IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
January 16, 2004 Session

CLETUS M. THETFORD v. AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY, ET AL.

Direct Appeal from the Chancery Court for Gibson County
No. 15821 George R. Ellis, Chancellor

No. W2003-01904-SC-WCM-CV - Mailed February 7, 2005; Filed May 3, 2005

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated section 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of facts and conclusions of law. The trial court awarded the employee 60% permanent partial disability to the body as a whole and found that his work activities had advanced and anatomically changed his pre-existing arthritic condition. The employer contends that: 1) the employee did not give proper notice of his injuries; 2) that his work activities did not cause an advancement of his pre-existing arthritic condition; and 3) the disability award was excessive and unsupported by the evidence. For the reasons set forth below, we affirm the judgment of the trial court.

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

JAMES F. BUTLER, SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., joined. JAMES L. WEATHERFORD, SR. J., filed a dissenting opinion.

Floyd S. Flippin and Paul B. Conley, III, Humboldt, Tennessee, for the appellee, Cletus M. Thetford.

Deana C. Seymour and Lee R. Sparks, Jackson, Tennessee, for the appellants, American Manufacturers Mutual Insurance Company and Tower Automotive Products, Co., Inc.

MEMORANDUM OPINION

Mr. Cletus Thetford was sixty years old at the time of trial. He is married and has four children. He completed the tenth grade in school, and his work experience includes carpentry and factory work. He also owned and operated a service station for twelve years. Mr. Thetford started

working for Tower Automotive Products, Co., Inc.'s (hereinafter "Tower") predecessor, A.O. Smith, on October 21, 1981.

Mr. Thetford has a history of arthritis. In 1986, he sought treatment from a chiropractor for back and leg pain caused by lifting a garden tiller. In 1994, Dr. Odhav, a rheumatologist, diagnosed Mr. Thetford with arthritis and prescribed medication. In 1997, he had knee surgery for a nonwork-related arthritic problem. Dr. Aelion, a rheumatologist, diagnosed him with fibromyalgia.

Mr. Thetford testified that he had almost perfect attendance at Tower and did not miss any work due to his arthritis prior to September 2001. He also worked substantial amounts of overtime from 1992 through 2001 without missing any work due to arthritic pain.

According to Ms. Vickie Gordon, human resource manager at Tower, on December 10, 2001, Tower moved Mr. Thetford to a new position in the heavy truck press department.[1] He described the new job as follows:

> . . .As parts come off this moving belt, I'd take the part, bring it around, put it down in the basket, and come back and get the next one. When this basket gets full, there was a basket sitting back out of the way over here, and I had to take these parts that come off the belt to keep the belt running and put the parts in this basket and put it up. And it's coming so fast it was awful hard for me to handle. And it just made me a lot sorer, irritated all of my joints so bad I couldn't keep up with what it was doing.

Mr. Thetford testified he handled twelve to fifteen parts per minute that weighed between four to forty pounds. He had to turn the press off when he got behind and could not make production quotas. His supervisor later told him he had to keep the press running. Mr. Thetford stated as a result of the job change: "My symptoms worsened to a great deal. I had medication raised. I had to go to the doctor more regular." Mrs. Thetford stated that after his job change Mr. Thetford had to take more medication including Paxil for depression, could no longer work around the house, and had to rest more.

Mr. Thetford spoke with Debbie Bowlin, health and safety coordinator, Bill Hughes, his supervisor, and Francine Williams. Mr. Thetford testified: "I was asking for some relief, another job because that job was irritating me so bad I couldn't – couldn't continue working there." He asked to be transferred back to another job but was told no other jobs were available without going through a bidding process. He put a bid in, but a job never came open that he could obtain.

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[1]Mr. Thetford maintained this job change occurred sometime in September 2000, but admitted at trial that the December date could be right and that he wasn't sure when it changed. His wife, Lisa Thetford, stated that he went to his new job in October 2002.

On January 2, 2002, Mr. Thetford was unable to continue with his job and signed a physician certificate for Family or Medical Leave for an "undetermined" time. Dr. Wade Reeves, family practitioner, signed the form which listed fibromyalgia as the medical condition and that Mr. Thetford was unable to perform work of any kind for an undetermined period of time. Tower placed Mr. Thetford on leave based on this document.

