IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT KNOXVILLE

WILLIAM ADKINS, CHANCERY	)	CAMPBELL
	)	
Plaintiff/Appellee	)	NO. 03S01-9804-CH-00042
	)	
v.	)	
	)	
BEECH GROVE PROCESSING COMPANY,	)	HON. BILLY JOE WHITE, CHANCELLOR
	)	
Defendant/Appellant	)	

For the Appellant:

Robert W. Knolton
105 Donner Drive, Suite B
P. O. Box 4459
Oak Ridge, TN 37831-4459

For the Appellee:

Charles B. Sexton
425 Industrial Lane
P. O. Box 4187
Oneida, TN 37841-4187

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

Members of Panel:
Justice Adolpho A. Birch, Jr.
Senior Judge William H. Inman
Special Judge Joe C. Loser, Jr.

AFFIRMED

INMAN, Senior 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.

William Adkins ["employee"] sustained a work-related low back injury superimposed upon a pre-existing degenerative disc condition. The work injury was followed by injuries sustained in a non-work-related automobile accident, and all of these conditions ultimately combined to render him totally and permanently disabled for Social Security Disability purposes. The trial court in this workers' compensation cause found him to be 50% vocationally disabled as a result of the accident at work, which the employer appeals.

We affirm the judgment of the trial court.

Employee, who is sixty years old, worked for eight years at Beech Grove Processing Company ["employer"] as a heavy equipment operator.

On March 26, 1992, he was operating a front end loader when the equipment malfunctioned and the bucket, which contained ten tons of lime, dropped against the body of the loader. The impact resulted in employee's low back injury, treated by Dr. George Stevens, an orthopedic surgeon.

Dr. Stevens testified by deposition that he first saw employee on March 31, 1992. He determined that employee had sustained a lumbosacral sprain with some radiculopathy involving the leg, but no ruptured disc. His examination and x-ray also revealed moderate degenerative changes and mild lumbar levoscoliosis, i.e., lateral curve of the spine, congenital and not work-related. He opined this type of deformity is usually not painful or disabling.

Dr. Stevens treated employee with an injection of the trigger point, prescribed anti-inflammatory medication and muscle relaxants, and started him

on physical therapy. On periodic follow-up visits, employee had continued pain with minimal therapeutic response, so Dr. Stevens ordered an MRI.

The MRI of October 23, 1992 revealed a concave configuration of multiple lumbar vertebrae with no acute compression deformity and no evidence of ruptured disc.[1] Dr. Stevens referred employee to Dr. Jeffrey Uzzle, a physician who specializes in physical medicine and rehabilitation, for further treatment, and last saw employee in July 1994. He opined that the employee had sustained from two to five percent permanent partial impairment, based on the information provided in the *AMA Guidelines for the Evaluation of Permanent Impairment, 4th Ed.* He placed no work restrictions on employee and testified, "We didn't specifically discuss that."

Dr. Uzzle testified by deposition that he first saw employee on January 7, 1993, for symptoms of lower back, left buttock and left lower extremity pain, burning, numbness and tingling going down into the left foot, treated prior to that date with anti-inflammatory medicines, Motrin, Elavil and a muscle relaxer. He felt that employee had strained his lower back region and should continue his medications and try a work-hardening program.

Employee had little, if any, progress in the work-hardening program. He had a lot of difficulty tolerating the physical activities involved, from a subjective standpoint, and Dr. Uzzle opined he may not have given a full effort. When employee completed the work-hardening program, Dr. Uzzle ordered a functional capacity evaluation [FCE], and last saw the employee on March 4, 1993, when he was released to return to work on March 8, 1993 with no restrictions.[2] His final diagnosis was chronic low back pain syndrome. He

---

[1]The lumbar deformity was a static deformity which existed prior to any injury.

[2]Dr. Fred Killefer described in his report how Dr. Uzzle had used the FCE results in assessing the extent of employee's impairment:

could not state within a reasonable degree of medical certainty that employee's back injury did not accelerate a pre-existing lumbar spondylosis, but he anticipated no work-related permanent physical impairment.

Independent medical evaluations were conducted for the employer by Dr. Fred Killefer, a neurosurgeon; and Dr. Rodney Caldwell, a vocational expert. The employee provided evaluations by Dr. John Purvis, a neurosurgeon; and Dr. Norman Hankins, a vocational expert.

Dr. Fred Killefer's evaluation of March 8, 1993 was evidenced by his three-page medical report. He opined that employee's low back problem:

> has now gone on for a full year . . . two prolonged and relatively intensive efforts at physical therapy . . . no specific underlying pathology of note has been uncovered . . . reasonable to release this man as of today to return to his regular work without restrictions . . . I would estimate that he has a two percent permanent impairment to the body as a whole based on greater than six months of medically documented lumbar symptoms with minimal changes.

