

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
KNOXVILLE, FEBRUARY 1997 SESSION

**FILED**

April 23, 1997

Cecil Crowson, Jr.  
Appellate Court Clerk

STONE CONTAINER CORPORATION, )  
 )  
Plaintiff/Appellant )  
 )  
v. )  
 )  
NEIL GRIFFITH, )  
 )  
Defendant/Appellee )

HAMILTON CIRCUIT

Hon. William L. Brown,  
Circuit Judge

NO. 03S01-9609-CV-00094

**For the Appellant**

J. Bartlett Quinn  
Cynthia D. Hall  
800 Vine Street  
Chattanooga, TN 37403

**For the Appellee:**

Thomas L. Wyatt  
Summers, McCrea & Wyatt  
500 Lindsay St.  
Chattanooga, TN 37402

**MEMORANDUM OPINION**

**Members of Panel:**

E. Riley Anderson, Justice  
John K. Byers, Senior Judge  
Roger E. Thayer, Special Judge

**AFFIRMED**

**THAYER, Special 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 employer, Stone Container Corporation, has perfected this appeal from a decision of the trial court to award the employee, Neil Griffith, 10% permanent partial disability benefits to the body as a whole.

Temporary total disability benefits were paid until the employee returned to work during January, 1995, and the payment of medical expenses is also not an issue. The employer insists the evidence preponderates against a finding of permanent injury or disability.

The short record contains the oral testimony of the employee, and the depositions of three orthopedic surgeons.

Employee Griffith had worked for Stone Container Corporation for about twenty-five years when he sustained a work-related injury on November 28, 1994. On this day he was reaching down to pick up a heavy pallet when he felt pain across the top of his shoulder. The next morning he had pain in his left arm and was hospitalized a few days to determine if he was having or had a heart attack. Testing for this condition was negative and he was released.

He first came under the care of Dr. Lester F. Littell III, who was one of the three designated physicians of the employer. He found he had sustained a work-related injury but was of the opinion it would eventually clear up. He found no permanent impairment and did not place any restrictions on the patient.

Becoming dissatisfied with Dr. Littell, employee Griffith requested the company to furnish another physician for a second opinion. He was then seen by Dr. Neil H. Spitalny who found mild disc bulging at several levels as reported on a MRI report and said this was consistent with normal degenerative aging process of the cervical spine and discs. He was of the opinion there was no medical impairment. We do note his testimony indicates he saw him again on January 22, 1996, when he was still complaining of left shoulder pain and discomfort in the neck musculature.

Griffith finally chose a doctor and was seen by Dr. Richard B. Donaldson, who said he had read the medical reports of the other two physicians and was aware of the results of the various tests which had been performed. He gave a diagnosis of a strain of the neck, left shoulder girdle and left arm. He said since his pain complaints had lasted longer than seven months, he had chronic pain syndrome. Under the AMA Guidelines, this resulted in a 4% medical impairment rating. He recommended some therapy from time to time and medication as needed.

In rendering a decision, the trial court made specific findings that the employee was a very credible witness concerning his complaints of pain and commended him for his long employment service.

The review of the case is *de novo* accompanied by a presumption of the correctness of the findings of fact unless we find the preponderance is otherwise. T.C.A. § 50-6-225(e)(2).

In choosing which medical testimony to accept, the trial court may consider the qualifications of the experts, the circumstances of their examination, the information available to them and the evaluation of the importance of that information by other experts. *Orman v. Williams-Sonoma, Inc.*, 803 S.W.2d 672, 676 (Tenn. 1991).

Where the trial court has seen and heard witnesses and issues of credibility and the weight of oral testimony are involved, the trial court is in a better position to judge credibility and weigh evidence and considerable deference must be accorded to those circumstances. On the other hand, where evidence is introduced by deposition, the appellate court is in as good a position as the trial court in reviewing and weighing testimony. *Landers v. Fireman's Fund Ins. Co.*, 775 S.W.2d 355, 356 (Tenn. 1989).

In reviewing the record concerning the trial court's acceptance of testimony indicating a medical impairment based on a chronic pain syndrome, we find that Dr. Littell only saw the employee from December 12, 1994 to February 6, 1995, and was never in a position to diagnose this type of condition because of the short period of time involved.

Dr. Spitalny apparently did not consider a chronic pain syndrome diagnosis as there is no mention of it in his testimony. We cannot say the evidence preponderates against the findings of the trial court. Therefore, the judgment entered below is affirmed. Costs of the appeal are taxed to plaintiff-employer and sureties.

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Roger E. Thayer, Special Judge

CONCUR:

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E. Riley Anderson, Justice

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John K. Byers, Senior Judge

IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE

STONE CONTAINER CORPORATION,	)	HAMILTON CIRCUIT
	)	No.95LA0079
Plaintiff/Appellant,	)	
	)	
vs.	)	Hon. William L. Brown
	)	Judge
	)	
NEIL GRIFFITH, INC.	)	
	)	
Defendant/Appellee.	)	03S01-9609-CV-00094

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, J. Bartlett Quinn, for which execution may issue if necessary.

04/23/97