

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

JOHNNY L. FRYE,)	
)	McMINN CIRCUIT
Plaintiff/Appellant)	
)	NO. 03S01-9904-CV-00043
v.)	
)	
ATHENS PRODUCTS,)	HON. JOHN B. HAGLER
)	
Defendant/Appellee)	

FILED: SEPTEMBER 13, 2000

For the Appellant:

Robert S. Thompson
Logan, Thompson, Miller, Bilbo
Thompson, & Fisher, P.C.
30 Second Street
Cleveland, TN 37364-0191

For the Appellee:

Donald B. Reid
10 West Madison Avenue
P.O. Box 628
Athens, TN 37371-0628

MEMORANDUM OPINION

Members of Panel:

Justice William M. Barker
Senior Judge John K. Byers
Special Judge Howell N. Peoples

AFFIRMED

BYERS, Senior Judge

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

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 finding, unless the preponderance of the evidence is otherwise. TENN. CODE ANN. § 50-6-225(e)(2); *Stone v. City of McMinnville*, 896 S.W.2d 548, 550 (Tenn. 1995).

The application of this standard requires this Court to weigh in more depth the factual findings and conclusions of the trial courts in workers' compensation cases. See *Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988).

_____The plaintiff appeals from the trial court finding that he had failed to show by a preponderance of the evidence that he had sustained an injury arising out of and in the course of his work.

We affirm the judgment of the trial court.

_____There is little need to go into significant detail concerning the facts in this case. There are significant discrepancies between the testimony of the plaintiff at trial and in the statements he made to medical providers concerning whether he sustained an injury on June 1, 1998, or whether he experienced pain on the prior Sunday while walking in the mall, or whether he sustained an injury at work on June 2nd. The plaintiff gave the only evidence concerning an alleged accidental injury.

The determination of the trial judge was, by necessity, based upon his assessment of the evidence and his ruling based upon the testimony of the plaintiff.

_____The trial court found that the plaintiff did not tell the defendant of any work-related accident until June 28th but found that he did notify the physician and especially the nurse practitioner on June 2nd that he sustained a work-related injury on June 1. The court found this unusual and ruled that the two histories cancelled out each other, thus causing the plaintiff to fail in carrying his burden of proof.

_____ We affirm the judgment of the trial court and tax the costs of the appeal to the plaintiff.

John K. Byers, Senior Judge

CONCUR:

William M. Barker, Justice

Howell N. Peoples, Special Judge

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

JOHNNY L. FRYE v. ATHENS PRODUCT

No. E1999-01435-WC-R3-CV Filed - September 13, 2000

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 dismissed 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 plaintiff.

IT IS SO ORDERED this 13th day of September, 2000.

PER CURIAM

Barker, J. - Not participating.