According to Ms. Gordon, he had worked a total of eight days at this new position on the press line. Ms. Gordon stated that the parts weighed no more than twenty pounds and that Mr. Thetford did not have to pick up the parts but guide them from the conveyor belt into the basket. She stated that Mr. Thetford never informed her that he had a workers' compensation injury or needed medical treatment for his arthritic condition that he felt was aggravated by his work at Tower. Mr. Thetford admitted he never asked anyone at Tower for medical treatment.

Mr. Hughes and Ms. Williams advised him that there were no other jobs available and encouraged him to apply for short-term disability which was later denied. Mr. Thetford then talked to Francine Williams about how the job was causing an increase in his arthritis, but "[s]he told me that arthritis wasn't work-related." He later consulted with counsel.[2]

On February 25, 2002, Mr. Thetford filed a complaint for workers' compensation benefits alleging that while working for Tower, he "either by an accidental injury or by a gradually occurring condition developed occupational fibromyalgia and other related injuries." The complaint does not allege a date of injury.

Under cross-examination Mr. Thetford testified as follows:

Q: You told me that no doctor ever told you that your problems were related to your work. Is that right?

A: At that time they hadn't.

Q: In fact, when I took your deposition on October 24 of 2002 and asked you that question, "Did any doctor tell you that the problems that you are having are related to your work," and your response was, "No." Is that right?

A: Yes, ma'am. Could have been.

He also admitted that he was told that fibromyalgia was not caused by his work. He also acknowledged that he did not know he had a work related injury until he spoke with his attorney.

[2]In its recitation of facts following trial, the trial court stated: "When asked the question, he answered that it was not until he was turned down for short-term disability that he tried to pursue the workers' comp[ensation] to blame. He went on to explain that the defendant had told him this was not a workmens' comp[ensation] case."

Dr. Robert Riley Jones performed an independent medical examination and diagnosed fibromyalgia and polyarticular (multiple joint) arthritis. When asked whether Mr. Thetford's medical condition was related to his work for Tower, Dr. Jones replied, "Neither by history nor by physical findings." He found no anatomical deterioration in his condition or permanent impairment as a result of his work at Tower. He also agreed with Dr. Reeves' conclusions that his symptoms associated with arthritis and fibromyalgia were not work related.

Dr. Joseph C. Boals, III, also conducted an IME and found Mr. Thetford had a 10% impairment to the body as a whole for generalized pain syndrome. He found that the job change at Tower "caused increased symptomatology in his joints and there is impairment on the basis of aggravation." He also stated that if Mr. Thetford's pain subsided after he left the press line job, he would not have been assigned an impairment rating.

Ms. Gordon was the only official from Tower called to testify by the plaintiff. Tower did not call any witnesses at trial. The trial court awarded 60% permanent partial disability benefits to the body as a whole. The trial court found that Mr. Thetford had a prior condition which was advanced and anatomically changed by his work for Tower Automotive.

ANALYSIS

Appellate review is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the findings of facts, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (Supp. 2002). The reviewing court is required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. *Wingert v. Gov't. 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 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). Where the trial court has seen and heard witnesses, especially where the issues of credibility and weight of oral testimony are involved, considerable deference must be accorded the trial court's factual findings. *Humphrey v. David Witherspoon, Inc.*, 734 S.W.2d 315 (Tenn. 1987). The extent of an injured worker's vocational disability is a question of fact. *Seals v. England/Corsair Upholstery Mfg. Co., Inc.*, 984 S.W. 2d 912, 915 (Tenn. 1999).

NOTICE OF INJURY

The employer first raises the issue of whether the trial court erred in awarding workers' compensation benefits when the employee failed to give the employer proper notice of an injury when the first claim for workers' compensation benefits received by the employer was the complaint filed fifty-four days after the employee left the employ of the employer and the complaint did not contain a date of injury.

