

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

September 15, 2006 Session

**JAMES SNOW v. GOODYEAR TIRE & RUBBER CO.**

**Direct Appeal from the Chancery Court for Obion County  
No. 24261 Hon. Michael Maloan, Chancellor**

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**No. W2006-00092-WC-R3-CV – Mailed January 24, 2007; Filed February 27, 2007**

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The Employee claimed an injury to his respiratory system, which the employer denied. The trial court dismissed the action finding that the evidence did not preponderate in favor of a causal connection between the respiratory condition and the employment. After consideration of the evidence, the Workers' Compensation Panel concludes that the evidence does not preponderate against the finding of the trial court affirms the judgment of the trial court.

**Tenn. Code Ann. §50-6-225(e) (2005) Appeal as of Right; Judgment of the Trial Court is Affirmed. Case dismissed.**

ROBERT E. CORLEW, SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J. and DONALD P., HARRIS, SR. J., joined.

Jeffrey P. Boyd, Jackson, Tennessee, for the Appellant, James Snow.

Randy N. Chism, Union City, Tennessee, for the Appellee, Goodyear Tire & Rubber Company.

**MEMORANDUM OPINION**

The facts in this case are largely undisputed. James Snow ("the Employee") began his employment for Goodyear Tire & Rubber Company ("the Employer") in 1998. He worked in an area of the tire company called the "banbury," where raw rubber and chemicals are mixed together for use in the production of tires. In this area, large doors are left open for train cars to enter the building in order to deposit material for use in the production process. The uncontroverted evidence presented on behalf of the employee showed that a large number of pigeons would frequently enter through the large open doors and roost in the rafters of this area of the building. The evidence showed that the area of the building was very unsanitary due to

the presence of the birds and bird droppings. Additionally, the Employee also testified that his work area was dusty due to the presence of chemicals which were used. He testified that the dust and chemicals would often get stirred into the air by the floor sweeper. The Employee thus testified that he was exposed to this dust and pigeon excreta in his work environment.

The Employee testified that the following year, 1999, he began having problems breathing and pains in his chest. While an earlier chest X-ray was negative, in February, 2000, he went to a hospital emergency room, and a chest X-ray performed at that time indicated the presence of a mass of scar tissue in the middle lobe of his right lung. No treatment was recommended at that time, however. In 2002, the Employee sought treatment from two different physicians and ultimately was referred to Dr. William Culbertson. The Employee provided a medical history to Dr. Culbertson, who diagnosed histoplasmosis and sent the Employee to Vanderbilt for evaluation and surgical removal of a portion of his right lung. Surgery was performed on December 2, 2002. He was released to return to work on April 30, 2003, with restrictions that he should avoid noxious fumes, chemicals, smoke, and dust. The Employee then returned to work for the Employer at a different job within his restrictions, making the same or a higher wage.

The Employee was thirty-four years of age at the time of trial with a twelfth grade education. Before commencing work for the Employer herein, the Employee's prior work history included working as a laborer, laying carpet, as a "bundle boy" in a manufacturing facility, and in a shipping department. He testified that physical activity such as walking flights of stairs, playing with his children, and walking on uneven ground now causes him to be winded easily.

### **EXPERT TESTIMONY**

The trial court heard the testimony of five physicians. Because the physicians testified by deposition, however, the trial court was not in a superior position to evaluate the credibility of these witnesses, and this Panel may evaluate the credibility of and determine the weight to be given to the opinions of these witnesses. Elmore v. Traveler's Ins. Co., 824 S.W.2d 541, 544 (Tenn. 1992).

The Employee's treating physician, Dr. William Culbertson, is board certified in internal, pulmonary, and critical care medicine. Dr. Culbertson initially diagnosed the presence of a partial obstruction or mass in the Employee's right lung. Upon referral to Vanderbilt, it was determined that the mass was not malignant, but surgical excision was appropriate. When diagnosing the mass, Dr. Culbertson initially suspected cancer but, after further testing, concluded the Employee had a granulomatous inflammation, which is most commonly caused by histoplasmosis exposure. Dr. Culbertson then diagnosed the Employee with histoplasmosis and concluded that the Employee had experienced a work-related injury due to the history of exposure to noxious fumes, dust, and pigeon excretion at the work place. The Employee had informed Dr. Culbertson that he had been exposed to a significant amount of pigeon excreta at work, and thus the doctor opined that this was the type of exposure that would cause histoplasmosis. Dr. Culbertson acknowledged that the Employee "could be exposed to

histoplasmosis anywhere” because it is “endemic to this area” and that “ninety percent of us will have some evidence of exposure, based on skin testing, when we are adults.” Nonetheless, “bird excreta ... has to be aerosolized in order for [one] to get disease from it.” In making his diagnosis, Dr. Culbertson also acknowledged that he was influenced by the fact that a second Employee at the same plant also carried a diagnosis of histoplasmosis.

