

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKER'S COMPENSATION PANEL  
AT JACKSON  
June 28, 2005 Section

**R. V. CHILDERS, V. GOODYEAR TIRE & RUBBER CO.**

**Direct Appeal from the Chancery Court of Obion County  
No. 17,751      W. Michael Maloan, Chancellor**

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No. W2004-02127-WC-R3-CV- Mailed December 12, 2005; Filed January 20, 2006

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This workers compensation appeal has been referred to the Special Worker's Compensation Appeals Panel in accordance with Tennessee Code Annotated § 50-6-225 (e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. In this appeal, the employer asserts the trial court erred in finding that the employee suffered permanent, total disability as a result of an injury, which occurred on April 15, 1993, during the course of his employment with Goodyear Tire and Rubber Company. We conclude that the evidence presented supports the findings of the trial judge and, in accordance with Tennessee Code Annotated § 50-6-225(e)(2), affirm the judgment of the trial court.

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

Ron E. Harmon, Sp. J., delivered the opinion of the court, in which Janice M. Holder, J., and Clayburn L. Peeples, Sp. J., joined.

James M. Glasgow, Jr., Union City, Tennessee, for the appellant, Goodyear Tire and Rubber Co.

Michael P. Pfrommer, Memphis, Tennessee, for the appellee, R. V. Childers

**MEMORANDUM OPINION**

**I. FACTUAL BACKGROUND**

R. V. Childers began working for Goodyear in 1977. Childers worked from 1989 until April 15, 1993 in the calendar room, operating mills that formed the rubber used to make tires. The rubber Childers worked with and was exposed to during this time consisted primarily of compounds 1236 and 6286. While milling the rubber, lumps and holes would form in the compound causing the employee to "batch off" the rubber. This means the worker; Childers, would cut large sections of hot rubber from the mill. The process exposed the employee to vapors and fumes during the fifteen or twenty minutes it took to complete the procedure. Batching off of the rubber occurred one to two times per day.

On April 15, 1993 while at work, Childers began spitting up blood. He was examined by the nurse at the plant, and then sent to his family physician, Dr. Alan C. Gooch. After a preliminary examination, Mr. Childers was transferred by ambulance to Baptist East in Memphis, Tennessee, where Dr. Williams saw him. Four days later, the upper lobe of his right lung was surgically removed. Following surgery, Mr. Childers returned home and continued seeing Dr. Gooch for his follow up care. He did not return to work for Goodyear or any other employer after April 15, 1993.

## II. MEDICAL EVIDENCE

After Childers ceased employment with Goodyear, he developed neuropathy in his lower extremities. From the medical evidence, Dr. Allen C. Gooch, a family practitioner certified by the American Board of Surgery, testified by deposition that Mr. Childers had been a patient of Dr. Gooch's clinic for sixteen or seventeen years. Mr. Childers had no prior lung problems prior to the April 15, 1993 injury. Dr. Gooch verified that Childers had the upper lobe of his right lung removed as a result of his April 15, 1993 injury and that the removed lung portion showed extensive hemorrhaging throughout. Dr. Gooch opined that to a reasonable degree of medical certainty, Childers' exposure to substances in the workplace caused the hemorrhaging in his lungs that led to the surgical removal of his upper right lobe.

In support of his opinion Dr. Gooch testified he had ruled out all other causes of Childers lung injury and that inhaling vaporized chemicals causes pulmonary injuries. That further, medical literature shows pulmonary problems can develop in rubber workers with chronic exposure to vapors.

Three Goodyear employees testified at trial on behalf of Childers, stating they often had problems with rubber burning up and emitting fumes, that the rubber would emit fumes and smoke during the batch off process, and that they had seen Childers batch off rubber every shift. James Pritchett, Jr., called by the Defendant, testified that he was a technology engineer employed by Goodyear and that the Material Safety Data Sheets list precautions and hazards of raw materials used in the compounds. Mr. Pritchett testified that the MSDS relating to compounds 1236 and 6286 contained Vultax, that the MSDS for Vultax warns the material can cause respiratory tract irritation, and that persons should avoid breathing the vapors and use with adequate ventilation. Mr. Pritchett further confirmed that he had seen the rubber emit fumes and vapors, and that the vapors could contain Vultax.