Dr. John Taylor Purvis testified by deposition that he evaluated employee on July 14, 1993, at which time employee told him that he had been released to return to full work by another doctor but had so much pain that he was forced to quit his job. Examination revealed employee's back flexion to be limited at 50 degrees with pain in the back, left hip and on left leg lift. Sensory exam was normal and coordination and motor power were good. Heel and toe standing were well performed. Dr. Purvis reviewed the MRI scan, which revealed spondylosis or osteoarthritis essentially at L5-S1 with no evidence of a ruptured disk. He opined the employee seemed to have lumbarization of the first sacral segment, i.e., "the sacral segments are all tied together and are solid bone." He

---

> "at the end of this [work-hardening], a Functional Capacity Evaluation was done *which graded Mr. Adkins out at Light work.* However, it was the opinion of the evaluator that Mr. Adkins did not perform up to his capabilities during this evaluation and *therefore Dr. Uzzle has released him to return to his normal work without restrictions"* [emphasis added].

opined employee had ten percent permanent partial impairment to the body as a whole as a result of his injury and its acceleration of his lumbar spondylosis, based upon the *AMA Guidelines for the Evaluation of Permanent Impairment, 4th Ed.* He specifically disagreed with the medical report of Dr. Killefer on a number of issues: (1) Dr. Purvis opined the employee should not work on heavy equipment, drive heavy equipment, drive a truck or do any kind of heavy lifting, repeated bending, stooping, kneeling or being in unusual cramped positions. (2) As to diagnosis, he testified that employee sustained both a muscle strain and an aggravation of his osteoarthritis as a result of the work accident. (3) As to extent of permanent impairment, he opined that Dr. Killefer's assessment failed to consider employee's limitation of motion, although the report acknowledged that his motion was limited. Specifically, he testified:

> "Dr. Killefer generally does not recognize spondylosis or osteoarthritis and does not recognize aggravation of osteoarthritis as a cause for symptoms in these patients and as a cause for a problem in those patients, whereas in my opinion it is a cause for problems . . . I guess you could almost, well, call it a philosophical difference in injuries, as to what Dr. Killefer thinks and what I believe."

As stated, two vocational experts testified: Dr. Norman Hankins testified live at trial on behalf of employee, and Dr. Rodney Caldwell testified by deposition on behalf of the employer.

Dr. Hankins testified that he saw the employee for a vocational evaluation on December 5, 1995, at which time he reviewed the medical depositions of Drs. Uzzle, Stevens and Purvis. He conducted various tests and interviewed the employee. He opined that the employee's work history includes medium to heavy work, that he reads on the 6th grade level and does arithmetic on the third grade level, and that his IQ is 80, or low average. Clerical tests and finger dexterity tests indicated he is not a good candidate for fine assembly or factory

work. The Rey Memory Test indicated he gave a good effort. Considering Dr. Purvis' limitations, he opined employee would be 81% vocationally impaired as compared to his pre-injury condition. He testified that since Drs. Uzzle, Killefer and Stevens placed no work restrictions on employee's return to work, and since vocational impairment is based on such restrictions, he would not be able to assess any vocational disability if he considered their reports rather than Dr. Purvis' report.

Dr. Rodney Caldwell testified by deposition that he reviewed the reports of Drs. Stevens, Uzzle, Purvis, Killefer and vocational specialist Hankins, as well as physical therapy records from Comp Rehab, Peak Performance and Clinton Physical Therapy, and two depositions of the employee. He also examined the employee on November 25, 1997 at the employer's request, in the office of the employee's attorney.

Dr. Caldwell testified that, considering his examination, testing, and review of the medical and vocational testing records, in his opinion the employee would have a vocational disability of 50 to 55 percent.

The employee testified at trial that he was 60 years old, had a high school education, a few weeks' vocational training right after high school at a heavy equipment school which went out of business, and work experience as a coal company laborer, automobile assembly line at General Motors in Baltimore, Maryland, coal miner, rail car loader, four years in the Merchant Marines (30 years ago) unloading boats, and 25 years as a heavy equipment operator.

He testified that after this back injury at work, he saw Dr. Stevens for about three years. He was off work for ten or eleven months, and then went back to work for three weeks. While working, he took numerous prescription medications for pain, and ". . . I just couldn't do it. I mean, the pain was so

great, I couldn't. I was in just constant pain, but it wasn't - - I mean, it was just all day . . . I quit at 10:00 o'clock in the morning . . . I just couldn't take it."

The trial court found that the employee had sustained a work-related permanent partial vocational disability amounting to 50 percent to the body as a whole, which the employer argues is excessive.

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). The extent of vocational disability is a question of fact to be determined from all of the evidence, including lay and expert testimony. *Worthington v. Modine Mfg. Co.,* 798 S.W.2d 232, 234 (Tenn. 1990). The trial court has the discretion to accept the opinion of one medical expert over another. *Johnson v. Midwesco, Inc.,* 801 S.W.2d 804, 806 (Tenn. 1990). When the medical testimony is presented by deposition, this Court is able to make its own independent assessment of the medical proof to determine where the preponderance of the evidence lies. *Cooper v. INA,* 884 S.W.2d 446, 451 (Tenn. 1994); *Landers v. Fireman's Fund Ins. Co.,* 775 S.W.2d 355, 356 (Tenn. 1989).

We have carefully reviewed the medical evidence and the lay testimony and conclude that the preponderance of the evidence supports the findings and judgment of the trial court, and the judgment is affirmed. Costs are assessed to the appellant.

_____

William H. Inman, Senior Judge

CONCUR:

_____

Adolpho A. Birch, Jr., Justice

_____

Joe C. Loser, Jr., Special Judge

IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE

FILED

March 5, 1999

Cecil Crowson, Jr.
Appellate Court
Clerk

WILLIAM ADKINS,	)	CAMPBELL CHANCERY
	)	No. 14,067
Plaintiff-Appellee,	)	
	)	
	)	No. 03S01-9804-CH -00042
v.	)	
	)	
BEECH GROVE PROCESSING	)	
COMPANY,	)	Hon. Jeffrey F. Stewart
	)	Chancellor
Defendant-Appellant.	)	

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 facts and conclusions of law are adopted and affirmed, and the decision of the Panel is made the Judgment of the Court.

Costs on appeal are taxed to the appellant,Beech Grove Processing Company, and Robert W. Knolton,surety,for which execution may issue if necessary.

03/05/99