

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON

December 8, 2005 Session

**TIMOTHY L. BINGHAM v. CHICKASAW COUNCIL, BOY SCOUTS OF
AMERICA, ET AL.**

**Direct Appeal from the Circuit Court for Shelby County
No. CT-003917-01 Rita L. Stotts, Circuit Judge**

No. W2004-02879-SC-WCM-CV - Mailed May 8, 2006; Filed August 18, 2006

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 fact and conclusions of law. Appellee/Plaintiff, Timothy L. Bingham ("Employee"), alleges that while on a boy scout camping trip he received a tick bite, resulting in Rocky Mountain Spotted Fever ("RMSF"). Employee was diagnosed with severe septic shock, pancreatitis, necrosis in the foot, acute renal failure, dehydration, hepatitis B, high blood pressure, high cholesterol, and HIV. The trial court found Employee's medical condition of acute pancreatitis was caused by the tick bite and that Employee was totally and permanently disabled. Appellant/Defendant, Chickasaw Council, Boy Scouts of America ("Employer"), appeals challenging the ruling of the trial court upon the grounds that medical evidence preponderates against the findings of the trial court. We find the evidence preponderates against the findings of the trial court and reverse the trial court.

**Tenn. Code Ann. § 50-6-225(e) (2005) Appeal as of Right; Judgment of the Circuit Court
Reversed**

ALLEN W. WALLACE, SR. J., delivered the opinion of the court, in which JANICE HOLDER, J., and ROBERT EWING CORLEW, SP. J., joined.

Catherine Bulle Clayton and Sara E. Barnett, Jackson, Tennessee, for the appellants, Chickasaw Council, Boys Scouts of America and Liberty Mutual Group d/b/a/ Liberty Mutual Ins. Co.

Julian T. Bolton, Memphis, Tennessee, for appellee, Timothy L. Bingham.

MEMORANDUM OPINION

Statement of Facts

In this case, Employee claims he developed RMSF as a result of alleged tick bites while on a camping trip with Employer. The fundamental issue is whether Employee's medical condition of acute pancreatitis was caused by a tick that Employee found on his leg during the camping trip. On his way home from the camping trip on June 30, 2000, he began to feel sick. He remained at home until July 8, 2000, when he was found unconscious and seriously ill by a fellow employee. He was admitted to the hospital and diagnosed with acute pancreatitis, acute renal failure, dehydration, and sepsis. Boy Scout employees contacted his family and cleaned his home before his family arrived. Empty alcohol containers were found in his home.

Medical Proof

The medical proof in this case consists of three treating physicians, Dr. Paul Dang, Dr. Kerry O. Cleveland, and Dr. Michael G. Threlkeld, and two independent medical evaluators, Dr. Robert Morrison and Dr. Daniel Sexton. Dr. Morrison testified in person at the trial, and Dr. Sexton testifies by videotape and written deposition. It is necessary for this Panel to evaluate carefully the medical testimony in this case to determine where the preponderance of the evidence lies.¹

Dr. Cleveland, a treating physician and an infectious disease specialist, knowing that the Employee worked for the Boy Scouts and might have been exposed to ticks, examined Employee thoroughly for evidence of tick bites with negative results. He nonetheless ordered blood testing for antibodies of specific bacteria such as RMSF. The results of the blood testing were negative for RMSF, parvovirus, cryptococcus, and meningitis.

Dr. Paul Dang, another treating physician and an internal medicine specialist, made an initial diagnosis on examination and lab work done in the emergency room that Employee had acute pancreatitis and sepsis. He also observed ischemic changes in Employee's leg below the knee with early stages of gangrene and necrosis. He reviewed the results the results of blood work for specific antibodies of certain bacteria in Employee's blood, including RMSF, and found the test negative for Rocky Mountain spotted serology, parvovirus profile, serum cryptococcal antigen, and serum meningococcal antigen. After Dr. Dang determined Employee did not have RMSF, he tested Employee's vascular system for a blood clot which might have caused the ischemic changes in his leg. The arterial Doppler study revealed moderate to severe occlusive to severe occlusive arterial disease, which was caused by plaque buildup due to cholesterol and high blood pressure. He further testified that Employee was HIV positive, which would result in a compromise of his immune

¹The trial court did not view the videotape of Dr. Sexton and held this case under advisement for one year and four months. This Panel has examined all the medical evidence, including the videotape of Dr. Sexton. Therefore, this Panel is in the same or similar position to evaluate the medical evidence as the trial court.

system causing the severity of an illness to increase as compared to a healthy person.

Dr. Michael G. Threlkeld, a board certified infectious doctor who treated Employee for HIV from August 2000 to November 2001, testified, "I have yet to be shown any indication that this patient had RMSF, no evidence by laboratory, no clinical evidence that was even suggestive of RMSF."

Dr. Daniel Sexton, a professor of medicine at Duke University, is board certified in both internal medicine and infectious diseases. He has spent twenty-five years researching RMSF and has published extensive works on the subject. He has treated over 200 patients for RMSF. Dr. Cleveland testified he knew the reputation of Dr. Sexton in the field of rickettsial especially RMSF, and stated that "if you ask me to list the top two or three people in the world that I know who obviously are experts, he would be one of those persons." Dr. Sexton reviewed all the medical records and the report of Employee's expert, Dr. Morrison. He concluded the employee did not have RMSF, stating "the reasons I concluded Mr. Bingham didn't have spotted fever are multiple, and they're fundamentally simple, but in their aggregate, the conclusion, I think, is overwhelming that he did not have spotted fever." Dr. Sexton goes into great details to state the basis of his opinion: (1) he had no fever in the first six days of his hospitalization, and that he had never seen a patient who had RMSF without a fever; (2) no clinical symptoms such as acidosis, mental confusion, generalized collapse, test results, or the rash on his legs which was not typical of spotted fever; and (3) his platelet count remained low, which is not characteristic of RMSF. His platelet count would be expected to be low on initial presentation at the hospital, but then improve, which did not happen. His platelet count remained low throughout his hospitalization due to his HIV. Dr. Sexton further noted the absence of arterial pulse and headaches, both of which are characteristics of RMSF.

