

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT JACKSON  
August 31, 2000 Session

**PAUL RODGERS v. MARVIN WINDOWS OF TENNESSEE, ET AL.**

**Direct Appeal from the Chancery Court for Lauderdale County  
No. 10242 Martha Brasfield, Chancellor**

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**No. W1999-01852-WC-R3-CV - Mailed April 3, 2001; Filed June 5, 2001**

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This workers' compensation appeal has been referred to the Special Workers' Compensation Panel of the Supreme Court in accordance with Tennessee Code Annotated § 50-6-225(e)(1999) for a hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The appellant presents the following issues for review: (1) Whether the evidence preponderates against the trial court's finding that the plaintiff sustained a work related injury that resulted in a permanent disability to the plaintiff, and; (2) Whether the evidence preponderates against the trial court's finding that the Plaintiff had a 15% permanent partial disability. After a review of the entire record, briefs of the parties and applicable law, we affirm the trial court's judgment.

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

ROBERT L. CHILDERS, SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and WIL V. DORAN, SP. J., joined.

J. Arthur Crews, II and B. Duane Willis, Jackson, Tennessee, for the appellant, Marvin Windows of Tennessee and Liberty Mutual Insurance Co.

Lisa June Cox, Jackson, Tennessee, for the appellee, Paul Rodgers.

**MEMORANDUM 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) for hearing and reporting of findings of fact and conclusions of law.

Plaintiff, Paul Rodgers, filed a Complaint for workers' compensation benefits on September 19, 1996. The trial was heard on June 29, 1999. At the conclusion of the proof the trial court awarded Plaintiff 15% permanent partial disability to the body as a whole. Defendants, Marvin Windows and Liberty Mutual Insurance, appeal the decision of the trial court. For the reasons discussed below, we affirm.

## FACTS

Plaintiff is a 38 year old man with a high school education. His work history includes manual labor, construction, factory work, pipe fitting, and a period of time where he owned his own convenience store.

On September 4, 1996, while employed at Marvin Windows, plaintiff was carrying a double French door when he tripped upon a skid lying on the floor. Plaintiff fell backward hitting the back of his head, right shoulder, and the right side of his back. He returned to work, but complained of pain and dizziness from the fall. Soon thereafter plaintiff again passed out and fell at work. Plaintiff had a history of non-related accidents during his employment at Marvin Windows and during previous employment. These injuries include a 1980 water skiing accident, a car wreck in 1990, and an injury from an accident involving an icy railcar in 1994. As a result of his fall at Marvin Windows, plaintiff was taken to the emergency room.

The physician on duty at the emergency room diagnosed the plaintiff as having a head trauma/concussion, cervical strain, and right shoulder bruise. Plaintiff was given a soft collar for his neck and Tylenol for pain. He was put on bed rest for 24 hours and told that he must see a company physician before he could return to work.

Plaintiff next saw Dr. W.H. Tucker. Dr. Tucker kept plaintiff off work for three days, and then returned him to light duty. Dr. Tucker noted that plaintiff had a full range of motion in his neck, but that plaintiff complained of pain in all ranges of motion. Dr. Tucker then referred plaintiff to Dr. D.J. Canale, a neurosurgeon. Dr. Canale found no obvious straightening of the cervical spine, and that plaintiff resisted flexion and extension of the neck beyond 50% of normal. Dr. Canale opined that while testing plaintiff's grip strength plaintiff "seems simply not to exert and gives way", and the Dr. Canale did not detect any real muscle weakness. Dr. Canale also opined that the EEG test was normal, and there was no evidence of muscle spasms in the neck. Dr. Canale concluded that plaintiff had sustained no permanent impairment and could return to work without restriction.

After his employment at Marvin Windows, plaintiff went to work at Great Southern Fire. During this employment he visited Dr. Varner for a low back injury that was treated with muscle relaxers and exercise. He later returned to normal work duty with no restrictions. Since his employment with Great Southern Fire plaintiff has worked at CCL as a line mechanic and at Kroger as a maintenance mechanic.

