

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

FILED

December 16, 1997

Cecil W. Crowson
Appellate Court Clerk

CRAIG RING,)	FRANKLIN CIRCUIT
)	
Plaintiff/Appellee)	NO. 01S01-9702-CV-00031
)	
v.)	HON. J. CURTIS SMITH,
)	JUDGE
CKR INDUSTRIES, INC. and THE)	
YASUDA FIRE & MARINE INSURANCE)	
COMPANY OF AMERICA,)	
)	
Defendants/Appellants)	
)	

For the Appellants:

A. Gregory Ramos
Janice Cimbalo
NORTH, PURSELL & RAMOS
Nashville, Tennessee

For the Appellee:

Floyd Don Davis
FLOYD DON DAVIS, P.C.
Winchester, Tennessee

MEMORANDUM OPINION

MEMBERS OF PANEL

LYLE REID, ASSOCIATE JUSTICE, SUPREME COURT
WILLIAM S. RUSSELL, RETIRED JUDGE
W. MICHAEL MALOAN, SPECIAL JUDGE

AFFIRMED

MALOAN, SPECIAL JUDGE

This Workers' Compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated §50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

The defendants, CKR Industries, Inc. and The Yasuda Fire & Marine Insurance Company of America, appeal the judgment of the trial court in finding the plaintiff, Craig Ring, sustained a compensable work-related injury and awarding permanent partial disability of twenty-five percent (25%) to the left arm. For the reasons stated in this opinion, we affirm the judgment of the trial court.

The plaintiff, Craig Ring, was 26 years of age at the time of this trial. He has a GED, no specialized job training, and a prior history of factory production work. Plaintiff worked for defendant, CKR Industries for 4 years prior to August 30, 1994, when he reported an injury to his left index finger and arm. He operated a press or machine at that time which required repetitive movement of both arms.

Dr. Mary Ellen Clinton, a board certified neurologist, examined and treated plaintiff after he had been seen and referred by numerous doctors. She gave various possible causes of plaintiff's problem, but stated his condition was not work-related.

Plaintiff was seen by Dr. Richard Fishbein, a board certified orthopedic surgeon, for the purpose of an independent medical evaluation. Dr. Fishbein was of the opinion the plaintiff's condition was ulnar neuropathy caused by his repetitive work. He assessed a permanent partial impairment of fifteen percent (15%) to the left upper extremity and assigned work restrictions of no lifting of more than 20 pounds on a regular basis and no more than 50 pounds on a very infrequent basis.

Plaintiff testified he really did not know how or when he hurt his finger and arm, but they first became painful at work on August 30, 1994. At trial, he complained of constant pain in his left elbow and numbness in the tip of his left index finger. Because of his work restrictions, he has been transferred to a lighter job at less pay. Plaintiff has taken up golf, built a deck on his house, and raced four wheelers since August, 1994.

At trial, the parties stipulated the date of the injury, notice, all medical bills and temporary total disability payments had been paid, and the appropriate weekly compensation

rate. The issues presented for trial were causation and extent of disability. After hearing the evidence, the trial court found the injury to be work-related and assessed a twenty-five percent (25%) permanent partial disability to the left upper extremity.

The scope of review of issues of fact is *de novo* upon the record of the trial court, accompanied by a presumption of correctness of the findings, unless the preponderance of evidence is otherwise. Tennessee Code Annotated § 50-6-225(e)(2). *Lollar v. Wal-Mart Stores, Inc.*, 767 S.W.2d 143 (Tenn. 1989). When a trial court has seen and heard witnesses, especially where issues of credibility and weight of oral testimony are involved, considerable deference must be accorded the trial court's factual findings. *Humphrey v. David Witherspoon, Inc.*, 734 S.W.2d 315 (Tenn. 1987). However, where the issues involve expert medical testimony which is contained in the record by deposition, as it is in this case, then all impressions of weight and credibility must be drawn from the contents of the depositions, and the reviewing court may draw its own impression as to weight and credibility from the contents of the depositions. *Overman v. Williams Sonoma, Inc.*, 803 S.W.2d 672, 676-77 (Tenn. 1991).

The plaintiff in a worker's compensation case has the burden of proving every element of his case by a preponderance of the evidence. *Elmore v. Traveler's Ins. Co.*, 824 S.W.2d 541, 543 (Tenn. 1992). 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, and occurs in the course of one's employment if it occurs when an employee is performing a duty he was employed to do. *Fink v. Caudle*, 856 S.W.2d 952 (Tenn. 1993). As to causation, our Supreme Court stated in *Tindall v. Waring Park Ass'n*, 725 S.W.2d 935, 937 (Tenn. 1987) as follows:

This Court has consistently held that causation and permanency of a work-related injury must be shown in most cases by expert medical evidence. Furthermore, by "causal connection" is meant not proximate cause as used in the law of negligence, but cause in the sense that the accident had its origin in the hazards to which the employment exposed the employee while doing his work. Although absolute certainty is not required for proof of causation, medical proof that the injury was caused in the course of the employee's work must not be speculative or so uncertain regarding the cause of the injury that attributing it to the plaintiff's employment would be an arbitrary determination or a mere possibility. If, upon undisputed proof, it is conjectural whether disability resulted from a cause operating within employment, there can be no award. If, however, equivocal

medical evidence combined with other evidence supports a finding of causation, such an inference may nevertheless be drawn by the trial court under the case law.

As in many worker's compensation cases, there is a conflict of medical testimony as to causation and degree of permanent impairment between a treating and an evaluating physician. While a treating physician's testimony is entitled to considerable weight, *Blanche Smith v. Bruce Hardwood Floors*, 21 TAM 40-4, No. 02501-95 12-CV-00130 (Tenn. 1996), no rule of law requires the trial court to accept the testimony of a treating physician over any other conflicting medical testimony. *Hayes v. School Calendar Co.*, 22 TAM 36-7, No. 03501-9609-CZ-00093 (Tenn. 1997).

The trial court stated in his decision from the bench, "I believe by a preponderance of the evidence the plaintiff has proved his case that this is a work-related injury." After a thorough review of the evidence in the record, we cannot say the evidence preponderates against the trial court's finding the plaintiff sustained a compensable work-related injury.

The next issue on appeal is the trial court's award of twenty-five percent (25%) permanent partial disability to the left arm. Tennessee Code Annotated §50-6-241(2)(1) requires the trial court to consider all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimants disabled condition in determining the extent of an injured worker's permanent disability. From a consideration of all these factors, we are not persuaded the evidence preponderates against the trial court's award of twenty-five percent (25%) to the left arm.

The judgment of the trial court is affirmed. This appeal is dismissed at defendant's cost.

W. Michael Maloan, Special Judge

Concur:

Lyle Reid, Justice

William S. Russell, Senior Judge

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AT NASHVILLE

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Plaintiff/Appellee

v.

CKR INDUSTRIES, INC., and
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INSURANCE COMPANY OF AMERICA

Defendants/Appellants

) Franklin Circuit No. 9235

)

) Hon. J. Curtis Smith,

) Judge

)

) Supreme Court No.

) 01-S-01-9702-CV-00031

)

) Affirmed

)

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FILED

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**Cecil W. Crowson
Appellate Court Clerk**

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.

Cost will be paid by defendant/appellant and surety, for which execution may issue if necessary.

It is so ordered this 16th day of December, 1997.

PER CURIAM

Reid, J., not participating