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

(June 29, 1998 Session)

BRUCE WESLEY LINK,	)	DAVIDSON CHANCERY
	)	
Plaintiff/Appellee	)	NO. 01S01-9710-CH-00217
	)	
v.	)	
	)	HON. CAROL L. MCCOY,
THE AEROSTRUCTURES CORPORATION,	)	CHANCELLOR
	)	
	)	
Defendant/Appellant	)	

For the Appellant:
Frederick W. Hodge
Court Square Building
300 James Robertson Parkway
Nashville, TN 37201-1107

For the Appellee:
James G. Stranch, III
Branstetter, Kilgore, Stranch & Jennings
227 Second Avenue North, 4th Flr.
Nashville, TN 37201-1631

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

Members of Panel:

Justice Frank F. Drowota, III
Senior Judge William H. Inman
Special Judge Joe C. Loser, Jr.

AFFIRMED

INMAN, Senior Judge

MEMORANDUM 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.

A finding of 12 percent disability to the plaintiff's left leg is derided by the employer who strenuously argues that the evidence strongly weighs against the judgment and that the claim for permanent, partial disability should be denied.

The plaintiff is 56 years old, and is a resident of Bowling Green, Kentucky. His vocational history reveals his talents for things mechanical: mill operator, aircraft assembler, machine shop supervisor, fabricator, turbine repair, back dump operator, precision grinder. He has also worked as an insurance salesman, automobile salesman and manager of a truck stop. He is experienced in computer fundamentals, blueprint and problem solving. All of this by way of his own testimony.

He alleged that he injured his left knee and hip as a result of slipping which jammed his knee into a machine.

His testimony was divergent; he testified that he slipped on a "metal thing" and fell, and complained only of his left knee.

The first report of work injury recites that the plaintiff reported a twinge in his left knee while stepping down from a machine on October 12, 1994. Several months earlier, in April, he complained of slipping and striking a fixture. He was treated by Dr. William Gavigan, an orthopedic specialist, who testified that x-rays of the plaintiff's knee were normal and an MRI study revealed no problems. An arthroscopic examination revealed no evidence of a

traumatic injury, but arthritic changes were evident. Dr. Gavigan expressed the opinion that the injury aggravated the arthritic condition resulting in an impairment of two percent to the leg.

The plaintiff returned to work with no complaints and under no restrictions.

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 548, 550 (Tenn. 1995). Where the trial judge has made a determination based upon the testimony of witnesses whom he has seen and heard, great deference must be given to that finding in determining whether the evidence preponderates against the trial judge's determination. *See Humphrey v. David Witherspoon, Inc.,* 734 S.W.2d 315 (Tenn. 1987).

The employer argues that it is undisputed that the plaintiff has fully recovered from any injury; that the arthritic condition pre-existed the alleged injury; that the plaintiff has no existing problems, and is now earning a higher wage than before his claimed injury, and that the impairment rating of two percent is *de minimis,* inferentially awarded to justify a long course of treatment.

Perhaps so, but we cannot substitute our judgment for that of the trial judge. In light of the fact that Dr. Gavigan testified that the injury aggravated a prior condition, which is not disputed, we are unable to find that the evidence preponderates against the judgment which is affirmed at the cost of the appellant.

_____
William H. Inman, Senior Judge

CONCUR:

_____
Frank F. Drowota, III, Justice

_____
Joe C. Loser, Jr., Special Judge

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

	}	*DAVIDSON CHANCERY*
BRUCE WESLEY LINK	}	*No. Below 96-712-I*
Plaintiff/Appellee	}	
	}	*Hon. CAROL L. MCCOY*
vs.	}	*Chancellor*
	}	
	}	*No. 01S01-9710-CH-00217*
THE AEROSTRUCTURES	}	
CORPORATION	}	
Defendant/Appell	}	*AFFIRMED*

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 Defendant/Appellant and Surety, for which execution may issue if necessary.

IT IS SO ORDERED on October 26, 1998.

PER CURIAM