Plaintiff sought an independent medical examination on September 8, 1999 from Dr. Robert Christopher. Dr. Christopher completed a detailed C-32 form, but was not deposed by either party. Dr. Christopher found no muscle spasms on the right side of the neck, but mild muscle spasms on the left side and the base of plaintiff's neck. Dr. Christopher opined that plaintiff sustained a 12% impairment to the body as a whole.

On May 5, 1999, Dr. Robert Barnett, an orthopedic surgeon, evaluated plaintiff. Dr. Barnett opined that plaintiff had a cervical strain and a concussion as a result of the accident. Dr. Barnett concluded that plaintiff retained a loss of cervical curvature. Dr. Barnett then opined that plaintiff sustained 20% impairment to the body as a whole, finding 4% to the body as a whole for the cervical strain, 2% for the dorsal strain, 9% for the limited motion to his neck and arms, and 5% for weakness in the grip strength. The trial court did not consider the loss of grip strength, as that complaint came after the injury.

In his deposition plaintiff had stated that he had no prior injuries to his head, however, in his supplemental interrogatory answers he stated that he had fallen from an icy railcar in 1994 and was briefly knocked out as a result. He was treated for that injury by Dr. Snyder, Dr. Canale's partner. The medical record concerning this accident lists the problems as being knocked unconscious, blurred vision, nausea, vomiting, and dizziness. Plaintiff admitted at trial that these were the same symptoms that he had after the fall on September 4, 1996. However, plaintiff also testified that he had had no further problems after the 1994 railcar incident. Plaintiff did not tell either Dr. Barnett or Dr. Christopher about the injuries he sustained in the 1994 fall from the icy railcar.

At trial, plaintiff's wife, brother and a co-worker corroborated his testimony that plaintiff had no difficulties performing his job responsibilities before the September 4, 1996 incident. In addition plaintiff's brother, who worked with the same employer as plaintiff at the time of the 1994 railcar incident, testified that plaintiff had no problems performing his job responsibilities after the 1994 railcar incident.

## ANALYSIS

Although the trial court had questions about the plaintiff's credibility, after hearing and weighing the testimony of all the witnesses, the trial court found that the plaintiff had suffered a permanent injury arising from the September 4, 1996 incident. In its Order dated August 31, 1999 the trial court found that the plaintiff "should have told the Defendant about the fall from the railway car in 1994," but that "it is not believed by this Court that that fall resulted in any serious injury or permanent impairment to the Plaintiff." Further the trial court found that plaintiff "had resumed his work duties and worked at various factories without problems after that fall."

Considerable deference must be given to the trial court's findings of fact, especially where issues of credibility are involved. *Collins v. Howmet*, 970 S.W.2d 941, 943 (Tenn. 1998). Considerable deference must also be given to the trial judge's findings regarding the weight and credibility of any oral testimony. *Townsend v. State*, 826 S.W.2d 434, 437 (Tenn. 1992). Review

of the trial court's decision requires a determination of whether the preponderance of the evidence favors the trial court's judgment. The decision of the trial court will be upheld unless upon review it is determined that the evidence preponderates against the trial court's judgment. *Painter v. Toyo Kogyo of Japan*, 682 S.W.2d 944, 951 (Tenn. Ct. App. 1984).

### CONCLUSION

After review of the trial court's findings, the briefs and oral argument submitted by the parties, we find that the evidence does not preponderate against the judgment of the trial court. A plaintiff in a workers' compensation case has the burden of proving causation and permanency of his injury by a preponderance of the evidence. *Roark v. Liberty Mutual Insurance Co.*, 793 S.W.2d 932, 934 (Tenn. 1990). We find the medical records, the doctors' opinions based on those records, and the testimony of the lay witnesses are sufficient under the law. Therefore we find the preponderance of the evidence favors the trial court's judgment. Costs are assessed to the Defendants/Appellants.

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ROBERT L. CHILDERS, SPECIAL JUDGE

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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 Appellants, Marvin Windows of Tennessee, and Liberty Mutual Insurance Co., for which execution may issue if necessary.

**IT IS SO ORDERED.**

**PER CURIAM**