

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

FILED May 5, 1999 Cecil Crowson, Jr. Appellate Court Clerk

CHRISTOPHER SCOTT SLACK, CIRCUIT)	MONROE
)	
Plaintiff/Appellant)	NO. 03S01-9801-CV-00011
)	
v.)	
)	
G.UB.MK CONSTRUCTORS and ARGONAUT INSURANCE COMPANY,)	HON. JOHN B. HAGLER, JUDGE
)	
Defendants/Appellees)	
)	

For the Appellant:

Larry B. Nolen, P.C.
106 Washington Avenue NE
Athens, TN 37303

For the Appellee:

Kristi D. McKinney
Kennerly, Montgomery & Finley, P.C.
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Knoxville, TN 37901

MEMORANDUM OPINION

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.

The plaintiff alleged that he injured his low back while lifting on February 14, 1996 in a job-related accident. After receiving the testimony by deposition of Dr. David Hague, the trial judge found that the plaintiff's back problems were congenital and not attributable to his employment. The complaint was dismissed and the plaintiff appeals.

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).

The restated issue is whether the preponderance of the evidence supports the finding that the work-related accident did not accelerate or otherwise change the pre-existing spondylolisthesis.

Dr. Hague testified that an MRI scan revealed a congenital grade one spondylolisthesis with bilateral pars defects which he treated with epidural blocks and a brace. He "presumed" that the disc protrusion with nerve root compression was due to the work injury, but was unable to confirm this presumption clinically. The diagnosis of spondylolisthesis was initially made in 1985 when the plaintiff was treated for injuries sustained in an automobile accident. He opined that the plaintiff had an unoperated grade one spondylolisthesis with medically documented injury and medically documented pain and muscle spasm that would give him a seven percent impairment to the

body as a whole. Dr. Hague testified that the bulging disc was not job-related, and that the pre-existing spondylolisthesis was merely rendered symptomatic by the February 14, 1996 accident, with no permanent anatomical changes in the underlying condition.

Permanency and causation of an injury must be established by expert medical testimony. *Tindall v. Waring Park Ass'n.*, 725 S.W.2d 935 (Tenn. 1987). We are as well able to judge depositions testimony as the trial judge, *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), and having done so, we are unable to find that the evidence preponderates against the finding of the trial judge that the medical proof failed to demonstrate job-related causation of plaintiff's back problem.

The judgment of the trial court is affirmed at the costs of the appellant.

William H. Inman, Senior Judge

CONCUR:

Adolpho A. Birch, Jr., Justice

Joe C. Loser, Jr., Special Judge

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CHRISTOPHER SCOTT SLACK,)
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) PLAINTIFF/APPELLANT,)
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) HON. JOHN B. HAGLER, JUDGE
v.)
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)
) G.UB.MK CONSTRUCTORS AND) S. CT. NO. 03S01-9801-CV-00011
) ARGONAUT INSURANCE COMPANY,)
)
) DEFENDANTS/APPELLEES.) AFFIRMED

<p>FILED</p> <p>May 5, 1999</p> <p>Cecil Crowson, Jr. Appellate Court Clerk</p>
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JUDGMENT

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.

Costs will be paid by Appellant, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM

BIRCH, J. NOT PARTICIPATING

