IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE

FILED

March 12, 1997

Cecil W. Crowson
Appellate Court Clerk

JEROLD SEYBERT, Plaintiff/Appellant	)	DAVIDSON CHANCERY, PART III
v.	)	HON. ROBERT S. BRANDT, CHANCELLOR
IKG INDUSTRIES, INC., and CIGNA INSURANCE, Defendants/Appellees	)	No. 01S01-9604-CH-00078 (No. 94-1553-III below)

FOR THE APPELLANT:

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FOR THE APPELLEES:

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MEMORANDUM OPINION

MEMBERS OF PANEL:

ADOLPHO A. BIRCH, JR., CHIEF JUSTICE, SUPREME COURT
JOHN K. BYERS, SENIOR JUDGE
WILLIAM S. RUSSELL, RETIRED JUDGE

AFFIRMED RUSSELL, RETIRED JUDGE

This appeal from the judgment of the trial court in a workers' compensation case has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated Section 50-6-225 (e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

THE CASE

Jerold Seybert fell at work on February 8, 1994, and injured his shoulder. Later he contended that his back was also hurt. He was treated by Drs. Mike Christofersen and his partner, John Wills Oglesby, a shoulder specialist. On April 26, 1994, the subject employee complained to Dr. Oglesby for the first time of a back injury, and Dr. Oglesby says that the employee told him that the back pain had developed since his last visit. Later, on June 6, 1994, Dr. Oglesby tested the plaintiff to determine the nature of the claimed back injury and could find no evidence of back injury. On that date Dr. Oglesby released the employee to return to work without restrictions and without permanent impairment. The doctor had previously prescribed a work hardening program for Mr. Seybert, and received a report from there that the employee was magnifying his symptoms.

This suit was filed on May 23, 1994, before Dr. Oglesby dismissed the plaintiff to return to work. More than a year after

the accident, on March 18, 1995, Dr. Winston Griner saw Mr. Seybert at the instance of plaintiff's attorney. Dr. Griner testified to permanent impairment from the claimed back injury, based predominantly upon the plaintiff's unsubstantiated claims of pain.

At the time of trial Mr. Seybert was working as a plumber's helper, in training to become a journeyman plumber.

The trial court found that all compensation benefits due for temporary disability and past medical treatment costs have been paid, and that the employee was entitled to no payment for permanent disability. The trial judge noted in his memorandum opinion that "future medical benefits are the only remaining benefits to which the plaintiff is entitled".

Discretionary costs were awarded to the defendants and denied to the plaintiffs.

THE ISSUES

The appellant contends (1) that the trial court erred in finding as fact that he suffered no permanent impairment; and (2) that the trial court erred in denying him discretionary costs and awarding same to the employer and its insurer, because he prevailed by being "awarded future medical treatment".

APPLICABLE LAW

We review the findings of fact of the trial court de novo upon the record, accompanied by a presumption of the correctness of the findings; and it is our duty to affirm the findings of the

trial court, unless the preponderance of the evidence is otherwise. Tennessee Code Annotated Section 50-6-225 (e)(2); Simpson v. H.D. Lee Co., 793 S.W. 2d 929 (Tenn. 1990).

Tennessee Rules of Civil Procedure, Rule 54, provides that a trial judge has discretionary authority to award certain litigation expenses to the prevailing party as discretionary costs.

Tennessee Code Annotated Section 50-6-204 (a)(1) provides, re medical expenses:

> (a)(1) The employer or the employer's agent shall furnish free of charge to the employee such medical and surgical treatment * * * as may be reasonably required; * * *
>
> * * * * *
>
> (b) where the nature of the injury * * * does not disable the employee but reasonably requires medical, surgical or dental treatment or care [it] * * * shall be furnished by the employer.

In summary, future legitimate medical expenses proximately resulting from a compensable injury are payable in all cases where proved, unless expressly waived.

CONCLUSION

The evidence well supports the finding of the trial judge that Mr. Seybert suffers from no permanent impairment constituting a vocational disability as a result of the subject accident, so that issue of appellant is overruled.

With regard to discretionary costs, the defendants were

clearly the prevailing parties. The Chancellor's comment regarding possible liability for future medical expenses was not a judgment, but a mere comment upon the current status of the case to the effect that future medical expenses constituted an open issue. He made no award of future medical expenses and none had been applied for. This issue is also without merit.

The judgment of the trial court is affirmed. Costs on appeal are assessed to the appellant.

WILLIAM S. RUSSELL, SPECIAL JUDGE

CONCUR:

ADOLPHO A. BIRCH, JR.,
CHIEF JUSTICE

JOHN K. BYERS, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

JEROLD SEYBERT,	}	DAVIDSON CHANCERY
	}	No. 94-1553-III Below
Plaintiff/Appellant	}	
	}	Hon. Robert S. Brandt,
vs.	}	Chancellor
	}	
IKG INDUSTRIES, INC., and CIGNA INSURANCE,	}	No. 01S01-9604-CH-00078
	}	
Defendants/Appellees	}	AFFIRMED.

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 will be paid by Plaintiff/Appellant and Surety, for which execution may issue if necessary.

IT IS SO ORDERED on December 6, 2000.

PER CURIAM