Tennessee Code Annotated section 50-6-201 provides:

> (a) Every injured employee or such injured employee's representative shall, immediately upon the occurrence of an injury, or as soon thereafter as is reasonable and practicable, give or cause to be given to the employer who has no actual notice, written notice of the injury,. . .and no compensation shall be payable under the provisions of this chapter unless such written notice is given the employer within thirty (30) days after the occurrence of the accident, unless reasonable excuse for failure to give such notice is made to the satisfaction of the tribunal to which the claim for compensation may be presented.
>
> (b) In those cases where the injuries occur as the result of gradual or cumulative events or trauma, then the injured employee or such injured employee's representative shall provide notice to the employer of the injury within thirty (30) days after the employee:
>
> (1) Knows or reasonably should know that such employee has suffered a work-related injury that has resulted in permanent physical impairment; or
>
> (2) Is rendered unable to continue to perform such employee's normal work activities as the result of the work-related injury and the employee knows or reasonably should know that the injury was caused by work-related activities.
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> In order for a communication to constitute either written notice or actual knowledge on the part of the employer it must be calculated to reasonably convey the idea to the employer that the employee claims to have suffered an injury arising out of and in the course of his or her employment.

Masters v. Indus. Garments Mfg. Co., 595 S.W.2d 811, 816 (Tenn. 1980). In *Jones v. Sterling Last Corp.*, 962 S.W.2d 469, 472 (Tenn. 1998), our Supreme Court stated:

> The notice requirement exists so that the employer will have the opportunity to make a timely investigation of the facts while still readily accessible, and to enable the employer to provide timely and proper treatment for the injured employee. In the absence of actual knowledge of the injury by the employer, waiver of the notice by the employer, or reasonable excuse by the employee for not giving notice, the statutory notice to the employer is an absolute prerequisite to the right of the employee to recover benefits. The plaintiff has the burden of proving that the required notice was given or excused.

(citations omitted).

On direct examination, Mr. Thedford testified as follows:

Q: Let me ask you if in the fall of 2001 after you went to this heavy truck press department, did you complain that the job was causing injury to your arthritis and to your body?

A: Yes, sir, I did.

Q: Who did you complaint to?

A: I talked to my supervisor, which was Bill Hughes, and I talked to Debbie Bowlin.

Q: Who is Debbie Bowlin?

A: And also Francine. Debbie Bowlin is the nurse.

Q: And what were you asking of them?

A: I was asking for some relief, another job because that job was irritating me so bad I couldn't.....couldn't continue working there.

Q: And what were you advised as to whether they could accommodate a new job for you?

A: They said they couldn't accommodate me with any job; the only way I could go to another job was to be a transfer, put in a bid, which I did. I had a bid in at all times, but never a job come open that I could get.

Vickie Gordon, Colleague Growth and Development Leader (Human Resource Manager) for Tower, testified, *inter alia*, that she did not receive any notification from Mr. Thedford that he had sustained a work related injury, or that he needed medical treatment for his arthritic condition that he felt was caused or aggravated by his work at Tower. She further testified that Debbie Bowlin, the Health and Safety Coordinator, was the person employees were directed to speak with, along with their supervisor and herself, about a work related condition. Debbie Bowlin would be the person that they would talk to most often. Mr. Thedford testified that he did not ask Tower to pay for his medical bills through the workers' compensation carrier because he was told that it was not a workers' compensation case. He testified he was first told that he needed to apply for workers' compensation by someone who turned down his claim, presumably for short term disability. He then went to Francine Williams, to inquire about this, and Ms. Williams told him " no, it is not workmens' comp." Thereafter, Mr. Thedford consulted his attorney. Mr. Thedford confirmed that he did not know he had an injury as a result of his work at Tower until he quit his job and talked with his attorney.

The trial court did not make a specific finding on the issue of notice, but did refer to the Plaintiff's testimony that "the new job made him a lot sorer" and that Mr. Thedford discussed this problem with his supervisor and the plant nurse. Mr. Thedford also inquired of Francine Williams

about the increase in his arthritis relating to his job and was told that arthritis was not work related. He was encouraged by Mr. Hughes and Mrs. Williams to apply for short term disability.

Under the terms of Tennessee Code Annotated section 50-6-201, the thirty-day notice period is tolled by "reasonable excuse for failure to give such notice." An employees reasonable lack of knowledge of the nature and seriousness of his injury has been held to excuse his failure to give notice within the thirty-day period. Likewise, an employees lack of knowledge that his injury is work related, if reasonable under the circumstances, will also excuse his failure to give notice within thirty days that he is claiming a work related injury. It is enough that the employee notifies the employer of the facts concerning his injury of which he is aware or reasonably should be aware. *Browning v. James River Corp.*, No. W1999-01799-WC-R3-CV, 2001 WL 823356 (Tenn. Workers' Comp. Panel, July 17, 2001). It is reasonable to accept, as the trial court apparently did, that Mr. Thedford believed that since he did not suffer an injury by accident, his condition was not work related. When he consulted with an attorney after leaving his job, he found out that he may have a claim and thereafter filed a complaint for workers' compensation benefits. Tower has failed to demonstrate that it has suffered any prejudice by the Plaintiff failing to provide it with written notice of the injury. The evidence does not preponderate against the trial court's ruling on this issue.

INJURY ARISING OUT OF AND WITHIN THE SCOPE OF EMPLOYMENT

Plaintiff worked for Tower for over twenty years prior to his resignation. It is undisputed that Plaintiff had a preexisting arthritic condition. Prior to Plaintiff's job change at Tower, it is undisputed that Plaintiff had an active lifestyle and worked regularly with considerable overtime work. Plaintiff testified that he never missed work because of arthritic pain and that he went to stock-car races, fished and camped. Plaintiff's wife, Mrs. Thedford, testified that his arthritis was "tolerable" prior to the job change, that he took care of their yard and "still pretty much went and done, and our. . .lifestyle was still pretty active." Plaintiff testified that after a few days on his new job in the heavy truck press department, his symptoms worsened, his medication had to be increased, and he had to go to the doctor more often. The work in the new job was so fast that it was difficult for Plaintiff to handle it. He stated that it made him a lot sorer and irritated all of his joints so bad he couldn't keep up with his job requirements. Plaintiff further testified that his right leg limp "worsened quite a bit and the stiffness in the joints and knee is a lot stiffer than it was." Plaintiff stated that when he stopped doing the new job, the additional pain stopped and was not as bad. After the job change Plaintiff was unable to mow his yard without resting and continues to have stiffness in his joints. He stated, "I guess I never did completely recover from it."

Dr. Riley Jones, an orthopaedic surgeon, conducted an independent medical review and examination of the Plaintiff. Dr. Jones diagnosed Plaintiff with fibromyalgia and polyarticular arthritis which was supported by Plaintiff's medical records. He also noted Plaintiff's x-rays showed generalized degenerative arthritis throughout the joints of his body. Dr. Jones opined that Plaintiff's physical condition was not related to his employment at Tower either by history or by physical findings. Further, Dr. Jones opined that Plaintiff's work did not cause any anatomical or pathological deterioration in his condition and that Plaintiff did not have any permanent physical

impairment as a result of his employment at Tower. Dr. Jones placed no restrictions on Plaintiff's physical activities due to any type of work injury or aggravation at his work place.

Dr. Joseph Boals, an orthopaedic surgeon, also conducted an independent medical review and examination on the Plaintiff. He noted that Plaintiff complained about an increase in his symptoms after a job change. Dr. Boals diagnosed Plaintiff with multi-joint degenerative arthritis and stated that assuming history to be accurate, this joint arthritis was aggravated by Plaintiff's work with increased symptomology. Dr. Boals stated that assuming an accurate history, and if Plaintiff associated his job with the increased symptoms of pain in multiple joints, Plaintiff had permanent impairment. Dr. Boals based this assessment on Plaintiff's functional loss which has effected his ability to carry out activities. Dr. Boals stated that under the American Medical Association Guides, 5th Edition, the Plaintiff's impairment would be awarded on the basis of the generalized pain syndrome resulting from the aggravation and requiring multiple drugs for relief. Dr. Boals explained that the impairment was not given from any specific table in the Guides but was based on the experience of the evaluator. Dr. Boals assessed Plaintiff's anatomical disability at 10% to the body as a whole. Dr. Boals opined that assuming Plaintiff gave an accurate and honest history, Plaintiff's condition was caused by his employment at Tower. Dr. Boals suggested Plaintiff avoid prolonged walking, standing, stooping, squatting, climbing, and anything that places excess strain on the joints. He further stated that heavy gripping with either hand should probably be eliminated. Dr. Boals recommended that Plaintiff remain under the care of either a pain management physician or a rheumatologist to guide him in the proper use of drugs.

