

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
(March 25, 2003 Session)

**BRIAN KEITH CHAPMAN v. BEKAERT STEEL WIRE CORPORATION,
ET AL.**

**Direct Appeal from the Chancery Court for Dyer County
No. 01-C-29, J. Steven Stafford, Chancellor**

No. W2002-00596-SC-WCM-CV - Mailed August 4, 2003; Filed October 16, 2003

The claimant in this workers' compensation case has appealed the trial court's decision awarding him permanent partial disability benefits of twenty-five percent to the body as a whole. The trial court excluded the deposition of one of the physicians who examined the claimant but made alternative findings if the deposition were improperly excluded. The panel has concluded that the evidence preponderates against the trial court's exclusion of the deposition evidence. Accordingly, we reverse the trial court. We further find that the evidence preponderates in favor of the trial court's alternative finding of forty-five percent to the body as a whole. The trial court's judgment is modified accordingly.

**Tenn. Code Ann. 50-6-225(e) (1999) Appeal as of Right; Judgment of the Trial Court
Affirmed in Part, Reversed in Part**

D. J. ALISSANDRATOS, SP.J., delivered the opinion of the court, in which JANICE M. HOLDER, J. and ALLEN W. WALLACE, SP. J., joined.

Jeffrey Allan Garrety, Joseph Ray Taggart, Jackson, Tennessee, for the Plaintiff-Appellant, Brian Keith Chapman.

Paul C. Peel, Memphis, Tennessee, for the Defendants-Appellee, Bekaert Steel Wire Corporation and Liberty Mutual Insurance Company.

MEMORANDUM OPINION

FACTS

This workers' compensation appeal has been referred to the Panel 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 employee, Brian Chapman ("Chapman") has appealed from the action of the trial court in awarding him permanent partial disability benefits of 25% to the body as a whole.

Chapman was 41 years of age at the time of trial and is a high school graduate. He had been employed with Appellee, Bekaert Steel Wire Corp. ("Bekaert") since 1988 as an operations technician. In October and November of 2000, Chapman began experiencing tightness and pain in his neck and shoulders.

The injury resulted in Chapman first seeing Dr. Huff, who then referred him to Drs. Brophy and Lochemes. Drs. Brophy and Lochemes performed surgery involving two levels of cervical discs. Chapman returned to work but continues to have difficulty doing things he did before; such as yard chores, activities requiring pushing and pulling, and physical activity with his children.

Dr. Brophy, one of the participating physicians in the surgery performed, testified that Chapman suffered a 10% permanent partial disability according to AMA Guidelines, 5th ed. Dr. Brophy based his impairment rating on the ROM method of measuring impairment. Dr. Boals, the only other physician to give an impairment rating, testified that according to the surgery performed on Chapman and the two-level fusion, Chapman would suffer 34% permanent partial disability to the whole body. Dr. Boals based his impairment rating on the DRE method. In their depositions, Dr. Brophy and Dr. Lochemes both testified that under the AMA Guidelines Dr. Boals should have used the ROM method to evaluate Chapman. The trial court excluded Dr. Boals' testimony "because of his failure to comply with the AMA Guidelines in evaluating Chapman."

STANDARD OF REVIEW

Our review is de novo upon the record accompanied by the presumption that the trial judge's findings of fact are correct unless the preponderance of the evidence is otherwise. Tenn. Code Ann. 50-6-225(e)(2).

ANALYSIS

This Panel would first like to compliment the learned Chancellor on his helpful and thorough findings of fact and conclusions of law.

This Court concludes, however, that Dr. Boals' testimony should not have been excluded. Even if Dr. Boals' evaluation deviated from the AMA Guidelines, the record still shows that he relied on the Manual for Orthopedic Surgeons in Evaluating Permanent Physical Impairment. Since

both resources are named in the Workers' Compensation Statute, Dr. Boals was entitled to rely on either one of them in arriving at his impairment rating. Therefore, the deposition should not have been excluded on the basis of Dr. Boals' failure to comply with the AMA Guidelines in evaluating Chapman.

Furthermore, the deposition should not have been excluded under Tennessee's standard for determining the admissibility of expert evidence. Under this standard, "[t]he trial court is not required to determine that the principles and methodology employed are generally accepted by the scientific community. The court needs only to determine that the principles and methodology are scientifically valid and reliable." McDaniel v. CSX Transp., Inc., 955 S.W.2d 257, 257 (Tenn. 1997). "[T]he court need not weigh or choose between two legitimate but conflicting scientific views. The court instead must assure itself that the opinions are based on relevant scientific methods, processes, and data, and not upon an expert's mere speculation." *Id.* at 265.

In this case, Dr. Boals did not merely speculate. In his deposition, Dr. Boals explained the scientific procedures used to arrive at his results. While these scientific procedures may deviate from the normal method of evaluating an injury such as Chapman's, the reasons for the deviations are explained by the expert.

The proper course for the trial court, at this point, would have been to admit the testimony. Dr. Boals is entitled to be listened to, but he does not have to be agreed with. The trial court then, should have decided the weight to give to the two legally admissible competing scientific views.

The trial court made an alternative ruling based on Dr. Boals' testimony being admissible, of 45% permanent partial disability to the body as a whole. As we have held that the deposition should be admitted into evidence, we find that the chancellor's alternative finding of 45% permanent partial disability is supported by a preponderance of the evidence. We therefore affirm the trial court as modified.

We remand for any further proceedings consistent with this opinion. The cost of this appeal is assessed against the Appellees, Bekaert Steel Wire Corporation and Liberty Mutual Insurance Company.

D.J. ALISSANDRATOS, SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

**BRIAN KEITH CHAPMAN v. BEKAERT STEEL WIRE CORPORATION
AND LIBERTY MUTUAL INSURANCE COMPANY**

**Chancery Court for Dyer County
No. 01-C-29**

No. W2002-00596-SC-WCM-CV - Filed October 16, 2003

ORDER

This case is before the Court upon the motion for review filed by Bekaert Steel Wire Corporation and Liberty Mutual Insurance Company 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.

It appears to the Court that the motion for review is not well-taken and is therefore denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to Bekaert Steel Wire Corporation and Liberty Mutual Insurance Company, for which execution may issue if necessary.

PER CURIAM

Holder, J.
Not Participating