IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT Knoxville
February 26, 2007 Session

**BOBBY CHRIS COUCH V. LIBERTY MUTUAL INS. CO. & JACKSON MANUFACTURING CO.**

**Direct Appeal from the Chancery Court for Bradley County**
**No. 03-111 Jerri Bryant, Chancellor**
_____Filed_May 3, 2007_____

**No. E2006-01253-WC-R3-WC - Mailed April 2, 2007**

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This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Tennessee Supreme Court in accordance with Tennessee Code Annotated section 50-6-225(e)(3) for hearing and reporting to the Supreme Court findings of fact and conclusions of law. Bobby Chris Couch was injured within the course and scope of his employment when he fell while unloading a truck. During the fall he caught his right leg between the truck and the loading dock. This resulted in a crushing injury to the right leg and a back sprain. Mr. Couch filed a complaint seeking to recover workers' compensation benefits for permanent partial disability to his leg and back. The trial court awarded 5% partial disability to the lower extremity. However, the court found no permanent impairment to the back. The court's final order required the employer to be responsible for future medical benefits for the leg and back injury. The employer has appealed only the award of future medical benefits for the back injury claiming that the trial court erred in making such an award when there was no expert medical proof of either permanent impairment or work limitations for the back injury. After review we affirm the trial's court findings.

**Tenn. Code Ann. § 50-6-225(e)(3) Appeal as of Right;**
**Judgment of the Chancery Court Affirmed**

J. S. (STEVE) DANIEL, Sr. J., delivered the opinion of the court, in which WILLIAM M. BARKER, C.J., and JON KERRY BLACKWOOD, Sr. J., joined.

David C. Nagle, Chattanooga, Tennessee, for the appellant, Liberty Mutual Insurance Company and Jackson Manufacturing Company.

Jimmy Bilbo, Cleveland, Tennessee, for the appellee, Bobby Chris Couch.

## OPINION

### I. Facts and Procedural History

Mr. Bobby Chris Couch was 38 years old on the date of the trial and had been employed with Jackson Manufacturing for several years in a manual labor position in which he unloaded trucks. The job Mr. Couch was performing on the date of his injury was described as a "tow boy." A person who performs this job goes into the trailers and manually unloads them at the employer's place of business. On May 6, 2002, while within the course and scope of his employment, Mr. Couch was unloading a truck when he fell between a truck trailer and the loading dock. When this occurred, Mr. Couch's left leg was injured when the truck trailer was unhooked and moved back against the dock, creating a crushing injury to his left leg and injuring his back. Immediately after the injury Mr. Couch was taken to a local hospital where he was treated and released. Thereafter, Mr. Couch was treated by Dr. David Allen Beeks, who saw Mr. Couch initially May 16, 2002 and treated him for the thigh and back complaints until March 4, 2003 when he was released. At the conclusion of the treatment, Dr. Beeks concluded that Mr. Couch had suffered a 1% permanent anatomical impairment to his left leg as a result of a "crush injury left thigh." The doctor also was of the opinion that Mr. Couch retained 0% permanent impairment for a lumbar strain. Dr. Beeks' testimony was received in the form of a C-32 and he was of the opinion that the injuries that he had treated arose from the employee's work.

Our review of the record reflects that Mr. Couch testified concerning his injuries and described the swelling and pain that he had suffered in his thigh as well as the pain and discomfort that he had as a result of a back sprain. The only proof received at trial was the testimony of Mr. Couch and the C-32 of Dr. Beeks. At the conclusion of the trial the court concluded by stating she found Mr. Crouch to be a creditable witness and "He has no work restrictions with the back or the leg. I think there is nothing in the record to support any permanency with the back, and I think 5 percent because of the continued pain problems is a reasonable rating to the left leg." Following this ruling from the bench an order was prepared and signed by the court which provided "Ordered, Adjudged and Decreed that the defendants, (Liberty Mutual Insurance Company and Jackson Manufacturing Company) shall continue to be responsible for authorizing and paying all reasonable and necessarily medical treatment expenses incurred by Bobby Chris Couch relating to his left lower extremity and spine pursuant to Tennessee Code Annotated section 50-6-204."