Although causation cannot be based upon merely speculative or conjectural proof, absolute certainty is not required. Any reasonable doubt in this regard is to be construed in favor of the employee. We have thus consistently held that an award may properly be based upon medical testimony to the effect that a given incident "could be" the cause of the employee's injury, when there is also lay testimony from which it reasonably may be inferred that the incident was in fact the cause of the injury. *Reeser v. Yellow Freight Sys., Inc.*, 938 S.W.2d 690, 692 (Tenn. 1997) (citations omitted).

The trial court has the discretion to accept the opinion of one medical expert over another medical expert. *Kellerman v. Food Lion, Inc*., 929 S.W.2d 333 (Tenn. 1996); *Johnson v. Midwesco, Inc.*, 801 S.W.2d 804, 806 (Tenn. 1990). When the medical testimony is presented by deposition, as it was in this case, this Court is able to make its own independent assessment of the medical proof to determine where the preponderance of the evidence lies. *Cooper v. INA*, 884 S.W.2d 446, 451 (Tenn. 1994); *Landers v. Fireman's Fund Ins. Co.*, 775 S.W.2d 355, 356 (Tenn. 1989).

An employer is responsible for workers' compensation benefits, even though the claimant may have been suffering from a serious pre-existing condition or disability, if employment causes an actual progression or aggravation of the prior disabling condition or disease which produces increased pain that is disabling. *Hill v. Eagle Bend Mfg., Inc.*, 942 S.W.2d 483 (Tenn. 1997) (citing *Fink v. Caudle*, 856 S.W.2d 952, 958 (Tenn. 1993)); *White v. Werthan Indus.*, 824 S.W.2d 158, 159 (Tenn. 1992); *Talley v. Virginia Ins. Reciprocal*, 775 S.W.2d 587, 591 (Tenn. 1989). There is no

doubt that pain is considered a disabling injury, compensable when occurring as the result of a work-related injury. It is true that an employer takes the employee with all pre-existing conditions, and cannot escape liability when the employee, upon suffering a work-related injury, incurs disability far greater than if he had not had the pre-existing conditions; if work aggravates a pre-existing condition merely by increasing pain, there is no injury by accident. *Sweat v. Superior Indus., Inc.*, 966 S.W.2d 31, 32 (Tenn. 1998). To be compensable, the pre-existing condition must be advanced, there must be anatomical change in the pre-existing condition, or the employment must cause an actual progression of the underlying disease. *Id.* at 33.

The trial court had the benefit of the testimony of Plaintiff, Plaintiff's wife, and the deposition testimony of two independent medical evaluators, Dr. Jones and Dr. Boals. The trial court apparently relied on the testimony of Dr. Boals and these witnesses in opining that Plaintiff had proven that he had a prior condition that was advanced and anatomically changed by Plaintiff's work with his employer. We find this testimony is sufficient to support a causal connection between the Plaintiff's employment and Plaintiff's disability. The evidence does not preponderate against the finding of the trial court in this regard.

THE TRIAL COURTS AWARD OF 60% PERMANENT PARTIAL DISABILITY TO THE BODY AS A WHOLE

The trial court determined that Plaintiff suffered a 60% permanent partial disability to the body as a whole. The Plaintiff's employer contends that the trial court award is excessive, is not supported by the evidence and should be reduced.

Tennessee Code Annotated section 50-6-241(b)(c) (2004) provides:

> (b) Subject to factors provided in subsection (a) of this section, in cases for injuries on or after August 1, 1992, and prior to July 1, 2004 where an injured employee is eligible to receive permanent partial disability benefits, pursuant to § 50-6-207(3)(A)(I) and (F), and the pre-injury employer does not return the employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of injury, the maximum permanent partial disability award that the employee may receive is six (6) times the medical impairment rating determined pursuant to the provisions of the American Medical Association Guides to the Evaluation of Permanent Impairment (American Medical Association), the Manual for Orthopedic Surgeons in Evaluating Permanent Physical Impairment (American Academy of Orthopedic Surgeons), or in cases not covered by either of these, an impairment rating by any appropriate method used and accepted by the medical community. In making such determinations, the court shall consider all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's disabled condition.

