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

CRAIG WARRINGTON,	)	
	)	HUMBOLDT CHANCERY
Plaintiff / Appellant,	)	
	)	NO. 02S01-9703-CH-00024
v.	)	(No. : H-3585 below)
	)	
EMERSON ELECTRIC COMPANY,	)	HONORABLE GEORGE R. ELLIS,
	)	CHANCELLOR
Defendant / Appellee.	)	

For the Appellant:

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For the Appellee:

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MEMORANDUM OPINION

Members of Panel
Justice Janice Holder
Senior Judge John K. Byers
Special Judge Robert L. Childers

AFFIRMED **CHILDERS, 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 trial court granted the defendant's "Motion to Dismiss" finding that the plaintiff had failed to carry his burden of proof of causation between the alleged work injury and the permanent impairment. We find that the evidence preponderates in favor of the trial court's decision and we affirm.

The plaintiff alleged that "on or about" October 5, 1995 he sustained an injury when he twisted his neck and back, while running a press. Plaintiff was 42 years old at the time of the trial. He claimed that he had no pain or other problems with his neck and back prior to beginning work on October 3, 1995 at Emerson Electric Company. At approximately 10:00 a.m. on October 4, 1995, plaintiff claimed that he began experiencing pain in his neck and shoulder at which point he informed his supervisor, Jimmy Barber, that he was injured. The plaintiff did not receive medical attention at that time and continued to work the remainder of his shift on that day and the next. On Friday, October 5, 1995, plaintiff claims that he left a message on "the answering machine in the press room" that due to his pain he would not be at work and that he was going to see a doctor.

Plaintiff first saw Dr. Tettleton, a chiropractor in Humboldt, on Friday, October 5, 1995. Dr. Tettleton performed a manipulation on the plaintiff to temporarily relieve his pain. The following Monday, at plaintiff's behest, Dr. Tettleton arranged an appointment with Dr. Dirk Franzen, a neurosurgeon in Jackson, Tennessee. Dr. Franzen examined plaintiff and recorded his statement that he "had woken up about a week ago with a crick in his neck." More important, Dr. Franzen noted that the history given to him by the plaintiff mentioned no definite inciting events and no injuries. Dr. Franzen subsequently performed surgery on the plaintiff at the C5-6 disc which improved, but did not resolve the symptoms. Dr. Franzen assessed plaintiff's impairment at 11%.

Our review is *de novo* on the record accompanied by a presumption that the findings of fact made by the trial court are correct unless the evidence preponderates otherwise. TENN CODE ANN. § 50-6-225(e). The plaintiff in a workers' compensation suit has the burden of proving every element of his case by a preponderance of the

evidence. *Elmore v. Travelers Ins. Co*., 824 S.W.2d 541, 543 (Tenn. 1992); *Raines v. Shelby Williams Indus*., 814 S.W.2d 346 (Tenn. 1991). Furthermore, causation and permanency of a work-related injury must be shown in most cases by expert medical evidence. *Raines*, 814 S.W.2d at 349; *Tindall v.Waring Park Assoc*., 725 S.W.2d 935, 937 (Tenn. 1987); *Osborne v. Burlington Indus*., 672 S.W.2d 757 (Tenn. 1984); *Floyd v. Tennessee Dickel Distilling Co*., 225 Tenn. 65, 463 S.W.2d 684 (1971).

The medical evidence presented by the plaintiff in this case does not preponderate against the decision of the trial court. To the contrary, Dr. Franzen's record reveals that the history provided by Mr. Warrington mentioned no definite inciting events or injury. The plaintiff contends that his notice of injury to his supervisor on October 4, 1994 was sufficient to prove causation. However, lay testimony is a sufficient alternative to medical evidence to establish causation only when causation is "obvious." *Simpson v. Satterfield*, 564 S.W.2d 953, 956 (Tenn. 1978); *see also, Magnavox Co. v. Shepard*, 214 Tenn. 321, 379 S.W.2d 791 (1964). Based upon the evidence in the record, the lay testimony of the plaintiff is insufficient to carry the burden of establishing causation.

We find that the evidence in the record does not preponderate against the trial court's dismissal for failure to prove causation. Therefore, the judgment of the trial court is affirmed. The cost of this appeal is assessed to the plaintiff/appellant.

_____

Robert L. Childers, Special Judge

CONCUR:

_____

Janice M. Holder, Justice

_____

John K. Byers, Senior Judge

IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

CRAIG WARRINGTON,	)	HUMBOLDT CHANCERY
	)	NO. H-3585
Plaintiff/Appellant,	)	
	)	Hon. George R. Ellis,
vs.	)	Chancellor
	)	
EMERSON ELECTRIC COMPANY,	)	NO. 02S01-9703-CH-00024
	)	
Defendant/Appellee.	)	AFFIRMED.

FILED

January 7, 1998

Cecil Crowson, Jr.
Appellate Court Clerk

JUDGMENT ORDER

This case is before the Court upon 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 Memorandum Opinion of the Panel should be accepted and approved; 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 Appellant, and surety, for which execution may issue if necessary.

IT IS SO ORDERED this 7th day of January, 1998.

PER CURIAM

(Holder, J., not participating)