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

FILED

February 17, 1998

Cecil Crowson, Jr.
Appellate Court Clerk

CARL W. SIDES, Plaintiff/Appellee v. INSURANCE COMPANY OF NORTH AMERICA, Defendant/Appellant	))))))))))	BLOUNT CIRCUIT NO. 03S01-9703-CV-00031 HON. D. KELLY THOMAS, JR., JUDGE

For the Appellant:

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M E M O R A N D U M O P I N I O N

Members of Panel:

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

AFFIRMED and
REMANDED

BYERS, Senior Judge

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. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

The plaintiff filed this suit and alleged he had sustained permanent impairment to his eyes as the result of an injury in the course of his employment with the defendant.

The trial judge awarded the plaintiff a recovery in the amount of 30% permanent partial disability to both eyes. The defendant says the evidence preponderates against the judgment of the trial court.

We affirm the judgment of the trial court.

The plaintiff was age 60 at the time of trial. He had a high school education and was trained as a machinist and welder.

The plaintiff alleged he was injured by a welding arc on or about February 5, 1993. The plaintiff did not see a doctor until some three days after the alleged injury, when he was sent by the defendant to Dr. Louis Haun, an ophthalmologist.

Dr. Haun was of the opinion the plaintiff had not been injured by a welding arc. Dr. Haun suspected the plaintiff's eye problem was caused by exposure to chemicals and inquired of the plaintiff concerning exposure thereto. From this time, the case was tried by the plaintiff and defendant on the theory that the plaintiff was suffering from a condition known as dry eyes.[1]

The evidence of whether the injury to the plaintiff's eyes was causally connected to the exposure to chemicals at work is based upon the testimony of the plaintiff and three doctors.

The plaintiff testified that after Dr. Haun asked him to remember whether he had been exposed to any chemicals at work, he recalled coming into contact with chemicals specifically in the course of fluidizing a piece of equipment called a bed, which is used in the manufacturing process.

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[1] The plaintiff never filed an amendment to his petition to aver his injury was caused by chemical exposure. However, both parties tried the case on the theory of whether a chemical exposure did or did not cause the plaintiff's dry eyes. *See* Rule 15.02 Tenn. R. Civ. Proc.

Dr. Haun testified there were chemicals created by the manufacturing process in the defendant's plant and that he had previously seen other workers with eye problems which were treated by him.

The defendant offered no evidence to refute the claim that chemicals were present in the plant.

Dr. Haun testified the plaintiff had "dry eyes" as a result of exposure to chemicals. When asked if there was a causal connection between the exposure of the plaintiff to chemicals and the work environment, he said: "But I think the injury led to the onset of the symptoms, and I think the symptoms have persisted over time, and you tend to think there's a causal relationship there just because it's all related, you know." Dr. Haun testified he formed the opinion stated by him within a reasonable degree of medical certainty. Dr. Haun did not fix a permanent impairment rating for the injury.

Dr. K. L. Raulston, Jr., an ophthalmologist, found the plaintiff was suffering from dry eyes and that this was caused by chemical exposure. Dr. Raulston testified the plaintiff had a 39 percent loss of vision in the right eye and a 37 percent loss of vision in the left eye as a result of the injury. Dr. Raulston related this to be equivalent to a 50 percent whole body impairment.

Dr. David J. Harris, Jr., an ophthalmologist with extended training in cornea and eye disease which covers the field of cornea transplants, surgery of the eye and extended treatment of eye disease, saw the plaintiff also. Dr. Harris did not find the plaintiff's condition was caused by chemical exposure and did not find any permanent impairment.

We review the judgment of the trial judge *de novo* upon the record with a presumption of the correctness of the finding. Tenn. Code Ann. § 50-6-225(e)(2). We are required to make an in depth review of the record to see where the preponderance of the evidence lies. *Galloway v. Memphis Drum Serv.,* 822 S.W.2d 584 (Tenn. 1991).

The testimony of the plaintiff concerning the exposure to chemicals in the plant is unrefuted. Beyond this, the plaintiff testified in person and the trial judge accredited his testimony. We are bound by the finding that the plaintiff was exposed to chemicals in the work place.

In this case, the plaintiff had to establish the causal relationship between the injury and the occurrence at work by expert medical evidence. *Johnson v. Midwesco, Inc.,* 801 S.W.2d 804 (Tenn. 1990). The trial judge may, when there are differences in opinion of experts, accept the opinion of one or more of the experts and reject the opinions of other experts who testify. *Id.* In finding causation, the judgment may not be based upon medical evidence which is so far speculative as to make such a finding arbitrary. *Tindall v. Waring Park Ass'n,* 725 S.W.2d 935 (Tenn. 1987). However, in reaching a conclusion, the trial judge must consider the expert testimony in conjunction with the testimony of the employee and any other lay witnesses who testify. *Thomas v. Aetna Life & Casualty Co.,* 812 S.W.2d 278 (Tenn. 1991).

When there is evidence given by deposition, we may determine the credibility of the witnesses so testifying. *Landers v. Fireman's Fund Ins. Co.,* 775 S.W.2d 355 (Tenn. 1989).

The trial judge in this case credited the testimony of the plaintiff whom he saw and heard testify; the trial judge accepted the testimony of Dr. Haun and of Dr. Raulston that the injury was caused by the exposure of the plaintiff to chemicals while at work for the defendant; and the trial judge accepted the testimony of Dr. Raulston on the question of the extent and permanency of the injury to the plaintiff. We have reviewed the record as we are required to do and find the evidence does not preponderate against the judgment of the trial court.

The plaintiff raises an issue of payment of interest in the judgment from the date of its entry. Tenn. Code Ann. § 50-6-225(h)(1) provides for interest on the judgment. If the interest to which the plaintiff is entitled has not been paid, the trial judge shall enter an order requiring the defendant to pay the amount owed.

This case is remanded to the trial court for entry of any order necessary to carry out the judgment.

The cost of this appeal is taxed to the defendant.

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John K. Byers, Senior Judge

CONCUR:

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E. Riley Anderson, Chief Justice

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Roger E. Thayer, Special Judge

IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE

CARL W. SIDES,	(	
	(	
Plaintiff-Appellee,	(	Blount Circuit
	(	No. L-9917
	(	
	(	Hon. D. Kelly Thomas, Jr.,
v.	(	Judge
	(	
	(	S. Ct. No. 03S01-9703-CV-00031
	(	
INSURANCE COMPANY OF NORTH AMERICA,	(	
	(	
	(	
Defendant-Appellant.	(	AFFIRMED 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 Insurance Company of North America, for which execution may issue if necessary.

IT IS SO ORDERED this _____ day of February, 1998.

PER CURIAM

Anderson, C.J. - Not participating.