

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

August 20, 2001 Session

NATHANIEL HAMPTON v. CONNECTICUT INDEMNITY COMPANY

**Direct Appeal from the Circuit Court for Shelby County
No. 306323 T. D. John R. McCarroll, Jr., Judge**

No. W2000-02057-WC-R3-CV - Mailed September 24, 2001; Filed December 21, 2001

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 evidence preponderates against the trial court's finding that he did not suffer a permanent injury. As discussed below, the panel has concluded the judgment should be affirmed.

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

JOE C. LOSER, JR., SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and ROBERT L. CHILDERS, SP. J., joined.

Steve Taylor, Memphis, Tennessee, for the appellant, Nathaniel Hampton

Jeffery G. Foster, Jackson, Tennessee, for the appellee, Connecticut Indemnity Company

MEMORANDUM OPINION

On or about June 7, 1999, the employee or claimant, Hampton, strained his knee at work. He reported the accident to his employer, who provided medical care, including diagnostic testing and physical therapy. A Magnetic Resonance Imaging scan revealed no abnormality.

Dr. James Varner viewed the test report and examined the claimant, but found no evidence of a permanent injury. Dr. Joseph Boals examined the claimant and found minimal tenderness over the injured knee and guessed the claimant's permanent impairment at 5 percent, based on subjective complaints.

Accepting the medical testimony of Dr. Varner, the trial court found that the evidence failed to establish the probability of a permanent injury. 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). This tribunal is not bound by the trial court's findings but instead conducts an independent examination of the record to determine where the preponderance lies. Galloway v. Memphis Drum Serv., 822 S.W.2d 584, 586 (Tenn. 1991). Where the trial judge has seen and heard the witnesses, especially if issues of credibility and weight to be given oral testimony are involved, considerable deference must be accorded those circumstances on review, because it is the trial court which had the opportunity to observe the witnesses' demeanor and to hear the in-court testimony. Long v. Tri-Con Ind., Ltd., 996 S.W.2d 173, 178 (Tenn. 1999). The appellate tribunal, however, is as well situated to gauge the weight, worth and significance of deposition testimony as the trial judge. Walker v. Saturn Corp., 986 S.W.2d 204, 207 (Tenn. 1998). The extent of an injured worker's vocational disability is a question of fact. Story v. Legion Ins. Co., 3 S.W.3d 450, 456 (Tenn. 1999).

The claimant seeks an "in-depth review" of the evidence to determine where the preponderance of the evidence lies. In all but the most obvious cases, permanency may only be established through expert medical testimony. Thomas v. Aetna Life and Cas. Co., 812 S.W.2d 278, 283 (1991). When the medical testimony differs, the trial judge must choose which view to believe. In doing so, he is allowed, among other things, to consider the qualifications of the experts, the circumstances of their examination, the information available to them, and the evaluation of the importance of that information by other experts. Orman v. Williams Sonoma, Inc., 803 S.W.2d 672, 676 (Tenn. 1991). Moreover, it is within the discretion of the trial judge to conclude that the opinion of certain experts should be accepted over that of other experts and that it contains the more probable explanation. Hinson v. Wal-Mart Stores, Inc., 654 S.W.2d 675, 676-7 (Tenn. 1983). The trial court did not err in accepting Dr. Varner's opinion that the claimant was not permanently injured.

For that reason and because the evidence fails to preponderate against the findings of the trial court, the judgment is affirmed. Costs are taxed to the appellant.

JOE C. LOSER,

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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 APPELLANT.

IT IS SO ORDERED this 21st day of December, 2001.

PER CURIAM

Holder, J. - Not participating.