Dr. Culbertson opined that the Employee did not have sarcoidosis. He distinguished sarcoidosis from histoplasmosis by explaining that one with sarcoidosis is asymptomatic, and exhibits no wheezing, cough, or congestion, but experiences enlarged lymph nodes on both sides of the chest. One with histoplasmosis, conversely, is usually symptomatic, exhibiting symptoms such as wheezing, coughing, and congestion. Dr. Culbertson explained that it is impossible objectively to determine the presence of one or the other of these diagnoses by viewing tissue under a microscope because the tissue appears the same.

The Employee presented the testimony of Joseph A. Blythe, M.D., who conducted an independent medical examination. Like Dr. Culbertson, Dr. Blythe is also board certified in internal, pulmonary, and critical care medicine. Dr. Blythe agreed with Dr. Culbertson’s diagnosis of histoplasmosis. He explained that histoplasmosis is a fungus infection that usually gets into the lung through inhaled particles, and he opined that the presence of pigeons in the work place was a likely cause of the Employee’s medical issues. Dr. Blythe disagreed with Dr. Culbertson with respect to diagnosis with regard to examination of tissue under a microscope. He opined that tissue affected by histoplasmosis appears different from tissue affected by sarcoidosis. He differentiated between sarcoidosis and histoplasmosis:

Actually, histoplasmosis usually causes caseating granuloma in the lung; whereas, sarcoidosis does not, the difference being that with caseating granuloma, there is necrosis in the middle of the granuloma as opposed to intact cells, which is the non-caseating. So in that respect, those two diseases would differ.

Dr. Blythe further opined that the Employee retained a 30% permanent partial disability to the body as a whole but testified that the Employee’s impairment was as a result of the surgery which was done because cancer was a concern:

I think that’s what happened to our patient here, is that he had a scar that was misinterpreted as a possible cancer and that was why he needed the surgery. He didn’t need the surgery because of the effects of the histoplasmosis on his lung. He needed the surgery because somebody was concerned that he had a cancer.

And then after they took that part of the lung out, he had a reduction in the amount of lung tissue that he had to breathe with.

The Employer presented the testimony of Dr. James E. Lockey who, performed a records review. Like Dr. Culbertson and Dr. Blythe, Dr. Lockey is also board certified in internal and pulmonary medicine, but he is also board certified in occupational medicine. He enjoys the distinction of being a “B Reader,” meaning that he has completed a comprehensive examination

demonstrating his expertise in reading X-rays in order to diagnose dust induced lung disease. Dr. Lockey expressed his opinion that histoplasmosis should be ruled out as a cause of the Employee's condition,

based on the negative histoplasma urine antigen, the lack of any fungal organisms on tissue staining, the lack of growth of any fungal organism on open lung biopsy cultures, the tissue location of the noncaseating granulomas along lymphatic drainage areas, and the progressive X-ray changes through 2003.

He also ruled out prior considerations of silicosis and berylliosis.

The Employer also sent the records to Joseph Tomaszewski, M.D., who is board certified in pathology and anatomic and clinical pathology. Dr. Tomaszewski is a pathologist. He testified as to the function of a pathologist as one whose

role is to make diagnosis, either using tissue obtained from a patient or bodily fluids, or using technological instrumentation to make diagnosis from blood and other body fluids. So essentially our role is to diagnose disease and to understand disease.

Dr. Tomaszewski testified that no other physician had found any evidence of the microorganism or fungus. He further testified as to reasons why he felt the Employee had sarcoidosis rather than histoplasmosis:

In rendering a diagnosis of sarcoidosis, because infectious [sic] can also produce granulomas, and not all infections have the caseation, you really have to rigorously exclude infection before you render a diagnosis of sarcoidosis. In this case I think I have reasonably excluded an infectious cause, for many of the reasons that we've already talked about. But I'll just relist them. One, the histological features of the disease being nonnecrotizing or noncaseous and having a certain distribution in the lung are more typical but not exclusive of sarcoidosis than they are of infection. That's one factor.

Secondly, multiple special stains applied by myself and other pathologists failed to document any microorganism here. Thirdly, all of the cultures that we know of were negative for an organism which can cause this type of disease. So in my mind, I think the bulk of the evidence within reasonable certainty is that this is not an infectious etiology but qualifies as a case of sarcoidosis.

The Employer next had Dr. Roy L. DeHart evaluate the Employee. Dr. DeHart is board certified in occupational, and aerospace medicine. Dr. DeHart ruled out histoplasmosis as a possible diagnosis because of a negative histoplasma antigen test. Like Dr. Lockey and Dr. Tomaszewski, Dr. DeHart determined that the Employee suffers from sarcoidosis. He acknowledged that sarcoidosis is of unknown etiology, but was not work-related. Dr. DeHart

did concur with Dr. Blythe that the Employee retains thirty percent anatomical impairment apportioned to the body as a whole as a result of the removal of the right upper lobe of his lung.

