

<p><b>FILED</b></p> <p><b>November 25, 1998</b></p> <p><b>Cecil W. Crowson</b> <b>Appellate Court Clerk</b></p>
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DONALD MAJOR,	)	Wayne County Chancery
	)	No. 9557
Plaintiff/Appellee	)	
	)	Hon. James L. Weatherford,
v.	)	Judge
	)	
LINCOLN BRASS WORKS,	)	S. Ct. No. 01-S-01-9802-CH-00021
	)	
Defendant/Appellant	)	AFFIRMED

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.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE  
(July 20, 1998 Session)

**FILED**  
  
November 25, 1998  
  
Cecil W. Crowson  
Appellate Court Clerk

DONALD P. MAJOR,	)	WAYNE CHANCERY
	)	
Plaintiff-Appellee,	)	Hon. James L. Weatherford,
	)	Judge
v.	)	
	)	No. 01S01-9802-CH-00021
LINCOLN BRASS WORKS,	)	
	)	
Defendant-Appellant.	)	

For Appellant:

Mark C. Travis  
Wimberly, Lawson & Seale  
Cookeville, Tennessee

For Appellee:

Larry R. Dorning  
Hohenwald, Tennessee

MEMORANDUM OPINION

Members of Panel:

Ben H. Cantrell, Special Justice  
William H. Inman, Senior Judge  
Joe C. Loser, Jr., Special Judge

AFFIRMED

Loser, 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. section 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. The employer, Lincoln Brass Works, insists the evidence at trial preponderated against the chancellor's finding that the injury was causally related to the employment. As discussed below, the panel has concluded the judgment should be affirmed.

In May of 1994, the employee or claimant, Major, felt a pop in his back while working and was referred by the employer to Dr. Douglas Wilburn, who diagnosed recurrent lumbar disc syndrome. When conservative care did not relieve the pain, the doctor surgically removed the injured disc.

After a trial on the merits, the chancellor found the injury to be compensable and awarded benefits, as provided by law. Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. section 50-6-225(e)(2). Where the trial judge has seen and heard the witnesses, especially if issues of credibility and weight to be given oral testimony are involved, considerable deference must be accorded those circumstances on review. Humphrey v. David Witherspoon, Inc., 734 S.W.2d 315 (Tenn. 1987).

Not every injury by accident which occurs in the course of employment is compensable; it is only compensable if it also arises out of employment, but

any reasonable doubt as to whether such an injury arises out of the employment should be resolved in favor of the employee. Reeser v. Yellow Freight System, Inc., 938 S.W.2d 690 (Tenn. 1997); Tapp v. Tapp, 192 Tenn. 1, 236 S.W.2d 977 (1951). Generally, an injury arises out of and in the course of employment if it has a rational causal connection to the work and occurs while the employee is engaged in the duties of his employment. Hall v. Auburntown Industries, Inc., 684 S.W.2d 614 (Tenn. 1985).

In all but the most obvious cases, causation may only be established through expert medical testimony. Masters v. Industrial Garments Mfg. Co., 595 S.W.2d 811 (Tenn. 1980). However, absolute certainty on the part of a medical expert is not necessary to support a workers' compensation award, for expert opinion must always be more or less uncertain and speculative; Stratton-Warren Hardware v. Parker, 557 S.W.2d 494 (Tenn. 1977); and, where equivocal medical evidence combined with other evidence supports a finding of causation, such an inference may nevertheless be drawn under the case law. Tindall v. Waring Park Ass'n, 725 S.W.2d 935 (Tenn. 1987).

In a workers' compensation case, a signed medical report, on a form established by the commissioner of labor, may be introduced in evidence, subject to compliance with statutory procedures. Tenn. Code Ann. section 50-6-235(c)(1) However, either party may obtain an order requiring a doctor to testify in person or by deposition. Tenn. Code Ann. section 50-6-235 (a) and (b).

The medical proof in this case consisted of the deposition of the operating

surgeon, Dr. Wilburn, and the medical report and deposition of Doctor Robert Barnett. Dr. Wilburn was not directly asked whether there was the requisite causal connection, but his testimony did include the following:

Q. As the operating surgeon when you do a disc excision, are you able to ascertain whether or not that disc excision is a result of trauma or degeneration?

A. No, they're both the same as far as being able to distinguish whether it was a traumatic episode or just a result of a degenerative process. We really cannot tell that. At the time of surgery, you basically rely on your patient's history.

Mr. Major's history was that of a traumatic event at work, superimposed upon a pre-existing injury. He testified and told his surgeon that, before the injury, he was able to work and was essentially free of symptoms. Moreover, Dr. Barnett stated unequivocally, in his report, that the injury was one arising out of the claimant's employment; and he was not discredited on cross-examination, when he was deposed.

For the above reasons, the evidence fails to preponderate against the findings of the trial court. The judgment is affirmed. Costs on appeal are taxed to the defendant-appellant.

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Joe C. Loser, Jr., Special Judge

CONCUR:

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Ben H. Cantrell, Special Justice

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William H. Inman, Senior Judge