Dr. Gooch finally testified that under AMA guidelines, Mr. Childers' pulmonary functions study showed a 17.5% impairment to the body; however, Mr. Childers would not be able to return to gainful employment due to his pulmonary impairment and ulcer diaphysis, which was also under treatment.

## III. RULING OF THE TRIAL COURT

The trial court ruled on August 17, 2004 that Childers had established a direct causal connection between the conditions under which he worked at Goodyear, specifically his exposure to chemicals and vapors of heated rubber, and his lung condition which occurred on or

about April 15, 1993. The Court awarded Childers permanent and total disability benefits to age 65.

#### IV. STANDARD OF REVIEW

The standard of review of issues of fact is de novo upon the record of the trial court accompanied by a presumption of correctness in the findings unless the presumption of evidence is otherwise. *Lollar vs. Wal-Mart Stores, Inc.*, 767 S.W. 2d 143, 149 (Tenn. 1989); Tenn. Code Ann. § 50-6-225 (e) (2). Upon appeal, the reviewing court may draw its own conclusions about the weight and credibility of expert testimony presented by deposition or other written documents because the reviewing court is in the position as the trial court to evaluate such testimony. *Houser v. Bi-Lo*, 36 S.W. 3d 68,71 (Tenn. 2001).

#### V. ANALYSIS

In order to be eligible for workers compensation benefits an employee must suffer an injury by accident arising out of and in the course of employment, which causes either disablement or death. Tenn. Code Ann. § 50-6-102 (12). The phrase "arising out of" refers to causation, the causation requirement is satisfied if the injury has a rational causal connection to the work. *Reeser vs. Yellow Freight Sys., Inc.*, 938 S.W. 2d 690-692 (Tenn. 1997). Although causation cannot be based upon merely speculative or conjectural proof, absolute certainty is not required and a reasonable doubt in this regard must be construed in favor of the employee. This court has 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 may be reasonably inferred that the incident was in fact the cause of the injury. *Id.*

It is well settled in this state that a plaintiff in a worker's compensation case has the burden of proving every element of his or her case by a preponderance of the evidence. *Elmore v. Travelers Inc. Co.*, 824 S.W. 2d 541, 543 (Tenn. 1992). With these principles in mind, we review the record to determine whether the evidence preponderates against a finding of the trial court. In such cases where equivocal medical evidence is supported with other evidence a finding of causation is clearly supported by the case law. *Tindall v. Waring Park Assoc.*, 725 S.W.2d.935, 937 (Tenn. 1987). *Reeser vs. Yellow Freight Sys., Inc.*, 938 S.W. 2d 690-692 (Tenn. 1997) states that courts have consistently held that an award is proper when based upon medical testimony to the effect that a given instant "could be" the cause of the employee's injury, where there is lay testimony inferring that the incident was in fact the cause. *Thomas vs. Aetna Life & Cas.Co.*, 812 S.W. 2d 278 (Tenn. 1991) (holding testimony could be or is possibly, combined with lay testimony, sufficient to support an award.)

## **CONCLUSION**

In reviewing the proof of causation in this case, lay testimony clearly supports Dr. Gooch's opinion that workplace chemical exposure caused Mr. Childers' lung injury. The proof further sustains the trial court's award of permanent and total disability benefits to age 65. Because we find the trial court's determination to be clearly supported by a preponderance of the evidence, we affirm the trial court's judgment and tax the cost of this cause to the appellant, Goodyear Tire and Rubber Company, and its sureties, for which execution may issue.

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RON E. HARMON, SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE  
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June 28, 2005 Session

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**JUDGMENT ORDER**

This case is before the Court upon 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 Memorandum Opinion of the Panel should be accepted and approved; 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 Appellant, Goodyear Tire and Rubber Company, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM