

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT KNOXVILLE  
March 15, 2001 Session

**UNITED STATES PIPE & FOUNDRY COMPANY v. STEVEN L. CAMP**

**Direct Appeal from the Circuit Court for Hamilton County  
No. 98C0321 L. Marie Williams, Circuit Judge**

---

**No. E2000-01198-WC-R3-CV - Mailed - May 2, 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. The trial court found the employee had sustained a temporary injury to his back and awarded medical benefits to treat his symptoms. On appeal the employee insists his injury was of a permanent nature. Judgment of the trial court is affirmed.

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

THAYER, SP. J., delivered the opinion of the court, in which ANDERSON, C. J. and BYERS, SR. J., joined.

Thomas L. Wyatt, of Chattanooga, Tennessee, for the Appellant, Steven Camp.

J. Bartlett Quinn and Charles D. Lawson, of Chattanooga, Tennessee, for Appellee, United States Pipe & Foundry Company.

**OPINION**

The employee, Steven L. Camp, had two workers' compensation claims which were consolidated for trial. One claim involved an injury to his right arm for which he received an award of 50 percent permanent partial disability to the arm. The second claim was an injury to his back. The trial court found the back injury was of a temporary nature and awarded medical benefits for the treatment of his symptoms. This appeal was perfected by the employee and relates only to the claim for the back injury.

**Basic Facts**

Employee Camp started working for United States Pipe & Foundry Company during May 1988. He initially injured his back in 1994 when he jumped back trying to avoid being struck by a crane and came into contact with a pipe. This incident caused mid-range back pain, stiffness of his neck and some numbness in his index finger. He was treated at the emergency room and was given anti-inflammatory medicine. This caused a back strain and he testified he returned to work fairly soon but had flare-ups with his back occasionally.

The employee testified that during June 1997, he injured his back again while pushing and lifting when he heard a pop and felt pain radiating down his lower back. He received therapy treatment and was given certain work restrictions. He stated that during January 1998, he was twisting and lifting when he heard another pop and his pain shifted to the other side; that it resulted in numbness of his leg down to his foot and there were sharp pains down his left leg. Upon his return to work he was given a temporary job of sweeping. His employer later determined there was no job available with his work restrictions and he was placed on temporary total disability benefits. Then the employer filed this action to determine whether the incidents at work during 1997 and 1998 were compensable.

### **Medical Evidence**

The medical report and office notes of Dr. Dennis L. Stohler, an orthopedic surgeon, were filed in evidence. These records indicate the employee was seen numerous times from October 1995 to the early part of 1999. With reference to the incident at work during 1997, the doctor concluded he suffered a back strain and was obese. He also concluded the patient was not cooperating with the physical therapist in attempting to rehabilitate his condition and that he was not interested in doing exercises, etc. As to the 1998 work incident, his diagnosis was a back strain and degenerative disc disease. The report and office notes did not express an opinion on causation of injury. The last office note dated February 18, 1999 indicated he agreed with Dr. Archer Bishop's conclusion that there was no permanent impairment resulting from the "multiple injuries he described while working at U.S. Pipe and Foundry."

Dr. Lester F. Littell III, an orthopedic surgeon, testified by deposition and stated he saw the employee for a period of several years from 1994 through 1997. He felt the employee was exaggerating his symptoms concerning his back complaints and stated he had no permanent impairment as a result of the 1997 work incident. (Dr. Littell performed surgery on his arm and found permanent impairment there).

Dr. David W. Gaw, an orthopedic surgeon, testified by deposition and stated he saw the employee only one time on October 13, 1997, when he did an independent medical exam. He found degenerative changes in his back with some protrusion or bulge of L4-5 and L5-S1 but no evidence of any disc hernia. He was of the opinion the 1997 work incident caused his back injury and that he had a 5 percent medical impairment. On cross-examination when asked if there was any anatomical change as a result of the 1997 incident, he admitted such change would be "microscopic."

Dr. Archer W. Bishop, an orthopedic surgeon, also testified by deposition. He stated he performed an independent medical exam on October 7, 1998 and took a history of the 1994, 1997 and 1998 work incidents. He also reviewed the numerous reports of other doctors who had seen him and reviewed MRI results, etc. His conclusion was the employee was suffering from degenerative disc disease and that he was somewhat obese weighing 284 pounds on a 6-foot 6 inch frame. He stated he had suffered several strains of his low back but there was no permanent impairment resulting from these injuries.

### **Findings of the Trial Court**

The trial court dismissed the claim for permanent injury but found his injury was of a temporary nature and awarded medical benefits to treat his symptoms.

### **Issue on Appeal**

The sole issue on appeal is whether the evidence preponderates against the conclusion of the trial court.

### **Standard of Review**

We must review the issue on appeal *de novo* accompanied by a presumption of the correctness of the findings of the trial court unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). The general rule is that causation and permanency of an injury must be shown in most cases by expert medical evidence. *Tindall v. Waring Park Ass'n*, 725 S.W.2d 935 (Tenn. 1987). Although absolute certainty is not required, the medical proof must not be speculative or uncertain with reference to cause or permanency. *Patterson v. Tucker Steel Co.*, 584 S.W.2d 792 (Tenn. 1979).

An employer takes an employee as the employer finds him or her and is liable under the Workers' Compensation Act for disabilities which are the result of the activation or aggravation of a pre-existing weakness, condition or disease brought about by the occupation. *Arnold v. Firestone Tire & Rubber Co.*, 686 S.W.2d 65 (Tenn. 1984).

Where there is conflicting medical testimony, the trial judge has discretion to conclude that the opinion of a particular expert should be accepted over that of another expert. *Thomas v. Aetna Life & Cas. Co.*, 812 S.W.2d 278 (Tenn. 1991); *Johnson v. Midwesco, Inc.*, 801 S.W.2d 804 (Tenn. 1990).

### **Conclusion**

The trial court was faced with conflicting medical testimony as to whether the employee's back injury was of a permanent nature. Three of the four doctors concluded there was no permanent injury. The trial court saw and observed the employee and was in a better position to judge his

credibility.

We cannot say the evidence preponderates against the findings of the trial court.

The judgment is affirmed. Costs of the appeal are taxed to the employee.

---

ROGER E. THAYER, SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE  
AT KNOXVILLE

**UNITED STATES PIPE & FOUNDRY COMPANY v. STEVEN L. CAMP**

---

**No. E2000-01198-SC-WCM-CV**

---

**ORDER**

Filed: September 4, 2001

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 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 on appeal are taxed to the applicant.

IT IS SO ORDERED this 4 day of September, 2001.

PER CURIAM

Chief Justice Anderson - not participating.