IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE, JANUARY 1997 SESSION

GUY BREWER,	)	
	)	WAYNE CIRCUIT
Plaintiff/Appellant	)	
	)	NO. 01S01-9607--CV-00150
v.	)	
	)	HON. JIM T. HAMILTON,
CITY OF WAYNESBORO and	)	JUDGE
TML RISK MANAGEMENT POOL	)	
CLAIMS,	)	
	)	
Defendants/Appellees	)	

For the Appellant:

James Y. Ross
P.O. Box 246
106 Public Square North
Waynesboro, TN 38485

For the Appellees:

James A. Hopper
404 West Main Street
P.O. Box 220
Savannah, TN 38372

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

Members of Panel:

Frank F. Drowota, III, Justice
John K. Byers, Senior Judge
William H. Inman, Senior Judge

AFFIRMED and
REMANDED

BYERS, 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 employee appeals from the trial court's dismissal of his complaint for workers' compensation benefits for lack of notice.

We affirm the judgment of the trial court.

Plaintiff testified that he injured his back on May 6, 1993, while unloading 50-pound bags of chemicals in the course of his employment as water plant operator for the City of Waynesboro. He testified that his back began to hurt that evening and then continued to get worse. He testified that he informed Flora Locker, the city recorder, and Howard Riley, public works director, that he had hurt his back at work within two weeks of his injury. He further testified that Riley provided him with someone to assist him with lifting about two weeks after his May 6, 1993 injury.

Flora Locker testified that the plaintiff told her he hurt his back lifting bags of chemicals, but she was uncertain when he told her except that it was before his July 14, 1993 fall. She testified that she did not make a report of it because it was more than ten days after the accident, which was the time limit she had been told for reporting accidents; however, she also testified that he never told her when he had hurt his back.

Howard Riley denied ever having received notice from the plaintiff. A co-worker, David Maples, testified that Steve Colley, the city manager, told him about two weeks after May 6, 1993, to make sure that plaintiff did not have to do any lifting at work because plaintiff was having problems with his back.

Plaintiff first went to Dr. J.V. Mangubat, a general practitioner and surgeon, for treatment. Dr. Mangubat testified by deposition that plaintiff first complained of pain in his left hip radiating down his left leg in April 1993, which he attributed to arthritis. He saw plaintiff again on May 6, 1993 to remove sutures from a previous in-office excision. Plaintiff did not complain of back or leg pain at the time. Plaintiff returned on June 3, 1993, complaining of pain in both hips radiating down both legs with some

swelling in the legs. Dr. Mangubat continued to relate the pain to arthritis and, when plaintiff failed to improve after several visits, referred him to Dr. Rodriguez, an orthopedist specializing in rheumatology. Dr. Mangubat testified that plaintiff never told him of any traumatic injury at work or otherwise.

Dr. Rodriguez ordered a CAT scan, which revealed a large, right-sided disc herniation at L4-5. His notes do not indicate any report of a traumatic injury. He referred plaintiff to his associate, C. Douglas Wilburn, another orthopedist, who testified by deposition. Dr. Wilburn related plaintiff's back injury and permanent impairment to the work-related injury of lifting 50-pound bags of chemical related to him by plaintiff.

Our review is *de novo* on the record, accompanied by the presumption that the trial court's findings of fact are correct unless the preponderance of the evidence is otherwise. T.C.A. § 50-6-225(e)(2). The crucial facts surrounding the issue of notice in this case arise mostly from the testimony of live witnesses, whose credibility and the weight to be given to their testimony is determined by the trier of fact. We find the evidence does not preponderate against the finding of the trial judge.

We affirm the judgment of the trial court and remand for assessment of costs of appeal, which are taxed to appellant.

_____
John K. Byers, Senior Judge

CONCUR:

_____
Frank F. Drowota, III, Justice

_____
William H. Inman, Senior Judge

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

GUY BREWER,	}	*WAYNE CIRCUIT*
	}	*No. 3128-B-244 Below*
Plaintiff/Appellant	}	
	}	*Hon. Jim T. Hamilton,*
vs.	}	*Judge*
	}	
CITY OF WAYNESBORO and TML RISK MANAGEMENT POOL CLAIMS,	}	*No. 01S01-9607-CV-00150*
	}	
Defendants/Appellees	}	*AFFIRMED AND REMANDED.*

FILED

March 24, 1997

Cecil W. Crowson
Appellate Court Clerk

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 by Plaintiff/Appellant and Surety for which execution may issue if necessary.

IT IS SO ORDERED on March 24, 1997.

PER CURIAM