

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

**FILED**  
  
October 17, 1996  
  
Cecil W. Crowson  
Appellate Court Clerk

RALPH D. WEST, )  
 )  
Plaintiff/Appellee )  
 )  
v. )  
 )  
SONIC DRIVE-IN and ANCO )  
INTERSTATE INSURANCE COMPANY,) )  
 )  
Defendants/Appellants )

SMITH CHANCERY  
  
NO. 01S01-9603-CH-00054  
  
Hon. C.K. Smith,  
Chancellor

**For the Appellants:**

W. Stuart Scott  
SunTrust Center, 14th Floor  
424 Church St.  
Nashville, TN 37219

**For the Appellee:**

Jacky O. Bellar  
212 Main St.  
P.O. Box 332  
Carthage, TN 37030

**MEMORANDUM OPINION**

**Members of Panel:**

Adolpho A. Birch, Chief Justice  
William H. Inman, Senior Judge  
William S. Russell, Special Judge

**AFFIRMED AS MODIFIED  
AND REMANDED**

**INMAN, Senior 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 plaintiff alleged that he injured his back on November 27, 1991 while employed as a cook. He sought medical treatment about one month later and in course was referred to Dr. Fonda Bondurant, an orthopedic surgeon in Lebanon, Tennessee, who performed a hemilaminectomy and discectomy on January 27, 1992. The surgery was successful, and the plaintiff was released to return to work on March 31, 1992. Utilizing the AMA Guidelines, Dr. Bondurant gave the plaintiff an impairment rating of eight percent "strictly because he had surgical intervention performed."

This case has been twice tried. The first trial was held on April 19, 1993 and ended with a non-suit after the plaintiff and his wife testified. The second trial was held on October 4, 1994 resulting in a finding that the plaintiff had a 32 percent vocational impairment. The defendant appeals and presents for review the issues of notice, occurrence, injury and disability. An issue involving the admission of certain Social Security records is also presented.

Our review is *de novo* on the record, accompanied with the presumption that the findings of fact of the trial court are correct unless the evidence otherwise preponderates. T.C.A. § 50-6-225(e)(2).

At the outset, we are constrained to observe that this 38-year-old man has testified three times; once upon discovery and twice in open court. His testimony is inconsistent and obviously underwent considerable fine-tuning during the interim between trials. The Chancellor expressed his dissatisfaction with certain aspects of the case, but in the end resolved the issues of notice and injury favorably to the plaintiff, chiefly because a reputable orthopedic surgeon took a history from the plaintiff two months after the injury and performed major corrective surgery on him. In any event the Chancellor is the best judge of the credibility of the plaintiff and we

defer to his evaluation of that virtue. *Walls v. Magnolia Truck Lines, Inc.* 622 S.W.2d 526, 528 (Tenn. 1981).

The plaintiff testified that he slipped and fell in the kitchen of the drive-in restaurant, hurting his back. He continued working for a month before seeking medical treatment as we have heretofore shown. About three years earlier, he had a similar injury at Taco Bell and claimed workers' compensation benefits; the employer is somewhat indignant that the plaintiff apparently concealed this activity, but it is of no moment to this case except for the credibility feature to which we have alluded.

The plaintiff has a remarkable work history. He has held a legion of jobs, quitting for a variety of reasons or for no reason at all. It is apparently justified to conclude that his work history ended when he made application on September 9, 1993 to the Social Security Administration for disability benefits claiming that he was permanently and totally disabled and alleging the onset of such disability to be April 18, 1993. The application was approved, and he was awarded benefits for total and permanent disability. The findings and decision of the administrative law judge became final, and the plaintiff is receiving benefits from the Social Security Administration. These records were objected to by the defendant as hearsay, since none of them is properly certified or authenticated, and the propriety of their consideration is presented for review.

The issue of notice is a close one. The plaintiff says that he gave no formal report of his accident but that the manager of the drive-in and other employees were aware of the occurrence. The manager, Sam O'Dell, did not testify. The Chancellor found that the "plaintiff gave oral notice which was uncontradicted," and we cannot find that the evidence preponderates against this finding since the element of credibility is pervasive.

Dr. Bondurant performed a hemilaminectomy and opined that the plaintiff retained an eight percent impairment as a result. Her testimony is not assailed in any manner, including her conclusion that the plaintiff had fully recovered and was

able to work. When the case is viewed in its entirety it is apparent that, assuming without deciding that the plaintiff has a substantial disability, such disability did not result from the on-the-job accident on November 27, 1991; the plaintiff represented to the Social Security Administration that his disability *dated from April 18, 1993*. We find the evidence preponderates against a finding of 32 percent impairment attributable to the on-the-job accident and preponderates in favor of a finding of 15 percent impairment. In view of our disposition of this case, we pretermite a discussion of the issue of whether the record of the Social Security procedures was properly admitted. The judgment is modified accordingly. Costs are assessed evenly, and the case is remanded for all purposes.

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William H. Inman, Senior Judge

CONCUR:

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Adolpho A. Birch, Chief Justice

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William S. Russell, Special Judge

IN THE SUPREME COURT OF TENNESSEE

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RALPH D. WEST,

Plaintiff/Appellee

vs.

SONIC DRIVE-IN and ANCO  
INTERSTATE INSURANCE CO.,

Defendants/Appellants

} SMITH CHANCERY  
No. 5463 Below  
}  
} Hon. C. K. Smith,  
} Chancellor  
}  
} No. 01S01-9603-CH-00054  
} AFFIRMED AS MODIFIED  
} AND REMANDED.

JUDGMENT ORDER

*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 appears 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 one-half by appellants and their surety; and one-half by appellee for which execution may issue if necessary.*

*IT IS SO ORDERED on October 17, 1996*

PER CURIAM

