

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
March 9, 2001 Session

WILLIAM HARPER v. NESTAWAY

**Direct Appeal from the Circuit Court for Carroll County
No. 3879 C. Creed McGinley, Judge**

No. W2000-02824-WC-R3-CV - Mailed April 25, 2001; Filed June 5, 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 the proof failed to establish permanency by a preponderance of the evidence. As discussed below, the panel has concluded the judgment should be affirmed.

**Tenn. Code Ann. § 50-6-225(e) (1999) 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 W. MICHAEL MALOAN, SP. J., joined.

Paul Nicks, Jackson, Tennessee, and Thomas K. McAlexander, Memphis, Tennessee, for the appellant, William Harper.

Jeffrey G. Foster, Jackson, Tennessee, for the appellee, Nestaway.

MEMORANDUM OPINION

Following a work-related injury, the employee or claimant, Harper, was seen and treated by a number of doctors, including Dr. Joseph Boals and Dr. John Robert Holancin. Dr. Holancin diagnosed second degree burns, from exposure to Propane, on both hands and osteoarthritis. When asked if the accident caused the arthritis, Dr. Holancin replied, "There's no way the burn caused the arthritis. That's just the normal aging process." When asked whether the claimant would retain any permanent impairment as a result of the accident, he replied, "From my last visit I could say that he suffered no permanent injury from that accident."

Dr. Boals examined the claimant and found some loss of grip strength. When asked if it was caused by osteoarthritis or the burns, Dr. Boals testified that he did not know.

Upon the above summarized evidence, the trial court declined to award permanent disability benefits. 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). The reviewing court is required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. Wingert v. Government of Sumner County, 908 S.W.2d 921, 922 (Tenn. Sp. Workers Comp. 1995). 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. See Long v. Tri-Con Ind., Ltd., 996 S.W.2d 173 (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).

In all but the most obvious cases, both causation and permanency must be established by expert medical testimony. See Thomas v. Aetna Life and Cas. Co., 812 S.W.2d 278 (Tenn. 1991). The appellant contends the claimant's own testimony supports Dr. Boals' opinion and that the trial court should therefore have ignored the opinion of the treating physician. 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. See Orman v. Williams Sonoma, Inc., 803 S.W.2d 672 (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. See Story v. Legion Ins. Co., 3 S.W.3d 450 (Tenn. 1999).

From our independent examination of the evidence, we are not persuaded that the evidence preponderates against the trial court's finding. The judgment of the Circuit Court for Carroll County is therefore affirmed. Costs are taxed to the appellant, William Harper.

JOE C. LOSER, JR.

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JUDGMENT

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 on appeal are taxed to the Appellant, William Harper, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM

