

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT KNOXVILLE
(December 3, 1996 Session)

FILED
March 4, 1997
Cecil Crowson, Jr.
Appellate Court Clerk

DANNY E. WILSON,)
)
Plaintiff-Appellant,)
v.)
CALVIN BURGESS LUMBER)
COMPANY,)
Defendant-Appellee.)

CUMBERLAND CHANCERY
Hon. Vernon Neal,
Chancellor.
No. 03S01-9604-00041

For Appellant:

S. Roger York
Crossville, Tennessee

For Appellee:

David J. Deming
Manier, Herod, Hollabaugh & Smith

MEMORANDUM OPINION

Members of Panel:

E. Riley Anderson, 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. In this appeal, the employee, Wilson, contends the evidence preponderates against the trial court's finding that his injury did not arise out of the employment. This panel affirms the trial court.

The employee or claimant worked for the employer, Burgess, as a log skidder operator. On May 29, 1994, at approximately 12:30 p.m., the claimant lost consciousness and became incontinent. When he regained consciousness, he told his employer he was ill and needed to go home. In his complaint, he claims his condition was caused by a faulty exhaust system on the skidder he was operating. It is undisputed the exhaust system on the skidder he had been operating was faulty. The defective part has since been replaced. The skidder did not have a closed compartment for the operator.

Although a toxicologist diagnosed brain damage caused by carbon monoxide poisoning, tests on the skidder produced carbon monoxide readings below the OSHA limit of no more than fifty parts per million for an eight hour exposure. A sample taken at two feet from the end of the exhaust pipe showed thirty parts per million and one taken sitting in the operator's seat, with a slit in the piece of flexible pipe that had a hole in it, showed two parts per million.

Moreover, another medical expert opined those levels were insufficient to cause brain damage to an operator in an open seat. Dr. Myron L. Mills, an occupational medicine specialist, further opined the claimant's injury was the result of a non-work-related seizure.

The trial judge dismissed the claim for insufficient proof of causation. Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. section 50-6-225(e)(2).

An accidental injury arises out of one's employment when there is

apparent to the rational mind, upon a consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Fink v. Caudle, 856 S.W.2d 952 (Tenn. 1993). Ordinarily, causation may only be established by expert medical testimony; and the trial judge has the discretion to determine which expert medical testimony to accept and which to reject. Kellerman v. Food Lion, Inc., 929 S.W.2d 333 (Tenn. 1996).

From our independent examination of the record and a consideration of applicable doctrines, we cannot say the evidence preponderates against the findings 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:

E. Riley Anderson, Associate Justice

Roger E. Thayer, Judge

IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE

DANNY E. WILSON,)	CUMBERLAND CHANCERY
)	NO.7887-10-94
Plaintiff/Appellant))
)	
vs.)	Hon. Vernon Neal
)	Chancellor
)	
)	
CALVIN BURGESS LUMBER)	03S01-96042-CH-00014
COMPANY.)	
)	
Defendant/Appellee.)	

JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Worker' Compensation 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 act and conclusions of law are adopted and affirmed, and the decision of the Panel is made the Judgment of the Court.

Costs on appeal are taxed to the plaintiff/appellant and surety, S. Roger York, for which execution may issue if necessary.

03/04/97

