

**IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
KNOXVILLE, NOVEMBER 1999 SESSION**

CRAIG STEPHEN PORTMAN,)	ROANE CHANCERY
Plaintiff/Appellee,)	
vs.)	Hon. Frank V. Williams, III,
CAMELOT CARE CENTERS, INC.,)	Chancellor
Defendant/Appellant.)	No. 03S01-9901-CH-00007

For the Appellant:

Jeffrey P. Boyd
45 Conrad Drive, Suite 200
P. O. Box 2385
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For the Appellee:

J. Anthony Farmer
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Knoxville, Tn 37901-0709

MEMORANDUM OPINION

Members of Panel:

E. Riley Anderson, Chief Justice
Roger E. Thayer, Special Judge
H. David Cate, Special Judge

AFFIRMED and
REMANDED.

CATE, Special Judge

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 only issue for resolution is whether the trial court properly concluded that the injury to the eye of the plaintiff, Craig Stephen Portman, arose out of his employment with the defendant, Camelot Care Center, Inc. We agree with the trial court and affirm.¹

The plaintiff Portman was an employee of the defendant on September 4, 1996, when he was involved in an incident, where a minor child spit in his eye. Three to five days later he experienced irritation in that eye. He sought medical treatment on the seventh day following the incident. Ultimately he came under the care of Dr. Subba Rao Gollamudi, an ophthalmologist who focuses on diseases and surgery of the cornea and anterior segment of the eye.

Dr. Gollamudi noted the plaintiff related to him that he had normal ocular health prior to the onset of symptoms in the eye, which occurred coincident with the incident at work, and further testified as follows:

Q. Doctor, if you assume Mr. Portman worked at the Camelot Care Center which was where he worked in the capacity as a counselor with children and that on the 4th day of September, 1996, a child spit in his eye, assume that's correct, and that he is then followed with the conditions that he described to you, are you able to form an opinion based upon a reasonable degree of medical certainty given the current level of scientific and medical research whether or not that episode at work was the causative factor in the development of the condition you ultimately diagnosed and treated?

A. I would say that I feel reasonably certain that the time frame and episode as related to me are consistent with saliva that has herpes in it causing ocular surface herpes.

The Plaintiff testified:

Q. Prior to September of 1996, had you ever experienced any symptoms, problems, been treated for or been told you had the herpes simplex virus?

A. No.

There is no evidence the plaintiff's ocular simplex herpes condition was caused by any other occurrence.

The standard of review of factual issues in workers' compensation cases is *de novo* upon the record of the trial court with a presumption of correctness, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (1991 of Supp. 1998).

"In order to be eligible for workers' compensation benefits, an employee must suffer 'an injury by accident arising out of and in the course of employment which causes either disablement or death.' Tenn. Code Ann. § 50-6-102(a)(5). The phrase 'arising out of' refers to causation. The causation requirement is satisfied if the injury

¹While all the issues in this case were not concluded, the parties and the trial court agreed that it should be treated as a final judgment pursuant to Tennessee Rules of Civil Procedure No. 54.

has a rational, causal connection to the work.” Reeser v. Yellow Freight Sys., Inc., 938 S.W.2d 690, 692 (Tenn. 1997) (citation omitted).

“Although causation cannot be based upon merely speculative or conjectural proof, absolute certainty is not required. Any reasonable doubt in this regard is to be construed in favor of the employee. We have thus 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 may be reasonably inferred that the incident was in fact the cause of the injury.” *Id.* “In this case, as in all workers’ compensation cases, the claimant’s own assessment of his physical condition and resulting disabilities is competent testimony and cannot be disregarded.” Tom Still Transfer Co. v. Way, 482 S.W.2d 775, 777 (Tenn. 1972).

While the doctor’s testimony assumes the saliva contained the herpes simplex virus, when both the lay and expert testimony is considered, the injury does have a rational, causal connection to the work.

The judgment is affirmed and the case is remanded for such further proceedings as are necessary. Costs of the appeal are taxed to the defendant/appellant.

H. David Cate, Special Judge

CONCUR:

E. Riley Anderson, Chief Justice

Roger E. Thayer, Special Judge

IN THE SUPREME COURT OF TENN
AT KNOXVILLE

FILED
March 3, 2000
Cecil Crowson, Jr.
Appellate Court
Clerk

CRAIG STEPHEN PORTMAN Plaintiff/Appellee)	ROANE CHANCERY No.13129
)	
VS.)	No. E 1999-02129-WC-R3-CV
)	
CAMELOT CARE CENTER, INC. Defendant/Appellee.)	Hon. Frank V. Williams, III. Chancellor
)	

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 facts 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 defendant/appellant, Camelot Care Center, Inc. and Allen, Kopet & Boyd, surety, for which execution may issue if necessary.

03/03/00