FILED

December 3, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

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

WAYNE M. CROWDER,	)	BRADLEY CHANCERY
	)	
Plaintiff/Appellee	)	NO. 03S01-9702-CH-00023
	)	
v.	)	HON. EARL H. HENLEY,
	)	CHANCELLOR
MAGIC CHEF COMPANY/	)	
MAYTAG CLEVELAND COOKING	)	
PRODUCTS, INC., Employer	)	
MUTUAL CASUALTY INSURANCE,	)	
	)	
Defendant/Appellant	)	

For the Appellant:

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For the Appellee:

R. Jerome Shepherd
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M E M O R A N D U M   O P I N I O N

Members of Panel:

Justice Adolpho A. Birch, Jr.
Senior Judge John K. Byers
Special Judge Irvin H. Kilcrease, Jr.

AFFIRMED

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 sustained a herniated disk and underwent two lumbar disk surgeries in 1995. The trial court found the back problem was work related and awarded 35 percent permanent partial disability.

We affirm the judgment of the trial court.

The Employee is now thirty six years old with seven years of formal education. He has fourteen years work experience in factory assembly for this Employer. Prior to that, he worked at a chicken farm and helped his father cut paper wood.

On May 4, 1995, he bent over a box at work and felt something "pop" in his low back. He went to the nurse's station, where a "deep heating rub" was applied and he was given an ice pack. He then went back to work, and he continued to work full time until July 1995.

In early July, after returning from the July 4th holiday, he experienced increased low back pain and went to the nurse at work again, where he received another deep heating rub. He testified that the pain in his lower back just kept getting worse and started going down his leg, so that he was unable to walk.

On July 23, 1995, he went to his family doctor because of the back pain, but he did not tell the doctor about his injury at work.

On August 2, 1995, the Employee was involved in an automobile accident and was treated by the same family doctor.

When his back pain did not improve, the Employee had an MRI of his lower spine on September 1, 1995. The MRI revealed "a large posterior herniated disc eccentric to the left at the 5-1 level with encroachment into the central canal with AP narrowing as well as eccentric encroachment into the neuroforamina and nerve root on the left." There were also degenerative disc changes.

The Employee testified that he was referred to an orthopedic surgeon and, when he discussed his work history and recent activities with the surgeon, they realized that the herniated disk was work related. He immediately reported this to his Employer.

The Employee subsequently underwent two back surgeries and is now back at work for the same Employer.

Dr. Richard B. Donaldson, a retired board-certified orthopedic surgeon and independent medical examiner, testified that he had no reason to question the Employee's credibility and opined that his work caused the herniated disk. He assessed 20 percent medical impairment.

The Employer contends that (1) the Employee's credibility was impeached, and (2) the doctor's opinion as to causation of his herniated disk which was based on that testimony was not sufficient evidence of causation.

The Employee testified that he saw the company nurse in June. The Employer's records indicate he saw her in May. However, when counsel re-called the Employee to the witness stand and questioned him about this discrepancy, he readily admitted that the Employer's records would be correct and he was simply mistaken about the date.

The Employer contends that the Employee's credibility is also impeached by his failure to report a work injury when he first saw his family doctor. However, the evidence proves that he reported the relationship between the work incident and his back problem as soon as his discussion with his surgeon made him aware of it.

Our review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise. TENN. CODE ANN. § 50-6-225(e)(2); *Stone v. City of McMinnville,* 896 S.W.2d 584 (Tenn. 1991).

Any conflict in testimony requiring a determination of the credibility of witnesses is for the trial court, whose decision thereon is binding upon the reviewing court unless other real evidence compels a contrary conclusion. *Jackson v. Bohan,* 861 S.W.2d 241 (Tenn. App. 1993); *State, ex rel Balsinger v. Town of Madisonville,* 435 S.W.2d 88, 91 (Tenn. 1968). Where the trial judge has seen and heard witnesses it is for him, not the appellate court, to determine issues of credibility, and his finding of fact in this regard is conclusive if there be any evidence to support it. *Walls v. Magnolia Truck Lines,* 622 S.W.2d 526 (Tenn. 1981).

The trial court found the Employee's testimony to be credible, and his testimony as to causation is supported by the testimony of Dr. Donaldson. Absolute certainty on the part of a medical expert is not necessary to support a worker's compensation award, and where equivocal medical evidence combined with other evidence supports a finding of causation, such an inference may be drawn under the case law. *Kellerman v. Food Lion, Inc.,* 929 S.W.2d 333 (Tenn. 1996); *Jackson v. Greyhound Lines, Inc.,* 734 S.W.2d 617 (Tenn. 1987).

We find the preponderance of the evidence supports the award of the trial judge, which is affirmed. Costs are assessed to the appellant.

____
John K. Byers, Senior Judge

CONCUR:

____
Adolpho A. Birch, Jr., Justice

____
Irvin H. Kilcrease, Jr., Special Judge

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

WAYNE M. CROWDER,	)	BRADLEY CHANCERY
	)	No. 95-269 Below
Appellee,	)	
	)	Hon. Earl H. Henley,
v.	)	Chancellor
	)	
	)	No. 03S01-9702-CH-00023
MAGIC CHEF COMPANY/	)	
MAYTAG CLEVELAND COOKING	)	
PRODUCTS, INC., Employer	)	
MUTUAL CASUALTY INSURANCE,	)	
	)	
Appellant.	)	AFFIRMED.

JUDGMENT ORDER

This case is before the Court upon motion for review pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), 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 motion for review is not well-taken and should be denied; 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 on appeal are assessed to the appellant.

IT IS SO ORDERED this ____ day of ______, 1997.

PER CURIAM

Birch, J. - Not participating.