

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

March 23, 2009, Session

KEVIN MILLEN v. MANAGEMENT CLEANING CONTROLS

**Direct Appeal from the Chancery Court for Shelby County
No. 06-1590-2 Arnold Goldin, Chancellor**

No. W2008-02078-SC-WCM-WC - Mailed June 18, 2009; Filed August 12, 2009

Employee was a passenger in an automobile, which was involved in a collision. It is undisputed that the accident arose from and occurred in the course of his employment. The trial court awarded future medical benefits but declined to award permanent disability benefits. We affirm the judgment.¹

**Tenn. Code Ann. § 50-6-225(e) (2008) Appeal as of Right;
Judgment of the Chancery Court Affirmed**

WILLIAM C. COLE, SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, C. J., and WALTER C. KURTZ, SR. J., joined.

Kevin Millen, Memphis, Tennessee, pro se.

J. Brent Moore, Nashville, Tennessee for the appellee, Management Cleaning Controls.

MEMORANDUM OPINION

Factual and Procedural Background

Kevin Millen worked as a janitor for Management Cleaning Controls (“Employer”). On March 15, 2006, he was a passenger in a vehicle driven by his supervisor from one job site to another when they were involved in a motor vehicle accident. It is undisputed that the event arose from and occurred in the course of employment.

¹ This workers’ compensation appeal has been referred to the Special Workers’ Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated § 50-6-225(e)(3) for a hearing and a report of findings of fact and conclusions of law.

Mr. Millen did not seek immediate medical attention. Shortly thereafter, he was seen by a chiropractor, apparently through his employer's workers' compensation coverage. Eventually, he was referred to Dr. Robert Bourland, an orthopaedic surgeon, who first examined him on May 8, 2006.

Dr. Bourland testified by deposition. He stated that Mr. Millen gave a history of being injured in a motor vehicle accident and of a subsequent incident in which his knee was injured in an altercation. Dr. Bourland testified that Mr. Millen complained of "pain everywhere all the time" and was very difficult to examine due to symptom magnification. Dr. Bourland diagnosed Mr. Millen with low back pain and myofascial strain and ordered physical therapy. Mr. Millen returned to Dr. Bourland on May 30, 2006, reporting that he was improved. Dr. Bourland released Mr. Millen from his care at that time. Dr. Bourland assigned no impairment and placed no restrictions upon Mr. Millen's activities.

The trial court ruled that the injury was compensable, but that Mr. Millen failed to prove permanent impairment. The court ordered future medical treatment to be provided. Mr. Millen has appealed, contending that the trial court erred by failing to award permanent disability benefits.

Standard of Review

This Court reviews a trial court's findings of fact in a workers' compensation case de novo with a presumption of correctness, "unless the preponderance of the evidence is otherwise." Tenn. Code Ann. § 50-6-225(e)(2) (2008). When the trial court has seen the witnesses and heard the testimony, especially where issues of credibility and the weight of testimony are involved, we must extend considerable deference to the trial court's factual findings. Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 167 (Tenn. 2002). We extend no deference to the trial court's findings when reviewing documentary evidence such as depositions, however. *Id.* As to questions of law, our standard of review is de novo with no presumption of correctness. Perrin v. Gaylord Entm't Co., 120 S.W.3d 823, 825 (Tenn. 2003).

Analysis

Mr. Millen asserts that he is in pain, which prevents him from working, and that he is the only person who can know the extent of his pain. He also argues that he should receive attorney's fees.

Despite Mr. Millen's assertions, the record is devoid of any evidence that his injury is permanent. "In all but the most obvious cases, such as the loss of a limb or of an eye, medical causation and the permanency of an injury must be established by expert medical testimony." Washington County Bd. of Educ. v. Hartley, 517 S.W.2d 749, 751 (Tenn. 1974). Dr. Bourland's deposition was the only expert medical proof placed into the record. He testified that Mr. Millen did not sustain a permanent impairment as a result of his work injury. In the absence of expert medical evidence to the contrary, the trial court's ruling is correct.

Conclusion

We conclude that the trial court correctly refused to award permanent disability benefits because Mr. Millen presented no evidence of permanent disability. The judgment of the trial court is affirmed. Costs are taxed to Kevin Millen, and his surety, for which execution may issue if necessary.

WILLIAM C. COLE, SPECIAL JUDGE

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ORDER

This case is before the Court upon the motion for review filed by Kevin Millen pursuant to Tenn. Code Ann. § 50-6-225(3)(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 Kevin Millen, and his surety, for which execution may issue if necessary.

PER CURIAM

JANICE M. HOLDER, C.J., not participating.