### STANDARD OF REVIEW

The standard of review of issues of fact is *de novo* upon the record of the trial court accompanied by a presumption of correctness of the findings, unless the preponderance of evidence is otherwise. Tenn. Code Ann. 50-6-225(e)(2); Lollar v. Wal-Mart Stores, Inc., 767 S.W.2d 143, 149 (Tenn. 1989). Where credibility and weight to be given testimony are involved, considerable deference is given the trial court when the trial judge had the opportunity to observe the witness' demeanor and to hear in-court testimony. Long v. Tri-Con Indus. Ltd., 996 S.W.2d 173, 178 (Tenn. 1999). Where the issues involve expert medical testimony that is contained in the record by deposition, determination of the weight and credibility of the evidence necessarily must be drawn from the contents of the depositions, and the reviewing court may draw its own conclusions with regard to those issues. Orman v. Williams Sonoma, Inc., 803 S.W.2d 672, 676 (Tenn. 1991). A trial court's conclusions of law are reviewed *de novo* upon the record with no presumption of correctness. Ganzevoort v. Russell, 949 S.W.2d 293, 296 (Tenn. 1997).

### ANALYSIS

The primary issue raised on appeal is whether the trial court erred in holding that the Employee failed to carry his burden of proof on the issue of causation of the causally connected injuries. Considering the evidence, then, as we are required to do, to determine the preponderance, we have first considered the issue of a causal connection between the fumes and pigeon excreta in the work place and the lung problems of the Worker. We have recognized that the causal relationship between the worker's employment and the injury must be established by the preponderance of the expert opinions supplemented by the lay evidence. The proof of the causal connection may not be speculative, conjectural, or uncertain. Clark v. Nashville Machine Elevator Co., Inc., 129 S.W.3d 42, 47 (Tenn. 2004); Simpson v. H.D. Lee Co., 793 S.W.2d 929, 931 (Tenn. 1990); Tindall v. Waring Park Ass'n, 725 S.W.2d 935, 937 (Tenn. 1987). Absolute certainty with respect to causation is not required, however, and the Panel must recognize that, in many cases, expert opinions in this area contain an element of uncertainty and speculation. Fritts v. Safety Nat'l Cas. Corp., 163 S.W.3d 673, 678 (Tenn. 2005). When all of the medical proof is presented by deposition, we must determine the weight to be given to the expert testimony and draw our own conclusions with regard to the issues of credibility. Bohanan v. City of Knoxville, 136 S.W.3d 621, 624 (Tenn. 2004); Krick v. City of Lawrenceburg, 945 S.W.2d 709, 712 (Tenn. 1997).

The Workers' Compensation laws should be "liberally construed to promote and adhere to the (purposes of the Workers' Compensation) Act of securing benefits to those workers who fall within its coverage." Martin v. Lear Corp., 90 S.W.3d 626, 629 (Tenn. 2002). Nonetheless, the burden of proving each element of his cause of action rests upon the worker in every Workers' Compensation case. Cutler-Hammer v. Crabtree, 54 S.W.3d 748, 755 (Tenn. 2001). All reasonable doubts as to the causation of an injury and whether the injury arose out of the

employment should be resolved in favor of the Worker. Phillips v. A. & H Constr. Co., 134 S.W.3d 145, 150 (Tenn. 2004); Reeser v. Yellow Freight Sys., Inc., 938 S.W.2d 690, 692 (Tenn. 1997). Our courts have “consistently held that an award may properly be based upon medical testimony to the effect that a given incident ‘could be’ the cause of the employee’s injury, when there is also lay testimony from which it reasonably may be inferred that the incident was in fact the cause of the injury.” Reeser, 938 S.W.2d at 692; accord, Long v. Tri-Con, 794 (Tenn. 1978); GAF Bldg. Materials v. George, 47 S.W.3d 430, 433 (Tenn. Worker’s Comp. Panel 2001). The element of causation is satisfied where the “injury has a rational, causal connection to the work.” Braden v. Sears, Roebuck & Co., 833 S.W.2d 496, 498 (Tenn. 1992).

The trial court found that the Employee had not carried his burden of proof that his injuries were caused by his employment with Goodyear and therefore dismissed the case. We have carefully reviewed the medical testimony supplemented by the lay testimony of the Employee. We agree with the trial judge that the evidence does not preponderate in favor of a finding of causal connection between the Employee’s injury and the workplace. Based upon the difference of opinion of the experts and the upon consideration of the qualifications and experience of the various experts, we cannot determine that the preponderance of the evidence is not in accordance with the findings of the trial court. Accordingly, we affirm the judgment of the trial court.

### CONCLUSION

Thus we affirm the decision of the trial court, finding that the injury is not compensable and that the claim should be dismissed. The costs on appeal will be taxed against the Employee. The Plaintiff’s complaint is dismissed.

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ROBERT E. CORLEW, SPECIAL 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, James Snow, and his surety, for which execution may issue if necessary.

**IT IS SO ORDERED.**

**PER CURIAM**