IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
KNOXVILLE, JULY 1996 SESSION

WESLEY EDDINS, SR.,	)	WASHINGTON CHANCERY
	)	
Plaintiff/Appellee	)	
	)	
v.	)	HON. J. RICHARD JOHNSON,
	)	CHANCELLOR
NORTH AMERICAN RAYON	)	
CORPORATION,	)	
	)	NO. 03S01-9602-CH-00016
Defendant/Appellant	)	

For the Appellants:

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For the Appellee:

Howell H. Sherrod, Jr.
249 East Main Street
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M E M O R A N D U M O P I N I O N

Members of Panel:

Penny J. White, Justice
Roger E. Thayer, Special Judge
Joe C. Loser, Jr., Special Judge

AFFIRMED. **THAYER, Special Judge**

This workers' compensation appeal has been referred to the Special

Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

The employer, North American Rayon Corporation, has appealed from the trial court's award of permanent disability benefits to plaintiff, Wesley Eddins, Sr. The Chancellor fixed the award at 45% to the body as a whole.

Two issues are presented on appeal. First, the employer contends the trial court was in error in allowing temporary total disability benefits. Second, it is argued plaintiff did not incur any permanent disability as a result of the alleged work-related injury.

Plaintiff is 29 years of age and is a high school graduate. He has been going to college for about two years attempting to rehabilitate himself for other types of employment. His college work would classify him as a sophomore. On about October 11, 1991, he was injured while at his work station when the floor gave away causing him to fall some distance below. He said the fall injured his back and he had immediate pain up and down his spinal cord and pain in his neck and legs.

He continued to work for about two weeks until his condition became worse; at one point, he testified, he could not move his legs; the company doctor took him off work duties on about November 8, 1991, and he had not returned to work as of the date of the trial on September 25, 1995; his chief complaint has been massive muscle spasms; he told the court his condition did not improve much until August-September 1994.

The record indicates he has seen many doctors, some have testified extensively in this proceeding and others appear in the record by medical reports, letters, etc., identified as collective exhibit #1.

The review of the case is *de novo* accompanied by a presumption of the correctness of the findings of fact unless we find the preponderance is otherwise. T.C.A. § 50-6-225(e)(2).

In connection with the issue concerning temporary total disability benefits, the trial court allowed benefits to run until January 28, 1993. The employer contends these benefits should have terminated on February 10, 1992. In saying the evidence preponderates against this finding, the employer cites the medical record of Dr. Jerry Gastineau, one of the first company doctors to see and treat plaintiff. Dr. Gastineau released plaintiff to return to work on February 10, 1992, finding he had reached maximum improvement and also finding there was no evidence of impairment or disability.

Conflicting with this opinion is the deposition testimony of Dr. Wayne M. Woodbury who first saw plaintiff during October 1994. Dr. Woodbury testified he reached maximum medical improvement during January 1993. Also, collective exhibit #1 contains a letter dated January 21, 1992, from Dr. Fred R. Knickerbocker to the insurance company saying the employee had not reached maximum medical improvement.

From our review of the record, we do not find the evidence to preponderate against the trial judge's finding on this point.

The employer insists the evidence preponderates against the trial judge's finding of permanent disability. There is conflicting evidence on this question also.

Dr. Dennis M. Aguirre, an anesthesiologist with a subspecialty in acute and chronic pain management, testified by deposition. He first saw plaintiff during June 1993 and found intense muscle spasms; he said plaintiff has a valid back dysfunction as a result of the accident and there was medical impairment; he did not give a medical rating but left that to the determination of other physicians; he did not continue other testing and/or treatments as plaintiff said he could not financially afford same.

Dr. Wayne M. Woodbury testified by deposition. He is a physician specializing in physical medicine and rehabilitation; he first saw plaintiff during October 1994 and testified his range of motion was extremely limited, that he

walked with difficulty; he was of the opinion his chronic back pain would continue; he said he had an impairment but did not give a rating.

Dr. Sheng Tchou, a specialist in physical medicine and rehabilitation, testified by deposition. He examined plaintiff on November 11, 1994 for the sole purpose of determining an impairment rating; he found muscle spasms on both sides of his lower back and gave a 22% medical impairment; he said plaintiff should be restricted from activities requiring frequent bending, stooping, twisting, prolonged standing or lifting more than ten pounds; he stated plaintiff could not return to his work with defendant but should re-educate himself or seek vocational training in order to find other employment.

Dr. Norman Hankins, a vocational rehabilitation witness, testified by deposition and was of the opinion plaintiff had an 81% vocational disability.

Dr. Freeman E. Broadwell, a physician of physical medicine and rehabilitation, testified by deposition. He first saw plaintiff early in the course of events on January 1, 1992, upon referral by one of the company doctors; he said x-rays showed no fractures, etc.; a CT scan showed mild bulging disc at L4-5 level and silent bulge at L5-S1 level; he did not detect any muscle spasm; and his diagnosis was low back strain with no impairment.

Dr. John Marshall, a physician of physical medicine and rehabilitation, testified by deposition. He first saw plaintiff a few days before the trial during September 1995, for the purpose of an independent examination. He found no impairment.

The above is a short summary of all expert witnesses who testified in this proceeding. Collective exhibit #1 contains reports, office notes, letters, etc. from other doctors who found no impairment.

Although our review is *de novo*, the question before us is whether the evidence preponderates against the findings of the trial court. It has often been stated in cases of this nature that the trial court must decide which medical testimony to accept where the evidence is conflicting. In making that decision, the court may consider the qualifications of the experts, the circumstances of

their examination, the information available to them and the evaluation of the importance of that information by other experts. *Orman v. Williams-Sonoma, Inc.*, 803 S.W.2d 672, 676 (Tenn. 1991).

Generally, the trial court is in a better position to judge credibility questions where oral testimony is involved but deposition testimony can be reviewed by the appellate court in the same manner as the trial court. *Landers v. Fireman's Fund, Inc.*, 775 S.W.2d 355, 356 (Tenn. 1989).

The trial court and three expert medical witnesses judged plaintiff's credibility concerning his numerous complaints of pain, etc. during his long interval of non-employment and resolved the issue in his favor. In reviewing and weighing all of the opposing evidence, we cannot conclude it preponderates against the evidence the court accepted.

Therefore, the judgment entered by the trial court is affirmed. Costs of the appeal are taxed to the defendant-employer and sureties.

_____
Roger E. Thayer, Special Judge

CONCUR:

_____
Penny J. White, Justice

_____
Joe C. Loser, Jr., Special Judge

IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE

WESLEY EDDINS, SR.,	)	Washington Chancery
	)	No. 29818
Plaintiff/Appellee,	)	
	)	Hon. J. Richard Johnson
V.	)	
	)	
	)	S. Ct. No. 03-S-01-9602-CH-0016
NORTH AMERICAN RAYON CORPORATION,	)	
	)	
Defendant/Appellant.	)	Affirmed.

JUDGMENT ORDER

This case is before the Court upon motion for review 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, which are incorporated herein by reference;

Whereupon, it appears to the Court that the motion for review is not well-taken and should be denied; 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.

Cost will be paid by Defendant/Appellant, and their surety, for which execution may issue if necessary.

It is so ordered this _____ day of _____, 1996.