The provision of the order requiring future medical care for the back injury is the only issue raised in this appeal. Our review of the record reveals that the trial court signed the final order June 9, 2006 and it was filed with the clerk June 12, 2006. A notice of appeal was filed June 13, 2006. In this appeal the employer and its insurer contend that the trial court erred in ordering them to be responsible for future medical care for the spine or back injury because Mr. Couch failed to prove causation and permanency of the injury, permanent medical impairment, permanent partial disability, or permanent restrictions relating to his back. Our review of the record fails to indicate any effort to present this issue to the trial court.

## II. 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) (2005). The reviewing court is required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. The standard governing appellate review of the findings of fact of a trial judge requires this "panel to examine in depth the trial court's factual findings and conclusions." GAF Bldg. Materials v. George, 47 S.W.3d 430, 432 (Tenn. Workers' Comp. Panel March 26, 2001). 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. Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 167 (Tenn. 2002); Townsend v. State, 826 S.W.2d 434, 437 (Tenn. 1992). Our standard of review of questions of law is de novo without a presumption of correctness. Perrin v. Gaylord Entm't Co., 120 S.W.3d 823, 626 (Tenn. 2003). When medical testimony is presented by deposition, this Court is able to make its own independent assessment of the medical proof to determine where the preponderance of the evidence lies. Cleek v. Wal-Mart Stores, Inc., 19 S.W.3d 770, 774 (Tenn. 2000); Houser v. Bi-Lo, Inc., 36 S.W.3d 68, 71 (Tenn. 2001).

## III. Analysis

### Future Medical Expenses

The employer contends that the trial court erred in ordering future medical care for the back injury because Mr. Couch failed to prove medical causation for his back injury by expert medical proof. The rule has been often stated that in order to recover an employee must prove causation through expert medical evidence except in the most obvious cases. Orman v. Williams Sonoma, Inc., 803 S.W.2d 672, 676 (Tenn. 1991). Although causation cannot be based upon speculative or conjectural proof, absolute medical certainty is not required, and reasonable doubt must be resolved in favor of the employee. Hill v. Eagle Bend Mfg., 942, S.W.2d 483, 487 (Tenn.1997). Our review of the proof presented in this record demonstrates in the C-32 that Dr. Beeks treated both thigh and back injuries and the back strain resolved over the course of his care. Dr. Beeks, in completing the C-32, concluded that the injury he treated arose out of Mr. Couch's employment. Therefore, our review of the record would support the trial court's conclusion that causation was proven for the back claim.

Next the employer contends that since Mr. Couch failed to prove that he had suffered medical impairment or job restrictions as a result of the back injury and was, therefore, not entitled to future medical benefits. An employer is responsible for reasonable and necessary medical care resulting from an employee's work-related injury even if the injury does not result in permanent impairment. Tenn. Code Ann. § 50-6-204(a), (b)(1) (Supp. 2001); Stephens v. Henley's Supply & Indus., Inc., 2 S.W.3d 178, 179 (Tenn. 1999). The obligation to pay future medical benefits exists even in cases

were the employees injury does not produce vocational impairment or otherwise affect the worker's employability. Wilkes v. Resource Auth. of Sumner Cty., 932 S.W.2d 458,461 (Tenn. 1996). Therefore, there is no requirement for the employee to prove impairment or restrictions to receive the benefit of future medical care for his work-related injury. The employer's contention in this regard is without merit.

## IV. CONCLUSION

Our review of the record leads us to conclude that the trial court did not err in ordering future medical care for the back stain. Therefore, we affirm the trial court decision. Cost of this appeal is taxed against Liberty Mutual Insurance Company and Jackson Manufacturing Co. for which execution may issue if necessary.

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J. S. DANIEL, SENIOR JUDGE

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**Bradley County Chancery Court**
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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 facts and conclusions of law are adopted and affirmed and the decision of the Panel is made the Judgment of the Court.

The costs on appeal are taxed to the appellant, Liberty Mutual Insurance Company and Jackson Manufacturing Company, for which execution may issue if necessary.