

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT KNOXVILLE
(July 3, 1996 Session)

FILED
November 25, 1996
Cecil Crowson, Jr.
Appellate Court Clerk

ERNEST O. WOOD,)	BLOUNT CIRCUIT
)	
Plaintiff-Appellant,)	Hon. W. Dale Young,
)	Judge.
v.)	
)	No. 03S01-9601-CV-00007
ALUMINUM CORPORATION)	
OF AMERICA,)	
)	
Defendant-Appellee.)	

For Appellant:

Charles Watson Cross
Cross & Sir
Nashville, Tennessee

For Appellee:

Donelson M. Leake
Robert L. Bowman
Kramer, Rayson, Leake, Rodgers
& Morgan
Knoxville, Tennessee

MEMORANDUM OPINION

Members of Panel:

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

AFFIRMED

Loser, Judge

MEMORANDUM OPINION

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. Fairly stated, the issues in this appeal are whether the employee should have been awarded permanent partial disability benefits and additional temporary total disability benefits. The panel has concluded the judgment should be affirmed.

The employee or claimant, Wood, is a high school graduate who has worked for the employer, ALCOA, since approximately 1971. On June 7, 1991, while at work, he fell from the top of a tray of carbons, landing on his right side and injuring his right elbow, shoulder and hip.

He continued working for the employer, while being conservatively treated for a torn right rotator cuff, until August 15, 1991. The injury was surgically repaired September of the same year and the employee returned to work for the employer on or about May 8, 1992 with minor restrictions. He was laid off six weeks later and has not worked since July 6, 1992. Because of other illnesses, he is receiving disability retirement benefits. He has received temporary total disability benefits for the time he lost from work before the layoff. He has also received medical benefits as required under the workers' compensation law.

The medical proof as to whether the claimant's disability is causally related to his injuries is speculative and equivocal. In separate litigation, he claims to be disabled from asbestos-related lung disease. The trial judge disallowed the claim for disability workers' compensation benefits for insufficient proof that the disability is causally related to the injury at work.

Appellate review is de novo upon the record of the trial court, accompanied by a presumption of the correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. section 50-6-225(e)(2). Where the trial judge has seen and heard the witnesses, especially if issues of credibility and weight to be given oral testimony are involved, considerable deference must be accorded those circumstances on review. Humphreys v. David Witherspoon, Inc., 734 S.W.2d 315 (Tenn 1987).

Unless admitted by the employer, the claimant has the burden of proving, by a competent evidence, every essential element of his claim. Mazanec v. Aetna Ins. Co., 491 S.W.2d 616 (Tenn. 1973). Among other things, the claimant must prove that his injury arose out of and in the course of his employment by the employer.

In order to establish that an injury was one arising out of the employment, the cause of the death or disability must be proved; and, in all but the most obvious cases, causation may only be established by expert medical testimony. Thomas v. Aetna Life and Cas. Ins. Co., 812 S.W.2d 278 (Tenn. 1991). An award may not be based on conjecture or speculation. Collins v. Liberty Mutual Ins. Co., 561 S.W.2d 456 (Tenn. 1978).

We have carefully reviewed the record in the light of the above principles and have concluded that the evidence fails to preponderate against the findings and judgment of the trial court. The judgment of the trial court is accordingly affirmed. Costs on appeal are taxed to the plaintiff-appellant.

Joe C. Loser, Jr., Judge

CONCUR:

Penny J. White, Associate Justice

Roger E. Thayer, Judge

