

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

**JOHN WILLIAM JONES v. CONAGRA GROCERY PRODUCTS  
COMPANY**

**Direct Appeal from the Chancery Court for Gibson County  
No. H4505 George R. Ellis, Chancellor**

---

**No. W2002-01947-SC-WCM-CV - Mailed July 7, 2003; Filed September 30, 2003**

---

This workers' compensation appeal has been referred to the Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. Section 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The trial court determined that: (1) the employee is 100% disabled and that he is limited by Tenn. Code Ann. 50-6-207(4)(A)(i) to 260 weeks of benefits; and (2) the employer is entitled to a reduction for the Social Security payments made on behalf of the employee totaling \$25,296.00. The employer was ordered to continue to be liable for employee's medical treatment for chronic obstructive pulmonary disease in accordance with the workers' compensation law. As discussed below, the panel has concluded the judgment should be affirmed.

**Tenn. Code Ann. § 50-6-225(e) (2002 Supp.) Appeal as of Right; Judgment of the  
Chancery Court Affirmed**

ALLEN W. WALLACE, SR. J., delivered the opinion of the court, in which Janice M. Holder, J. and ROBERT L. CHILDERS, SP. J., joined.

Mark C. Travis, Cookeville, Tennessee, for appellant, Conagra Grocery Products Company.

David M. Hardee, Jackson, Tennessee, for appellee, John William Jones.

**MEMORANDUM OPINION**

FACTS

The employee, John William Jones, is a 63 year old male with an 11th grade education who had obtained a GED. He had worked for Conagra Grocery Products Company ("Conagra") full-time since 1990, and worked part-time for this employer prior to 1990. He had been married 41 years.

His past relevant employment included work in farming and in the building/construction trade. Prior to beginning his employment with Conagra his health had been good and he had been a very active man.

Employee's work with Conagra required him to be around chemicals, which were used as cleaning agents. He began to experience breathing problems that developed to the extent that employee's wife called his lead man sometime in 2000 and asked that the employee be moved away from the chemicals. Employee was given a job with less exposure to chemicals, but his work still required him to be around chemicals. Over a period of time he developed breathing difficulties and shortness of breath. He coughed a lot, his nose was irritated, his skin burned, and he coughed up blood. On May 13, 2000, Conagra had the workplace fumigated. In preparation for fumigation the building was sealed and all cracks and openings were sealed with tape. The building was evacuated for the fumigation. Employee's job was to go into the building afterwards to clean up by removing the tape and other material used to seal the building. Upon entering the building he noticed a strange smell, and while cleaning the women's bathroom he experienced difficulty breathing. It was necessary for him to go outside several times to breathe fresh air. As a result of his breathing difficulties, employee sought treatment and has not been able to work since that date.

On May 13, 2000, employee's main exposure was methyl bromide. Other exposure prior to this time was to sodium hydroxide, solvent cleaners, bleach and acids. Employee's treating physician, Dr. Asa Clyde Heflin, who specializes in internal medicine with a sub-speciality in pulmonary diseases, testified that he had previous experience in treating patients exposed to methyl bromide. Dr. Heflin was of the opinion that employee's exposure to methyl bromide caused the illness, which is a severe obstructive pulmonary defect.

Employee was also seen by Dr. Roy L. DeHart and Dr. James Snell. Neither of these specialists believed his condition could have been caused by exposure to methyl bromide. However, Dr. DeHart was of the opinion that a person who has an underlying problem of chronic obstructive pulmonary disease could have that condition aggravated by exposure to methyl bromide, and that inhalation of any irritant can cause a progression of damage.

### ANALYSIS

In this appeal there is considerable disagreement between very qualified physicians. In such a case this panel may make an independent assessment of the medical proof to determine where the preponderance of the proof lies. *Whirlpool Corp. v. Nakhoneinh*, 699 S.W.3d 164, 167 (Tenn. 2002). This panel has done so and such independent assessment does not preponderate against the finding of the trial court.

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) (2002 Supp.). 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. 1995). The standard governing appellate review of findings of fact by a trial court requires the Special Workers' Compensation Appeals Panel to examine in depth a trial court's factual findings and conclusions. *GAF Bldg. Materials v. George*, 47 S.W.3d 430, 432 (Tenn. 2001). The trial court's findings with respect to credibility and weight of the evidence may generally be inferred from the manner in which the court resolves conflicts in the testimony and decides the case. *Tobitt v. Bridgestone/Firestone, Inc.*, 59 S.W.3d 57, 61 (Tenn. 2001). The extent of an injured worker's vocational disability is a question of fact. *Seals v. England/Corsair Upholstery Mfg.*, 984 S.W.2d 912, 915 (Tenn. 1999).

Lay and medical proof in this case establishes that employee suffered a new and distinct injury on May 13, 2000, and prior to this date he had an underlying obstructive lung disease. Dr. Heflin testified that acute exposure to methyl bromide by one who already has asthmatic obstructive lung disease can cause the development of reactive airway disease syndrome, which is an acute exacerbation of the underlying lung disease. This type of medical evidence entitles the employee to recover for the injury in this case. *Sweat v. Superior Indus., Inc.*, 966 S.W.2d 31 (Tenn. 1988).

In determining the extent of an injured worker's permanent vocational disability, the trial courts are to consider all pertinent factors, including lay and expert testimony, the employee's age, education, skills and training, local job opportunities for the disabled, and capacity to work at types of employment available in the claimant's disabled condition. Tenn. Code. Ann. § 50-6-241(a)(1). From a consideration of the pertinent factors, to the extent they were established by the evidence, and giving due deference to the finding of the trial court, we do not find the evidence preponderates against the finding of the trial court.

The judgment of the trial court is therefore affirmed. Costs are taxed to the appellant, Conagra Grocery Products Company.

---

ALLEN W. WALLACE, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE  
AT JACKSON

**JOHN WILLIAM JONES v. CONAGRA GROCERY PRODUCTS  
COMPANY**

**Chancery Court for Gibson County  
No. H4505**

---

**No. W2002-01947-SC-WCM-CV - Filed September 30, 2003**

---

**JUDGMENT ORDER**

This case is before the Court upon the motion for review filed by Conagra Grocery Products 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 the appellant, Conagra Grocery Products Company, and its surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

Janice M. Holder, J., not participating