IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE JANUARY 1999 SESSION

FILED

March 18, 1999

Cecil Crowson, Jr.
Appellate Court
Clerk

J. R. WEST,	)	BRADLEY CHANCERY
	)	
Plaintiff/Appellee,	)	NO. 03S01-9803-CH-00026
	)	
v.	)	
	)	
MAYTAG, INC.,	)	HON. EARL H. HENLEY,
	)	CHANCELLOR
Defendant/Appellant	)	

For the Appellant:

Denny E. Mobbs
P. O. Box 192
55-1/2 First Street, NE
Cleveland, TN 37364-0192

For the Appellee:

James F. Logan, Jr.
30 Second Street
P. O. Box 191
Cleveland, TN 37363-0191

MEMORANDUM OPINION

Members of Panel:

Justice Frank F. Drowota, III
Senior Judge William H. Inman
Senior Judge John K. Byers

MODIFIED 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.

The plaintiff sustained an injury at work in 1988 when a barrel fell off a truck and he tried to stop it with his foot, causing him to be "thrown down on concrete." He originally reported left hip and thigh pain to his doctor, but in 1993 he began complaining mostly of knee pain and of his knee "giving way and locking up." When his orthopedic specialist ordered an arthroscopic procedure for his knee, the employer refused coverage, contending the knee problem was not caused by his work accident. The trial court found the knee condition to be work-related and awarded benefits, which the employer appeals.

We affirm the decision of the trial court.

The plaintiff, now 70 years of age, began working for Maytag, Inc. in 1959 and retired in 1991. In 1988 he sustained an on-the-job injury when he stopped a container of acid, which was rolling down a ramp, with his hip and leg. Maytag paid his accident-related medical bills until February of 1995, when this dispute arose as to medical treatment for his left knee.

Plaintiff testified that he had problems with his knee "giving way" soon after the accident, and that he reported these problems to his employer but made no complaint to his treating doctor, who treated him with steroids and other medication for his hip injury.

Dr. Daniel Johnson, a board-certified orthopedic surgeon, who has treated plaintiff from the time of his injury up to the time of trial, testified by deposition

that in 1993 the plaintiff first began complaining about knee pain and his knee giving way and locking up.

In March 1994, Dr. Johnson admitted the plaintiff to Bradley County Memorial Hospital and performed a left knee arthroscopy. During the exploratory procedure, a displaced bucket handle tear of the left medial meniscus was found and a partial medial meniscectomy was performed.

When asked for his a medical opinion about whether or not the knee condition was related to the injury which plaintiff sustained at work, he testified:

> "I think it's a reasonable assumption. I can't say anything for sure. But a mechanism, when he tried to stop a barrel with his leg, can cause a cartilage tear. He put up with the symptoms for several years until it actually locked up on him. And that's very typical of a torn cartilage."

On cross-examination, Dr. Johnson admitted that he initially thought plaintiff's knee pain was probably not work-related. However, the plaintiff told him that his knee had never bothered him before the injury, and Dr. Johnson then discussed the matter with Maytag, advising them that

> ". . . I thought that there was a possibility that yes he could have an injury related to work but I couldn't tell you for sure. And yes, I agree, he had had some knee symptoms before, the initial complaints were not specifically to the knee. But a torn cartilage can sneak up on you. Be torn for some years and only later tear significant enough to then warrant surgery. . . I don't have a reasonable certainty. I think there is a reasonable connection, but not certainty."

Our 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).

In order to be eligible for workers' compensation benefits, an employee must suffer "an injury by accident arising out of and in the course of employment which causes either disablement or death." Tenn. Code Ann. § 50-6-102(a)(5). The phrase "arising out of" refers to causation. The causation requirement is satisfied if the injury has a rational, causal connection to the work. *Reeser v. Yellow Freight Sys., Inc.*, 938 S.W.2d 690, 692 (Tenn. 1997). Although causation cannot be based upon merely speculative or conjectural proof, absolute certainty is not required. Any reasonable doubt in this regard is to be construed in favor of the employee. We have thus consistently held that an award may properly be based upon medical testimony to the effect that a given incident "could be" the cause of the employee's injury, when there is also lay testimony from which it reasonably may be inferred that the incident was in fact the cause of the injury. *Id.*

Dr. Johnson's testimony as to causation was bolstered by the plaintiff's testimony, who testified that his knee problems began at the time of the original injury, but that since his hip was his major concern at that time, he did not seek medical attention for the knee until it worsened to the point of requiring attention. The trial judge found this testimony to be credible.

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).

We agree with the trial court that Dr. Johnson's speculative medical testimony, when coupled with the plaintiff's testimony, sufficiently proved

work-related causation of the plaintiff's medial meniscus tear. Accordingly, the judgment of the trial court is affirmed at the costs of the appellant.

_____
William H. Inman, Senior Judge

CONCUR:

_____
Frank F. Drowota, III, Justice

_____
John K. Byers, Senior Judge

IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE

FILED

March 18, 1999

Cecil Crowson, Jr.
Appellate Court
Clerk

J.R. WEST,	)	BRADLEY CHANCERY
	)	No. 95-219
Plaintiff-Appellee,	)	
	)	
	)	No. 03S01-9803-CH -00026
v.	)	
	)	
MAYTAG, INC.,	)	Hon. Earl H. Henley
	)	Chancellor
Defendants/Appellants.	)	

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, Maytag, Inc and Denny E. Mobbs,for which execution may issue if necessary.

03/18/99