

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
June 11, 2004 Session

**JAMES ARTHUR RATLEDGE v. CLIFFORD HAMPTON
CONSTRUCTION COMPANY, INC. ET AL.**

**Direct Appeal from the Circuit Court for McMinn County
No. 24,624 Lawrence H. Puckett, Judge**

Filed October 1, 2004

No. E2003-02323-WC-R3-CV - Mailed June 29, 2004

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 Plaintiff suffered a tear of the rotator cuff in his right shoulder. The dispositive issue is when did the tear occur? The medical proof revealed that the tear occurred one or two years before the date of injury alleged in the complaint.

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

WILLIAM H. INMAN, SR. J., delivered the opinion of the court, in which E. RILEY ANDERSON, J., and ROGER E. THAYER, SP. J., joined.

D. Mitchell Bryant, Cleveland, Tennessee, attorney for appellant, James Arthur Ratledge.

C. Christopher Brown, Knoxville, Tennessee, attorney for appellees, Clifford Hampton Construction Company, Inc., and Highlands Insurance Group.

MEMORANDUM OPINION

The Plaintiff alleged that he suffered an injury to his right shoulder on June 11, 2001 - a tear of the rotator cuff - when he "grabbed onto a chute on a concrete truck" resulting in disability. The Defendant admitted notice of the claimed injury, but asserted that the Plaintiff suffered from pre-existing medical conditions unrelated to his job. The amended answer alleged that the Plaintiff's claimed injury did not arise out of the course of his employment.

The trial judge held that the Plaintiff failed to prove his case by a preponderance of the proof. The Plaintiff appeals, and presents for review the issue of whether he failed to prove that he sustained a compensable injury. Our review is *de novo* on the record. We presume the judgment is correct unless the evidence preponderates against it. Rule 13(d) Tenn. R. App. P.

The Proof

The Plaintiff testified that he injured his right shoulder on June 11, 2001. Before the alleged injury occurred he gave notice that he was leaving for another job which he had accepted. The Plaintiff had injured his right shoulder on April 30, 2001, while at home, for which he sought medical treatment.

Two physicians testified, each by deposition. Dr. William J. Drury, an orthopedic surgeon, saw the Plaintiff twice, the first time on July 10, 2001. The Plaintiff related to Dr. Drury that in April, 2001 he injured his right shoulder while removing a chute on a concrete truck, and that he had a similar accident more recently, had been seen by a local physician and undergone MRI testing which revealed a tear of the rotator cuff. He testified that it was possible the injury occurred as the Plaintiff described, and he did not recommend surgery. He further testified that he “could not make a statement about the duration of the tear based either on the MRI findings or even on the original film,” and could not say when the tear occurred.

Dr. Barrett Heywood, an orthopedic surgeon, testified that the X-ray films showed a degree of elevation of the humeral head in the Appellant’s shoulder which meant that the rotator cuff tear actually occurred one to two years before the X-rays were taken. He testified that, to a reasonable degree of medical certainty, that the Appellant’s rotator cuff tear did not occur on June 11, 2001 as alleged in the Complaint.

The trial judge ordered another examination of the Plaintiff, this time by Dr. Ricky Hutcheson, who was unable to determine the approximate time of Plaintiff’s rotator cuff injury,

Analysis

The trial court denied the Plaintiff’s claim, finding that he failed to carry the burden of proof on the element of causation. The trial judge expressed some doubt about the Plaintiff’s credibility, and discussed the medical proof in depth, pointing out that each physician agreed that the Appellant had suffered a rotator cuff tear in his right shoulder; but that only Dr. Heywood could determine when the rotator cuff tear actually occurred, which was one to two years before the time the x-rays were taken. Dr. Heywood testified that, to a reasonable degree of medical certainty, the rotator cuff tear pre-existed the alleged date of injury and that no impairment resulted from the alleged June 11, 2001 injury. Dr. Drury did not review the MRI films or the x-ray films, but only reviewed the MRI reports. Neither Dr. Drury nor Dr. Hutcheson was able to determine the date of injury to a reasonable degree of medical certainty.

The Appellant argues that his injury could not have occurred prior to the time the X-rays were taken, as Dr. Heywood found, because he had a history of heavy work prior to June 11, 2001. However, both Dr. Drury and Dr. Heywood agreed that individuals who have suffered rotator cuff tears are often able to compensate for such injuries by using other movements. Dr. Heywood testified that it would not be surprising for the Appellant to have experienced no pain or significant problems prior to June 11, 2001, even with a rotator cuff tear, due to the use of such substituted movements.

As in any contested case, the Plaintiff in a workers' compensation case has the burden of proving, by a preponderance of the evidence, all elements of the case. *Tindall v. Waring Park Assn.*, 725 S.W.2d 935, 937 (Tenn. 1987). The Plaintiff must prove that the injury alleged both arose out of and occurred in the course of the employment. Tenn. Code Ann. § 50-6-102(5). The determination that the Plaintiff has failed to carry the burden of proof on any or all of the issues, including causation, is a finding of fact which we presume is correct unless the evidence otherwise preponderates. *Owens Illinois, Inc. v. Lane*, 576 S.W.2d 348 (Tenn. 1978). We are unable to find that the evidence otherwise preponderates.

The judgment is therefore affirmed at the costs of the Appellant, James Arthur Ratledge.

WILLIAM H. INMAN, SENIOR JUDGE

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ORDER

This case is before the Court upon the motion for review filed by James Arthur Ratledge 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 James Arthur Ratledge, for which execution may issue if necessary.

PER CURIAM

Anderson, J. - Not Participating