

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

FILED
February 21, 1997
Cecil W. Crowson
Appellate Court Clerk

DARIN M. POTTS,)
)
Plaintiff/Appellee)
)
v.)
)
BEAMAN BOTTLING COMPANY and)
LUMBERMENS MUTUAL CASUALTY)
COMPANY,)
)
Defendants/Appellants)

DAVIDSON CHANCERY
Hon. Irvin H. Kilcrease, Jr.,
Chancellor
NO. 01S01-9605-CH-00108
(No. 94-3724-I Below)

For the Appellants:

Richard C. Mangelsdorf, Jr.
2300 First American Ctr.
Nashville, TN 37238-2300

For the Appellee:

Philip W. Kendrick
5115 Maryland Way
Brentwood, TN 37027

MEMORANDUM OPINION

Members of Panel:

Chief Justice Adolpho A. Birch
Senior Judge John K. Byers
Special Judge William S. Russell

**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 trial judge found the plaintiff was 30% permanently partially disabled as a result of a work-related injury occurring on March 4, 1994. The trial court ordered the payment of temporary total disability benefits from May 23, 1994 through July 5, 1994. The trial court held that plaintiff was not entitled to reimbursement for unauthorized medical expenses.

Appellant challenges the award of permanent partial disability benefits and temporary total disability benefits. Appellee challenges the trial court's refusal to allow reimbursement for unauthorized medical expenses.

We affirm the trial court's judgment.

Plaintiff, 30 at the time of trial, has a tenth-grade education. He has worked mostly in construction and as a sales clerk in retail and convenience stores. On March 4, 1994, he felt pain in his right shoulder as he was lifting cases of three-liter Pepsi bottles. He told his supervisor, who told him to go to the hospital if he needed to do so. He went to Baptist Convenient Care the next morning, and they referred him to Dr. Robert Stein, an orthopedic surgeon. Plaintiff worked sporadically for defendant on light-duty tasks until June 27, 1994, when Dr. Stein released him to full duty. He worked for a portion of one day at full duty and then voluntarily quit working for defendant. Plaintiff began working for Burlington Coat Factory in June 1994.

At trial, plaintiff testified that he has constant pain and limited range of motion in his shoulders and neck. The employer put on various witnesses who testified to events which raised doubts as to the plaintiff's honesty in general, in a previous workers' compensation claim, and in this particular workers' compensation claim. The parties submitted the deposition testimony of four physicians.

Dr. Stein opined that the plaintiff did not suffer any permanent impairment as a result of a work-related injury. He opined plaintiff reached maximum medical improvement on July 5, 1994. He testified that an MRI revealed a fusion of C3-4, which he described as a congenital defect, and degenerative disc disease, which he also described as unrelated to trauma in his opinion.

Plaintiff went to see Dr. Winston Griner, a family practitioner and pain management specialist, on his own while he was being treated by Dr. Stein. Dr. Griner performed a neuroselective clinical evaluation and ordered an EMG. The EMG revealed C6-C7 radiculopathy. He assigned plaintiff a 15% impairment rating based on the AMA Guides. He also assigned him permanent restrictions: no lifting more than 15 pounds with his right arm or more than 15 pounds frequently; no repetitive bending; no working above his head; etc. Dr. Griner testified that the myelogram and MRI of plaintiff show no structural abnormalities in the C6-7 region.

Dr. Stein referred plaintiff to Dr. Weiss, a neurosurgeon, for neurological evaluation. He also opined that plaintiff had no permanent work-related impairment. Two EMGs taken subsequent to the one ordered by Dr. Griner do not reveal any abnormalities. He opined that the EMG ordered by Dr. Griner contains nonspecific "soft" findings which might not be found by another doctor. He testified that, under the AMA Guides, continued complaints of pain after six months would support an assessment of five percent impairment.

Dr. Benjamin Johnson, a pain management specialist, saw plaintiff on referral from Dr. Griner. He also assigned him a 15% impairment rating based on the AMA Guides. He based this impairment rating on the EMG report ordered by Dr. Griner and his objective findings of trigger points--palpable areas of muscle spasm--in plaintiff's shoulders and neck. He testified, upon seeing the subsequent EMG results, that they did not change his opinion.

Our review is *de novo* on the record, accompanied by the presumption of correctness of the findings of fact of the trial court, unless the preponderance of the evidence is otherwise. T.C.A. § 50-6-225(e)(2). This tribunal is equally well-

situated with the trial judge to gauge the weight, worth and significance of deposition testimony. *Seiber v. Greenbrier Industries, Inc.*, 906 S.W.2d 444, 446 (Tenn. 1995). However, we defer to the trial judge on issues of the credibility of witnesses seen and heard at trial.

Most of the appellant's objections to revolve around the plaintiff's lack of credibility; however, the trial court impliedly found plaintiff credible, since it accepted plaintiff's injury history after a clear challenge to plaintiff's credibility. We do not find the medical evidence preponderates against the trial court's finding of 30% permanent partial disability.

We find that the evidence does not preponderate against the trial court's award of temporary total disability benefits from May 23, 1994 to July 5, 1994, the date upon which Dr. Stein found the plaintiff to have reached maximum medical improvement.

We find the evidence does not preponderate against the trial court's finding that the plaintiff's medical treatment from Drs. Griner and Johnson was unauthorized and, thus, plaintiff is not entitled to reimbursement from the defendants for such treatment. The plaintiff could not specifically recall any conversation with defendant's human resources personnel or his supervisor in which he complained of his treatment under Dr. Stein. Mr. Lonnie Hillis, who was the defendant's human resources manager at the material times in this case, testified that plaintiff did not complain to him of Dr. Stein's treatment or ask if he could see another physician.

We affirm the judgment of the trial court. Costs are assessed to the appellants, Beaman Bottling Company and Lumbermens Mutual Casualty Company.

John K. Byers, Senior Judge

CONCUR:

Adolpho A. Birch, Chief Justice

William S. Russell, Special Judge

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DARIN M. POTTS,	}	DAVIDSON CHANCERY
	}	No. 94-3724-1 Below
Plaintiff/Appellee	}	
	}	Hon. Irvin H. Kilcrease, Jr.,
vs.	}	Chancellor
	}	
BEAMAN BOTTLING COMPANY	}	No. 01S01-9605-CH-00108
and LUMBERMENS MUTUAL	}	
CASUALTY COMPANY,	}	
	}	
Defendants/Appellants	}	AFFIRMED 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 by Defendants/Appellants and Surety, for which execution may issue if necessary.

IT IS SO ORDERED on February 21, 1997.

PER CURIAM