IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
November 3, 2000 Session

DANNY HUDSON v. FARMERS INSURANCE GROUP OF COMPANIES

Direct Appeal from the Chancery Court for Madison County

No. 54948 Joe C. Morris, Jr., Chancellor

No. W2000-00342-WC-R3-CV - Mailed April 19, 2001; Filed June 5, 2001

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. The plaintiff, Danny Hudson, appeals the judgment of the trial court that found that the plaintiff had failed to carry his burden of proof in establishing that his medical condition was caused by the work-related accident of August 21, 1996 and dismissed his claim. For the reasons stated in this opinion, we affirm the judgment of the trial court.

Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Trial Court Affirmed

C. CREED MCGINLEY, SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and JOE C. LOSER, JR., SP. J., joined.

K. Don Bishop, Henderson, Tennessee, for the Appellant, Danny Hudson

Lori Keen, Memphis, Tennessee, for the Appellee, Farmers Insurance Group of Companies

MEMORANDUM OPINION

The claimant, Danny Hudson, commenced this civil action on July 9, 1998, for recovery of benefits under the Tennessee Workers' Compensation law. After a trial on the merits on November 30, 1999, the Chancellor found that the plaintiff had failed to carry his burden of proof in establishing that his condition was the result of a work-related accident on August 21, 1996, and dismissed the plaintiff's action. The Chancellor made a contingent finding that in the event the plaintiff's condition was compensable, he would be entitled to 25% vocational disability to the body as a whole.

At the time of the trial, the plaintiff was 46 years of age with a high school education. He had pursued vocational training through a vocational school and had acquired a certification in restaurant management which comprised the majority of his prior work experience. At the time of the accident, he had worked for his employer, Backyard Bar-B-Que, for seven years.

On August 21, 1996, Mr. Hudson was attempting to move a desk from a location that had become wet due to a leaking pipe when he twisted his back. He did not fall or strike any object in the course of this accident. He continued working the day this incident occurred and has never missed any work as a result of the accident. From the date of the accident, Mr. Hudson claims that he has lost the use of his right arm and is unable to effectively lift the lower part of this arm without the assistance of his left arm. Throughout the course of his medical treatment and on the date of the trial he held his arm at his side. Prior to this injury, in 1990 - 1991, the plaintiff had remarkably similar symptoms relative to the loss of use of his right arm due to a cervical problem and was treated for that prior injury by Dr. John Neblett. This condition apparently had resolved as a result of surgery for a cervical hemiated disk.

Following the plaintiff's accident on August 21, 1996, the plaintiff embarked on a course of medical treatment provided by his employer. The plaintiff saw the following physicians in an attempt to discover any physical reason to explain the symptoms that existed with his right arm. He saw Dr. Sharron Thompson; Dr. John Neblett, a neurosurgeon; Dr. Michael Cobb, an orthopedic surgeon; Dr. Keith Douglas Nord, an orthopedic surgeon specializing in the shoulder; and Dr. Robert H. Miller, III, an orthopedic surgeon. Dr. Nord was one of the plaintiff's primary treating physicians and, being unable to find any physical or anatomical explanation for the plaintiff's symptoms, referred the plaintiff to Dr. John Hopkins, a psychologist. The plaintiff saw Dr. Hopkins only once and refused to return for an additional appointment. The plaintiff refused to accept that there could be a mental component to explain the physical symptoms that existed. None of the doctors who treated the plaintiff were able to find any anatomical impairment as a result of the accident of August 21, 1996.

The plaintiff saw Dr. Robert J. Barnett, an orthopedic surgeon, for the purposes of an independent medical examination at the request of his attorney. Dr. Barnett opined that Mr. Hudson had suffered a 35% permanent physical impairment to the body as a whole as a result of his accident. This anatomical rating is in stark contrast to Dr. Nord and Dr. Miller, who assigned no anatomical impairment whatsoever.

The plaintiff was seen by two psychiatrists. Dr. Elias King Bond performed an independent medical evaluation at the request of the defendant, and Dr. Randal J. Moskovitz performed an independent medical examination at the request of the plaintiff. Both of these psychiatrists diagnosed the plaintiff with somatoform pain disorder. This is a mental condition to explain physical symptoms when there is no diagnosable general medical condition to fully account for the physical symptoms. Although both psychiatrists agreed on the same mental diagnosis, they were in disagreement as to its causation. Dr. Moskovitz opined that the plaintiff's disorder was caused by his work-related accident of August 21, 1996, and assigned permanent psychiatric impairment in the

moderate to marked range (65 to 70 percent) pursuant to AMA Guidelines. Dr. Bond found that the condition was not caused by the plaintiff's work-related accident and diagnosed no permanent psychiatric impairment as a result of the work incident.

Our review is *de novo* upon the record of the trial court, accompanied by a presumption of correctness of the trial court's findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). This standard requires this tribunal to examine in depth a trial court's factual findings and conclusions. The reviewing court is not bound by a trial court's factual findings but instead conducts an independent examination of the record to determine where the preponderance of the evidence lies. Galloway v. Memphis Drum Serv., 822 S.W.2d. 584 (Tenn. 1991). 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 afforded those circumstances on review, because it is the trial court which had the opportunity to observe the witness's demeanor and to hear the in-court testimony. 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 depositional testimony as the trial judge. Walker v. Saturn Corp., 986 S.W.2d 204, 207 (Tenn. 1998).

After hearing the testimony in this case, as well as the medical proof, the Chancellor ruled that the plaintiff had failed to carry his burden of proof in establishing that his condition was the result of his work-related accident. In cases such as this, where there is conflicting medical proof on the issue of causation, credibility becomes a crucial issue. The Chancellor obviously was not impressed with the plaintiff's credibility in this case. Throughout the record are references that the plaintiff was less than candid with his health care providers concerning the extent of his injuries and factors which could have contributed to his condition outside the work place. The right arm which the plaintiff claimed he had been unable to effectively use since the date of the accident showed no signs of atrophy. This was commented on by more than one of the plaintiff's providers. He also failed to disclose that he had been able to perform activities such as painting, wallpapering, remodeling, and mowing the lawn, which are totally contrary to what the plaintiff claimed to be able to do with his arm. Apparently, the plaintiff had also failed to disclose to the mental health specialists significant stress factors in his personal life which could have affected their diagnosis.

After full review of this record, this panel concludes that the preponderance of the evidence is not contrary to the Chancellor's decision. The award of the trial court is affirmed. Cost on appeal are taxed to the plaintiff, Danny Hudson.

_____

C. CREED MCGINLEY, SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
November 3, 2000

DANNY HUDSON v. FARMERS INSURANCE GROUP OF COMPANIES

Chancery Court for Madison County
No. 54948

No. W2000-00342-WC-R3-CV - Filed June 5, 2001

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, Danny Hudson, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM