

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT NASHVILLE  
September 29, 2006 Session

**ROBERT GILL v. SATURN CORPORATION**

**Direct Appeal from the Circuit Court for Maury County  
No. 11223 Robert L. Holloway, Jr., Judge**

---

**No. M2006-00428-WC-R3-CV - Mailed - January 10, 2007  
Filed - February 14, 2007**

---

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with Tennessee Code Annotated section 50-6-225(e)(3) for hearing and reporting to the Supreme Court our findings of fact and conclusions of law. In this appeal, the employer, Saturn Corporation (Saturn), asserts that the forty-five percent permanent, partial disability to the body as a whole, awarded the employee, Robert Gill, by the trial court, was excessive. We conclude that the evidence presented does not preponderate against the findings of the trial court and affirm.

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

DONALD P. HARRIS, SR. J., delivered the opinion of the court, in which CORNELIA A. CLARK, J., and MARIETTA M. SHIPLEY, SP. J., joined.

Marsha McShane Watson, Nashville, Tennessee, for appellant, Saturn Corporation.

J. Anthony Arena, Nashville, Tennessee, for appellee, Robert Gill.

**MEMORANDUM OPINION**

Robert Wayne Gill was 48 years of age at the time of the trial of this case. His educational background includes graduation from Meridian High School in Stanford, Michigan. He attended the Saginaw Valley Area Construction Institute in Midland, Michigan, where he was involved in the Associated Builders and Contractors program and received electrical training. As a part of his training, he served a four-year apprenticeship with an electrical contractor and, thereafter, in 1990, was licensed as a journeyman electrician by the State of Michigan.

In 1990, Mr. Gill applied for work at Saturn Corporation. He was hired and assigned to assembling automobiles. He worked in that capacity from August 1, 1990 until June 1, 1991. At that time, he was transferred by Saturn to a journeyman electrician position.

It was while he was working in assembling automobiles that he, on May 15, 1991, injured his neck. As he was bending over and twisting to affix a paper manifest on the rear bumper of a vehicle, his neck popped and he felt a warmth spreading into his shoulders and down his back. It was not particularly painful at the time and Mr. Gill continued working. Over the next five days, however, his neck stiffened and, at the beginning of his next shift, he reported the injury to the medical department at Saturn.

After additional visits to the medical department at Saturn, he was referred to Dr. Randall Davidson at the Mid-Tennessee Bone & Joint Clinic in Columbia, Tennessee. Over the next year and a half, Mr. Gill continued treatment at the Mid-Tennessee Bone & Joint Clinic, where he saw either Dr. Davidson or Dr. Kenneth Moore. When his condition did not improve, he asked Saturn to see another physician and was referred to the Franklin Bone & Joint Clinic, where he was seen by Dr. Paul Parsons. Dr. Parsons ordered a MRI which revealed a ruptured disc in his neck. Dr. Parsons ordered physical therapy, including traction and massage. When the neck did not improve, Dr. Parsons referred him to Dr. Warren McPherson. According to Mr. Gill, Dr. McPherson indicated he had two options, either surgery or traction therapy. Mr. Gill opted not to have the surgery and Dr. McPherson prescribed a traction kit which Mr. Gill was able to take home and use. The traction device consisted of a bag that is filled with water and attached through a pulley to a harness that fits under the chin. It is designed to relieve the pressure on the injured disc. At the time of trial, Mr. Gill still had the device and had continued to use it.

Mr. Gill continued to return to the medical department at Saturn for treatment of his neck until his workers' compensation claim was denied in May 1998.<sup>1</sup> Thereafter, Mr. Gill sought treatment on his own through Dr. John Earl, a chiropractor in Columbia. After Dr. Earl passed away, Mr. Gill continued chiropractic treatment through a Dr. Thiesing. Mr. Gill continued to receive such treatment until about a year prior to trial, even though his health insurance would not cover the cost of chiropractic care.

According to Mr. Gill, he still has stiffness and constant aching in his neck. He is limited as to how far he can turn his head and the length of time he is able to keep it turned. His neck hurts him when he looks up or down for any length of time. Working over his head is painful. There is numbness in his fingers that prevent him from lifting and carrying heavy objects. He has lost strength and frequently experiences headaches due to the stiffness in his neck. He has considered additional treatment for the condition, but does not want to have surgery.

---

<sup>1</sup>There is some evidence in the record that Mr. Gill filed an initial complaint for workers' compensation benefits on January 20, 1999. No action was taken to move the case forward and, on January 7, 2005, Saturn filed a motion to dismiss for failure to prosecute. Thereafter, a notice of voluntary non-suit was filed and the order of non-suit was entered on April 20, 2005. The second complaint was filed April 27, 2005.

