

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

**DARRYL DAVIS v. PIRELLI ARMSTRONG TIRE CORPORATION AND
TRAVELERS INSURANCE COMPANY**

**Direct Appeal from the Chancery Court for Davidson County
No. 96-12-II Carol L. McCoy, Chancellor**

**No. M1999-00008-WC-R3-CV - Mailed April 19, 2000
Filed - September 6, 2000**

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) (1999) for hearing and reporting of findings of fact and conclusions of law. Appellate review of factual issues in workers' compensation cases is *de novo* with a presumption that the trial court's findings are correct, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. §50-6-225(e)(2) (1999); Hill v. Eagle Bend Mfg., Inc., 942 S.W. 2d 483, 487 (Tenn. 1997). When a trial court has seen and heard witnesses and issues of credibility and weight of testimony are involved, considerable deference is afforded the trial court's findings of fact. See Humphrey v. David Witherspoon, Inc., 734 S.W. 2d 315, 315-16 (Tenn. 1987).

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

SAMUEL L. LEWIS, SP. J., delivered the opinion of the court, in which FRANK F. DROWOTA, III, J., and TOM E. GRAY, SP..J. joined.

Steve C. Norris, Nashville, Tennessee, for the appellant, Darryl Davis.

William D. McCaskill, Jr., Nashville, Tennessee, for the appellees, Pirelli Armstrong Tire Corporation and Travelers Insurance Company.

OPINION

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) (1999) for hearing and reporting of findings of fact and conclusions of law. Appellate review of factual issues in workers' compensation cases is *de novo* with a presumption that the trial court's findings are correct, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. §50-6-225(e)(2) (1999); Hill v. Eagle Bend Mfg., Inc., 942 S.W. 2d 483, 487 (Tenn. 1997). When a trial court has

seen and heard witnesses and issues of credibility and weight of testimony are involved, considerable deference is afforded the trial court's findings of fact. See Humphrey v. David Witherspoon, Inc., 734 S.W. 2d 315, 315-16 (Tenn. 1987).

In this workers' compensation case the employee, Plaintiff Darryl Davis appeals from the judgment of the Chancery Court for Davidson County finding that the employee did not sustain a compensable injury. This panel finds that the evidence does not preponderate against the trial court's findings and affirms its decision.

The Plaintiff while an employee of Pirelli Armstrong Tire Corporation on September 21, 1995 fell from the height of approximately 10 feet to a concrete floor. There is no dispute that the fall and whatever injuries were caused by the fall were compensable under the Workers' Compensation Law. The dispute between the parties was over the extent of the injuries caused by the fall. The Defendants paid the medical expenses and temporary total disability benefits until the physician released the Plaintiff to return to work. The Plaintiff thereafter obtained additional medical care which included surgery for herniated lumbar disc from a non-approved physician. It is the Defendants insistence that the herniated lumbar disc was not caused by the fall and they refused to pay for the additional medical care or for temporary total disability after the medical release by the Company authorized physician. Defendants denied Plaintiff was entitled to any permanent partial disability as a result of the September 21, 1995 fall.

The case was heard before Chancellor Carol McCoy for Davidson County on January 14, 1999. The Court after consideration of the testimony of the Plaintiff and the depositions of Dr. Victor T. Bazzone, William R. Schooley, and Robert Weiss and the entire record, found that the herniated lumbar disc was not caused by the fall on September 21, 1995. The Court further found that the Plaintiff "failed to show by preponderance of the evidence that the work related fall on September 21, 1995 while employed at Pirelli Armstrong Tire Corporation was a cause of a disc herniation at L5 S1 in the lumbar area which required surgery". The Court also found that "because the Plaintiff failed to show by preponderance of the evidence that he sustained a permanent work related injury as a result of the September 21, 1995 fall at Pirelli and because the Defendants have previously paid all of appropriate temporary total disability benefits and authorized medical expenses" that the Plaintiff's lawsuit against the Defendants should be dismissed. The Plaintiff insist that the Chancellor erred in failing to find that the preponderance of the evidence showed Plaintiff sustained a herniated disc as a result of either the accident at work or as a result of the physical therapy which the Plaintiff received as employer authorized treatment for the injuries sustained in the fall. He therefore insists that all the medical care he received and the permanent disability sustained to his back were compensable under the workers' compensation law.

Prior to her findings of fact and conclusions of law, the Chancellor succinctly stated the issue before her as "whether Mr. Davis' fall on September 21, 1995 resulted in the strain of his lower back without permanent impairment or whether there was a disc herniation that occurred as a result of the accident.

Following her detailed review of the medical evidence and the entire record, the Chancellor found that “based on the medical findings the Court does not have a sufficient basis on which to find that the herniated disc for which Mr. Davis was treated was related to the injury he had in September of 1995” and “reluctantly finds that there is no compensation to which he is entitled.”

The issue for this Court to determine is whether the preponderance of the evidence is against the findings of the trial court. Appellate review of factual issues in workers’ compensation cases is *de novo* with a presumption that the trial court findings are correct unless the preponderance of the evidence is otherwise. T.C.A. §50-6-225(e)(2) (1999); Hill v. Eagle Bend Mfg., Inc., 942 S.W. 2d 483, 487 (Tenn. 1997). When a trial court has seen and heard witnesses and issues of credibility and weight of testimony are involved, considerable deference is afforded trial court’s findings of fact. See Humphrey v. David Witherspoon, Inc., 734 S.W. 2d 315, 315-16 (Tenn. 1987).

This panel has reviewed the factual issues *de novo* with a presumption that the trial court’s findings are correct unless a preponderance of the evidence is otherwise. Eagle Bend Mfg., Inc., id. 487. Following our review we find nothing in this record that would show that the preponderance of the evidence is otherwise. The evidence does not preponderate against the trial court’s findings and we therefore affirm the trial court’s decision.

Plaintiff also insist that the herniated disc was caused by treatment he received as a result of the fall. We find no medical evidence in the record on which such a finding could be based. The sole evidence is testimony of the Plaintiff that the physical therapy he received was the cause of the herniated disc. Plaintiff is attempting to substitute his own opinion of medical condition for the opinions of the treating physicians. This he cannot do. Thomas v. Aetna Life and Casualty Insurance Co., 812 S.W. 2d 278 (Tenn. 1991).

It therefore results that the judgment of the Chancellor is affirmed with cost of appeal assessed to Defendant Darryl Davis.

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JUDGMENT

This case is before the Court upon Darryl Davis's 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 will be assessed to Darryl Davis for which execution may issue if necessary.

PER CURIAM

Drowota, J., not participating