Employee called Dr. Robert Morrison as an expert. He is an infectious disease doctor, and over his thirty-five years experience, has treated twenty to twenty-five cases of arthropod-borne diseases, including RMSF, West Nile virus, and ehrlichiosis. He has never conduct research on RMSF or any other arthropod-borne diseases. He is the only medical expert who opined that Employee had RMSF.

Analysis

The standard of review in a workers' compensation case 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); *Houser v. Bi-Lo, Inc.*, 36 S.W.3d 68, 70-71 (Tenn. 2001). We are 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. Spec. Workers' Comp. Panel 1995). Moreover, we are required by law to examine *in depth* a trial court's factual findings and conclusions. *GAF Bldg. Materials v. George*, 47 S.W.3d 430, 432 (Tenn. Spec. Workers' Comp. Panel 2001). Where the medical testimony in a workers' compensation case is presented by deposition, we may make an independent assessment of the medical proof to determine where the preponderance of the proof lies. *Cooper v.*

Insurance Co. of N. Am., 884 S.W.2d 446, 451 (Tenn. Spec. Workers' Comp. Panel 1994).

In this case, the trial judge saw and heard the testimony of Dr. Morrison. This Panel is required to give considerable deference to the trial court's findings, especially where the issue of credibility and weight of testimony involved. *Whirlpool Corp. v. Nakhoeinh*, 69 S.W.3d 164, 167 (Tenn. 2002). However, our in depth examination of the proof, especially of expert witnesses, require this Panel to carefully examine the qualifications, background, and training of the witnesses, their opinions, and the basis and rationale of such opinions. All such examinations are required to determine where the preponderance of the evidence lies.

The testimony of Dr. Dong, Dr. Cleveland, and Dr. Threlkeld testified by deposition. Dr. Sexton testified by video deposition that was also transcribed. In reviewing their medical testimony, we extend no deference to the trial court's findings. In such medical proof, we must determine the weight to be given to such testimony and draw our own conclusions with regard to the issue of credibility and weight to be give such testimony. *Bohonan v. City of Knoxville*, 136 S.W.3d 621, 624 (Tenn. 2004); *Krick v. City of Lawrenceburg*, 945 S.W.2d 709, 712 (Tenn. 1997).

The employee in any workers' compensation action has the burden of proving causation, and in all but the most obvious cases expert medical testimony is required to establish causation. *Thomas v. Aetna Life & Cas. Co.*, 812 S.W.2d 278, 282 (Tenn. 1991). The proof of the causal connection may not be speculative, conjectural, or uncertain. *Clark v. Nashville Mach. Elevator Co., Inc.*, 129 S.W.3d 42, 47 (Tenn. 2004); *Simpson v. H. D. Lee Co.*, 793 S.W.2d 929, 931 (Tenn. 1990); *Tindall v. Waring Pork Ass'n.*, 725 S.W.2d 935, 937 (Tenn. 1987). The element of causation is satisfied where the "injury has a rational, causal connection to the work." *Braden v. Sears, Roebuck & Co.*, 833 S.W.2d 496, 498 (Tenn. 1992).

All the medical experts in this case, except Dr. Morrison, testified unequivocally, based on laboratory and clinical findings, that Employee did not have RMSF causing his various medical conditions. The testimony of the treating physicians is not only unequivocal, but is corroborated by the testimony of Dr. Sexton, who no doubt is an expert in the field of RMSF. On the other hand, Dr. Morrison based his opinion on certain hypotheses and what "might" have happened. The basis of his opinion appears to be more conjectural and speculative, and some of his basis for such opinion was described by Dr. Sexton as "preposterous." When Dr. Morrison's testimony is compared to that of the medical experts, in light favorable to Employee, it just cannot be concluded that the preponderance of the evidence lies with the findings of the trial court.

CONCLUSION

An in depth consideration of the medical evidence in this case, even considering the workers' compensation law which must be construed liberally in favor of an injured employee, can lead to but one conclusion: Employee's medical condition was not caused by Rocky Mountain Spotted Fever.

The judgment of the trial is, therefore, reversed, and the case is dismissed. The assessment

of discretionary costs is set aside, and the cause is remanded to the trial court for consideration of discretionary cost, if any, of the Employer against Employee.

Costs of appeal are taxed to the appellee, Timothy L. Bingham, and his sureties, in which execution may issue, if necessary.

ALLEN W. WALLACE, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

**TIMOTHY L. BINGHAM v. CHICKASAW COUNCIL, BOY SCOUTS OF
AMERICA, LIBERTY MUTUAL GROUP, AND/OR D/B/A LIBERTY
MUTUAL INSURANCE COMPANY**

**Circuit Court for Shelby County
No. CT-003917-01**

No. W2004-02879-SC-WCM-CV - Filed August 18, 2006

JUDGMENT ORDER

This case is before the Court upon the motion for review filed by Timothy L. Bingham 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 movant, Timothy L. Bingham, and his sureties, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

Holder, Janice M, J., not participating