> (c) The multipliers established by subsections (a) and (b) are intended to be maximum limits. If the court awards a multiplier of five (5) or greater, then the court shall make specific findings of fact detailing the reasons for awarding the maximum impairment. In making such determinations, the court shall consider all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's disabled condition.

The extent of an injured worker's disability is an issue of fact. *Jaske v. Murray Ohio Mfg. Co., Inc.*, 750 S.W.2d 150, 151 (Tenn. 1988). In *Walker v. Saturn Corp.*, 986 S.W.2d 204 (Tenn. 1998), the Supreme Court discussed the factors to utilize in determining vocational disability and stated in pertinent part:

The Panel correctly held that a vocational impairment is measured not by whether the employee can return to her former job, but whether she has suffered a decrease in her ability to earn a living. This Court stated in *Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 458 (Tenn. 1988) that a vocational disability results when "the employee's ability to earn wages in any form of employment that would have been available to him in an uninjured condition is diminished by an injury." *Id.* at 208 (citations omitted).

In assessing the extent of an employee's vocational disability, the trial court may consider the employee's skills and training, education, age, local job opportunities, anatomical impairment rating, and her capacity to work at the kinds of employment available in her disabled condition. Further, the claimant's own assessment of her physical condition and resulting disabilities cannot be disregarded. The trial court is not bound to accept physicians' opinions regarding the extent of the plaintiff's disability, but should consider all the evidence, both expert and lay testimony, to decide the extent of an employee's disability. *Id.*

Plaintiff testified that he could not perform his new job which he was assigned to in the heavy truck press department at Tower. Plaintiff was only able to work at that position approximately eight total days before he applied for disability. Plaintiff was advised by Tower representatives that Tower could not accommodate him with another job and that the only way to obtain one was to bid for a transfer. Plaintiff put a bid in, but no job ever came open which he could obtain. Plaintiff was advised by Bill Hughes and Francine Williams that there were no other jobs available for Plaintiff and encouraged Plaintiff to apply for short term disability.

The trial court made the following findings of fact to substantiate its award of six times the anatomical rating of Dr. Boals: (a) Cletus Thedford is sixty years old; (b) he has only an eleventh grade education; (c) he has no vocational education above this eleventh grade level; (d) he has worked at Tower Automotive since 1981 until he voluntarily left the company in January, 2002 because there was no work available for him there; (e) Mr. Thedford’s arthritis has worsened as a result of his work at Tower to the point that he can do none of the jobs that were offered to him at Tower, nor did the employer offer him a return to a previous job that he had requested to be returned

to; (f) the local job market in Gibson County and the surrounding area is such that it is not likely that he would be able to perform any work in heavy labor and manufacturing, all of which he had previously been trained and experienced to do; (g) his age alone, coupled with his lack of skilled training creates a poor job outlook for Mr. Thedford.

We find that the trial court properly applied the relevant factors in determining the extent of the Plaintiff's vocational disability. We are to presume the correctness of the trial court's findings unless the preponderance of the evidence is otherwise. *Humphrey v. David Witherspoon, Inc.*, 734 S.W.2d 315 (Tenn. 1987). We find that the evidence does not preponderate against the trial court's judgment.

CONCLUSION

The judgment of the trial court is affirmed. The costs on appeal are taxed to the Defendants-Appellants.

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JAMES F. BUTLER, SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

CLETUS M. THETFORD v. AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY, ET AL.

Chancery Court for Gibson County
No. 15821

No. W2003-01904-SC-WCM-CV - Filed May 3, 2005

JUDGMENT ORDER

This case is before the Court upon the motion for review filed by the defendants-appellants, American Manufacturers Mutual Insurance Company and Tower Automotive Products Co., Inc., 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 defendants-appellants, American Manufacturers Mutual Insurance Company and Tower Automotive Products Co., Inc., and their surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

Holder, J., not participating