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

RICHARD KEVIN McCULLERS,	)	Bradley County Chancery
	)	
Plaintiff/ Appellee,	)	
	)	Cause No.
vs.	)	03S01-9703-CV-00027
	)	
COLONIAL WOOD PRODUCTS, INC.,	)	
	)	Hon. Earl H. Henley, Chancellor
Defendant/Appellant.	)	

For the Appellants:
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MEMORANDUM OPINION

Members of Panel:

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

KILCREASE, Special Judge

REVERSED AND REMANDED

MEMORANDUM OPINION

This worker's 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 of findings of fact and conclusions of law. In this appeal, the defendant, Colonial Wood Products, Inc., challenges the trial court's finding that the plaintiff's sciatic nerve injury was caused by his on-the-job accident.

For the reasons stated herein, we reverse the judgment of the trial court.

At the time of the trial, the plaintiff, Richard K. McCullers was 37 years old. In early 1995, the plaintiff began working for the defendant as a furniture painter. On November 22, 1995, he suffered an on-the-job injury when he caught a wood frame that fell from a buggy he was pushing. Approximately one week after the accident, the plaintiff was diagnosed with a left inguinal hernia and a traumatic left epididymitis. Both of these conditions eventually resolved through either antibiotics or surgery. The plaintiff suffered no permanent impairment or received any restrictions as a result of either condition.

On May 5, 1996, the plaintiff consulted Dr. Charles Hughes regarding pain, numbness and tingling in his left leg. He gave Dr. Hughes his history which included the November 22, 1995 injury. The plaintiff also told Dr. Hughes that he had lost twenty pounds in the previous six months. Dr. Hughes diagnosed the plaintiff to have a compressed sciatic nerve. He opined that the plaintiff's sciatica was brought on because he was so thin that, at 149 pounds, he did not have enough muscle and fat to prevent compression of the sciatic nerve. Dr. Hughes stated that the plaintiff's work injury of November 22, 1995 was not the cause of his condition. He assigned the plaintiff an impairment rating of 5% to his left leg and placed no restrictions on the plaintiff's physical activities. Dr. Hughes also indicated that the plaintiff's condition improved significantly over his course of treatment and that the plaintiff might completely recover.

At trial, the plaintiff again stated that he had lost a significant amount of weight and

attributed this weight loss to his on-the-job injury. However, medical records which are included in the record on appeal indicate that the plaintiff weighed 150 pounds several months before and one month after the injury.

In workers' compensation cases, the scope of review of this Court on issues of fact is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225 (e)(2). The plaintiff in a workers' compensation suit has the burden of proving every element of his case by a preponderance of the evidence. *Tindall v. Waring Park Association,* 725 S.W.2d. 935, 937 (Tenn. 1987). In all but the most obvious cases, causation may only be proved by expert testimony. *Dorris v. INA Insurance Company,* 764 S.W.2d 538 (Tenn. 1989). Dr. Hughes attributed the plaintiff's condition to his low weight and specifically ruled out the plaintiff's on-the-job accident as a cause for his condition. The plaintiff's testimony that he lost twenty pounds as a result of his injury at work is rebutted by the documentary evidence which shows a 1 pound difference in the plaintiff's weight before and after the accident. The evidence does not preponderate in favor of a finding that the plaintiff's sciatica or his thinness was caused by his November 22, 1995 on-the-job injury.

The only evidence in the record regarding the permanence of the plaintiff's injury is Dr. Hughes' statements. When he was asked whether he could give a reasonable range of time within which the plaintiff will recover, Dr. Hughes stated that "These are subjective findings and they don't have a predictable healing pattern that I can speculate about." This statement indicates that there is a possibility that the plaintiff's condition is not permanent. No statement made by Dr. Hughes suggests that the medical factors indicating permanence outweigh those to the contrary. *See Owens Illinois, Inc. v. Lane,* 576 S.W.2d 348, 350 (Tenn. 1978). The evidence does not preponderate in favor of a finding that the plaintiff's sciatic nerve injury is permanent.

Accordingly, the judgment of the trial court is reversed. Costs on appeal are taxed to the appellee.

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Irvin H. Kilcrease, Jr., Special Judge

CONCUR:

_____

Adolpho A. Birch, Jr., Justice

_____

John K. Byers, Senior Judge

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

FILED

March 23, 1998

Cecil Crowson, Jr.
Appellate Court Clerk

RICHARD KEVIN McCULLERS,	)	Bradley Chancery
	)	No. 96-084
Plaintiff-Appellee,	)	
	)	Hon. Earl H. Henley,
v.	)	Chancellor
	)	
COLONIAL WOOD PRODUCTS, INC.,	)	NO. 03S01-9703-CH-00027
	)	
Defendant-Appellant.	)	Reversed and Remanded

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 will be paid by the defendant-appellee.

It is so ordered this 23 day of March, 1998.

PER CURIAM

Birch and Reid, JJ., not participating