Mr. Gill testified that he does not think that he is able to perform as a construction electrician because he is unable to look upward or perform overhead work. He also could not do underground work because such work requires turning the head at extreme angles. He has been able to continue working at Saturn performing maintenance and trouble-shooting but believes that if he lost his job there he would have difficulty finding work as an electrician in the open labor market because of his limitations and his inability to do electrical construction or installation work.

Mr. Gill has been a journeyman electrician at Saturn since 1991, has never had a complaint about the quality of his work and has never been taken off work by any of the physicians who treated him. No physician has recommended work restrictions that prevented him from performing his job. At the time of trial, he had about twenty years of experience in the electrical trade. He has had experience in the installation of residential and commercial electrical service but, again, does not believe he is physically able to perform much of that work even though no physician has imposed work restrictions that would prevent him from doing it.

Dr. Walter W. Wheelhouse, an orthopaedic surgeon, certified by the American Board of Orthopaedic Surgeons, testified by deposition. On June 29, 2005, he performed an independent medical evaluation of Robert Gill. In addition to a physical examination, Dr. Wheelhouse reviewed the Saturn medical records, medical records from the physicians who had treated or evaluated his condition, records of the diagnostic tests performed, and records relating to the physical therapy Mr. Gill had received. During the course of his deposition, Dr. Wheelhouse outlined the history of Mr. Gill's injury and treatment.

Mr. Gill reported to Dr. Wheelhouse that he injured his neck at Saturn on May 15, 1991, working on an automobile assembly team doing repetitive bending, twisting and turning. He was bending over to install a paper manifest to the back bumper of an automobile when he felt a pop in his neck and pain that was not present prior to the injury. He reported the work injury to the Saturn medical department on May 20, 1991. He was referred to Dr. Randall Davidson on December 11, 1991. Dr. Davidson diagnosed a chronic cervical strain and recommended physical therapy and a pain medication. He continued seeing Dr. Davidson or his associate, Dr. Kenneth Moore, over the course of the next year. An x-ray taken November 11, 1992, was read as normal and he was diagnosed with recurrent cervical strain. Dr. Davidson continued treating Mr. Gill conservatively with physical therapy and pain medication.

Mr. Gill continued to have pain and problems with his neck, radiating into his shoulders and occasionally into his arms. On September 22, 1993, Mr. Gill was referred to Dr. Paul Parsons at the Franklin Bone & Joint Clinic. Dr. Parsons ordered a magnetic resonance imaging (MRI) of the neck. The MRI revealed that Mr. Gill had a ruptured disc in his neck with a herniation of the C5-6 disc and a deformity on the spinal cord. Dr. Wheelhouse was of the opinion that the injury Mr. Gill sustained in May 1991 was the likely cause of his herniated disc. Because of neurological symptoms exhibited by Mr. Gill, Dr. Parsons referred him to Dr. Warren McPherson.

Dr. McPherson reviewed the MRI and agreed that there was an abnormality at C5-6. Dr. McPherson recommended traction, which Dr. Wheelhouse felt to be an appropriate treatment for relieving the pressure of the ruptured disc on the nerve root or spinal cord. According to Dr. McPherson's records, he also discussed potential surgery with Mr. Gill. Mr. Gill elected not to have surgery.

After conducting his own physical examination, Dr. Wheelhouse diagnosed Mr. Gill as having a herniated disc at C5-6 with radiculopathy. Dr. Wheelhouse was of the opinion Mr. Gill will retain an eight percent permanent impairment to the person in accordance with the AMA Physician's Guide to the Evaluation of Permanent Impairment, (5th Edition). He was further of the opinion that Dr. Wheelhouse that Mr. Gill should avoid overhead reaching or lifting, avoid repetitive overhead work and avoid repetitive bending, twisting and turning of his neck. Dr. Wheelhouse believed that Mr. Gill will need ongoing care for his neck injury, including medication for pain, physical therapy, possible injections, and, more likely than not, corrective surgery.

Dr. Randall L. Davidson, Jr., a board certified orthopaedic surgeon practicing with the Mid-Tennessee Bone & Joint Clinic, testified by deposition. Dr. Davidson examined Robert Gill on December 11, 1991. Mr. Gill complained of pain in his neck and reported he had sustained a work injury at Saturn in May 1991. Dr. Davidson's examination revealed that Mr. Gill had full range of motion, normal reflexes, normal sensation and no evidence of a radicular component. He did have some tenderness in the muscles of the neck and over the left trapezius muscle. Dr. Davidson diagnosed a chronic cervical strain and prescribed physical therapy and a pain medication.

Mr. Gill continued to be seen by physicians at the Mid-Tennessee Bone & Joint Clinic through November 11, 1992. During the November 1992 visit, Mr. Gill reported the pain and symptoms in his neck had persisted. Because Mr. Gill had chronic symptoms lasting for a period greater than six months, Dr. Davidson was of the opinion that Mr. Gill would retain a five percent permanent impairment to the body due to the cervical strain. Dr. Davidson would impose no work restrictions as a result of the injury he observed in Mr. Gill's neck.

Dr. Davidson reviewed the MRI ordered by Dr. Parsons but was of the opinion that the herniated disc revealed in that MRI was not caused by the work accident Mr. Gill had described to him. This opinion was based upon the fact that, at the time of Dr. Davidson's evaluation, Mr. Gill had no radicular type symptoms suggesting a disc herniation. Even considering the injury reflected by the MRI, Dr. Davidson was of the opinion that Mr. Gill would not require any work restrictions.

The trial court found Mr. Gill to be a very credible witness. The court noted that Mr. Gill had to turn his entire body to see in another direction, had difficulty working above shoulder level or at low levels because of an inability to turn his head, could not go into crawl spaces, could not bend and twist the way he could prior to his injury and was very limited in his range of motion. The court believed Mr. Gill's testimony that he could no longer perform electrical construction or installation work and was limited to performing the maintenance and troubleshooting type work he had been performing at Saturn where he had a team to assist him. Based upon the evidence

presented, the trial court found that Mr. Gill had sustained a permanent partial disability of forty-five percent to the body as a whole. From the judgment of the trial court, Saturn has appealed.

The sole issue raised by Saturn on this appeal is whether the percentage of disability determined by the trial court was excessive. The existence and extent of a permanent vocational disability are questions of fact for determination by the trial court and, are reviewed de novo, accompanied by a presumption of correctness, unless the preponderance of the evidence is otherwise. Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 170 (Tenn. 2002); Walker v. Saturn Corp., 986 S.W.2d 204, 207 (Tenn. 1998). In assessing the extent of an employee's vocational disability, the trial "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." Tenn. Code Ann. § 50-6-241(b) (2005); Worthington v. Modine Mfg. Co., 798 S.W.2d 232, 234 (Tenn. 1990); Roberson v. Loretto Casket Co., 722 S.W.2d 380, 384 (Tenn. 1986). Further, the claimant's own assessment of his or her physical condition and resulting disabilities cannot be disregarded. Uptain Constr. Co. v. McClain, 526 S.W.2d 458, 459 (Tenn. 1975); Tom Still Transfer Co. v. Way, 482 S.W.2d 775, 778 (Tenn. 1972).

In this case, the trial court found Mr. Gill to be a credible witness who was worthy of belief. According to Mr. Gill's testimony, he did not believe that he was able to perform as an electrician in the construction and installation of electrical service wiring and equipment. As a result, he would be limited to jobs requiring only the kind of work he was doing for Saturn, maintenance and troubleshooting. Moreover, there was evidence before the trial court that he was unable to perform some maintenance work at Saturn and had to rely on other members of his team to perform those jobs. Because of the deference that must be given the trial court who observed the witness and his demeanor while testifying, this judge must agree with the trial court's finding that Mr. Gill was unable to do the type of work he had performed for other electrical companies, that being the construction and installation of electrical service and equipment.

Saturn argues that the disability rating found by the trial court was excessive in view of the fact Mr. Gill had continued in his employment as a journeyman electrician continuously and without interruption as a result of his injury since June 1, 1991. As the Tennessee Supreme Court has stated, "[d]espite the employee's return to any employment, if 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, then that is what is meant by vocational disability for the purposes of Workers' Compensation." Corcoran v. Foster Auto GMC, Inc., 746 S.W.2d 452, 459 (Tenn. 1988). The trial court found Mr. Gill had sustained a forty-five percent vocational disability to the body as a whole. Because Mr. Gill's injury occurred on May 15, 1991, his award of benefits is not limited by the statutory caps set forth in Tennessee Code Annotated section 50-6-241(a)(1). While this panel may have reached a somewhat different result with regard to the extent of Mr. Gill's permanent disability, it is not our function to replace the trial court's judgment with our own. The legislature has given the trial court the presumption of correctness unless we find the evidence preponderates against the trial judge's findings, which, from a review of the evidence, we cannot do.

The judgment of the trial court is, therefore, affirmed. The costs of this cause shall be taxed to the Appellant, Saturn Corporation.

---

DONALD P. HARRIS, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
SEPTEMBER 29, 2006 SESSION

**ROBERT GILL v. SATURN CORPORATION**

Circuit Court for Maury County  
No. 11223

---

No. M2006-00428-WC-R3-CV - Filed -January 14, 2007

---

**JUDGMENT**

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 appeals 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 will be paid by the Appellant, Saturn Corporation, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM