encountered by the Plaintiff in his work with the Defendant. Dr. Enjeti based his opinion upon medical studies which he had done and which he had studied which indicated the illness suffered by the plaintiff is caused by exposure to metal particles.

Dr. Enjeti testified he had the report from the engineer which tested the material said to be found in the work place. He found no metal or dust particles in the Plaintiff's lungs.

When asked if he had any objective findings to support his conclusion the Plaintiff's disease was caused by his work for the Defendant, Dr. Enjeti responded: "Beyond the occupational history, no."

Dr. James D. Snell, examined the Plaintiff and confirmed the diagnosis of interstitial pulmonary fibrosis. Dr. Snell discussed each of the substances listed by the engineer as being present in the work place. He testified none of these would cause the problem which the Plaintiff has. He found none of these - nor asbestos - present in the Plaintiff's lung biopsy. Dr. Snell was of the opinion the Plaintiff interstitial fibrosis was of unknown origin and did not relate its' beginning to the Plaintiff's work for the Defendant.

Dr. McGann gave a video deposition and testified the Plaintiff's condition of uncertain etiology and that it was not caused or aggravated by the work for the Defendant.

The four pathologists found no evidence that any of the particles contained in the engineer's report were present in the Plaintiff's lung tissue.

We do not deem it necessary to go into detail about the extensive medical evidence in this case because the ultimate opinions of the experts are controlling on the issue of liability.

Dr. Enjeti was of the opinion the Plaintiff's illness arose out of his employment. Doctor's Snell and McGann were of the opinion the illness did not arise out of the employment.

Discussion

Although the testimony in this case, and the medical reports etc were extensive and deep, the resolution of the matter is not nearly as complex because the only dispute in the record is whether the interstitial pulmonary fibrosis which the Plaintiff suffers has been shown to arise out of the Plaintiff's employment or not.

The trial judge, in a lengthy memorandum opinion reviewed the evidence, both lay and expert, and found the Plaintiff failed to show by a preponderance of the evidence that the disease is compensable. His finding was based upon the conflicting medical conclusions testified to by the expert witnesses.

In all but the most obvious of cases an injury must be shown by expert medical evidence, however, absolute certainty is not required to prove a case. *Orman v. Williams Sonoma Inc.*, 803 S.W.2d 672 (Tenn. 1991). Medical evidence combined with lay evidence that an incident "could be" the cause of an injury can support a finding of causation. *Hill v. Eagle Bend Mfg. Inc.*, 942 S.W.2d 483 (Tenn. 1997).

The memorandum opinion shows the trial judge carefully weighed the testimony of the witnesses who testified in person and also considered all the relevant records and reports admitted at trial. Specifically, the trial judge accepted the testimony of the Defendant's expert witnesses over the testimony of Dr. Enjeti. This led him to conclude the Plaintiff had failed to show by a preponderance of the evidence that the Plaintiff has sustained a compensable occupational disease. The record does not preponderate against this finding and we affirm the judgment.

The costs of this appeal are taxed to the Plaintiff.

JOHN K. BYERS, SENIOR JUDGE

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No. E2002-02842-SC-WCM-CV

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 Jimmy H. Spurlock.

IT IS SO ORDERED this 22nd day of January, 2004.

PER CURIAM

Anderson, J. - not participating.