IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE
(June 25, 1996 Session)

NEVA JEWEL MILAM,	)	DAVIDSON CHANCERY
	)	
Plaintiff-Appellant,	)	Hon. Robert S. Brandt,
	)	Chancellor.
v.	)	
	)	No. 01S01-9601-CH-00004
HCA HEALTH SYSTEMS, INC., d/b/a CENTENNIAL MEDICAL CENTER,	)	
	)	
Defendant-Appellee.	)	

For Appellant:

Joseph K. Dughman
Bruce, Weathers, Corley & Lyle
Nashville, Tennessee

For Appellee:

John D. Wood
Levine, Mattson, Orr & Geracioti
Nashville, Tennessee

M E M O R A N D U M O P I N I O N

Members of Panel:

Frank F. Drowota, III, Associate Justice, Supreme Court
Joe C. Loser, Jr., Special Judge
Hamilton V. Gayden, Jr., Special Judge

AFFIRMED

Loser, 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. section 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. In this appeal, the employee or claimant contends (1) the award of permanent partial disability benefits is inadequate and (2) the chancellor "erred as a matter of law by deciding, before any evidence had been heard or any witnesses testified, that the on-the-job accident had only a tangential relationship with" her injury. The employer seeks dismissal of the appeal because the claimant did not file a statement of the evidence and was not entitled to a copy of the transcript of the evidence. Because a transcript is part of the record on appeal, the issue raised by the employer must necessarily be considered first.

Unlike some other jurisdictions, Tennessee does not provide official court stenographers for civil trials. Instead, it is customary in this state that the parties to civil litigation will engage a stenographer and pay a per diem for stenographic services. Those parties who participate in the per diem may, for an additional fee, order from the stenographer a transcript of the evidence for use on appeal in case of an adverse decision in the trial court. The stenographer does not customarily make the transcript available to a party who did not participate in payment of the per diem. It is a matter of contract among the parties to the litigation and the non-party stenographer; and a party who does not join in the engagement and payment of a stenographer has no contract right to require the stenographer to transcribe the record which is therefore unavailable until made available on terms satisfactory to both the stenographer and the party or parties who engaged the stenographer. See Beef N' Bird of America, Inc. v. Continental Casualty Company, 803 S.W.2d 234 (Tenn. App. 1990).

Instead, a non-participating party may prepare a narrative statement of the evidence for use on appeal. The procedure for including a statement of the evidence in the record on appeal is provided by Tenn. R. App. P. 24(c). We find no statement of the evidence in the record.

In this case, the employer engaged the services of a stenographer - or court reporter - in the trial court and paid the full per diem. The claimant did not participate. When the chancellor issued his decision, however, she was dissatisfied with the outcome and decided to appeal. Instead of preparing a statement of the evidence, she applied to the trial court for an order requiring the employer to make a transcript available to her. The trial court granted the motion.

Appellate rules do not require that a party who has assumed the burden of providing a court reporter at trial make available that reporter's work for a party who did not join in providing the reporter; and, in the absence of unusual circumstances, the rules do not permit a party to see how his case comes out before deciding whether to share in the reporter's fees. One who follows that course runs the risk of not having a verbatim record available. See Estate of

Ruby Nichols, 856 S.W.2d 397 (Tenn. 1993).

Finding no unusual circumstances in the present case, we hold that the trial court should not have required the employer to make a transcript of the evidence available to the claimant and that this case is therefore before us without either a transcript or a statement of the evidence. Without a transcript or statement of the evidence, appellate courts must conclusively presume that the findings of fact by the trial court are supported by the evidence presented to that court. J. C. Bradford & Co. v. Martin Constr. Co., 576 S.W.2d 586, 587 (Tenn. 1979.

The extent of an injured employee's permanent disability and causal connection to an employee's work are issues of fact. From the state of this record, the chancellor's findings of fact and the award based on those findings are conclusively presumed to be correct and supported by competent evidence. The issues raised by the appellant are consequently resolved in favor of the appellee and the judgment is accordingly affirmed. Costs on appeal are taxed to the plaintiff-appellant.

_____

Joe C. Loser, Jr., Judge

CONCUR:

_____

Frank F. Drowota, III, Associate Justice

_____

Hamilton V. Gayden, Jr., Judge

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

NEVA JEWEL MILAM,	(	
	(	
Plaintiff-Appellant,	(	
	(	Davidson Chancery
	(	No. 94-2693-III
	(	
v.	(	Hon. Robert S. Brandt, Chancellor
	(	
HCA HEALTH SYSTEMS, INC., d/b/a CENTENNIAL MEDICAL CENTER,	(	No. 01S01-9601-CH-00004
	(	
	(	
Defendant-Appellee.	(	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.

Costs will be paid by plaintiff-appellant, for which execution may issue if necessary.

IT IS SO ORDERED this 23rd day of October, 1996.

PER CURIAM

Drowota, J. - Not participating.