IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
KNOXVILLE, MAY 1999 SESSION

FILED

August 4, 1999

Cecil Crowson, Jr.
Appellate Court
Clerk

C. DOUGLAS GIBSON	)	HAWKINS CIRCUIT
	)	
Plaintiff/Appellant	)	
	)	
V.	)	Hon. Ben K. Wexler,
	)	Circuit Judge
WILLIAM GIBSON	)	
(MORRISTOWN DRIVERS SERVICE)	)	
	)	
Defendant/Appellee	)	No. 03S01-9806-CV-00064

For the Appellant:

Phillip L. Boyd
108 South Church St.
P.O. Box 298
Rogersville, Tenn. 37857

For the Appellee:

Robert A. Crawford
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P.O. Box 2485
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M E M O R A N D U M O P I N I O N

Members of Panel:

Frank F. Drowota III, Justice
John K. Byers, Senior Judge
Roger E. Thayer, Special Judge

AFFIRMED.

THAYER, Special 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 employee, C. Douglas Gibson, has appealed from the action of the trial court in dismissing his claim for permanent disability benefits.

The sole issue on appeal is whether the evidence preponderates against the conclusion of the trial court.

Plaintiff was 47 years of age and had completed the 9th grade. He was employed by defendant, William Gibson, as a truck driver. On August 9, 1995, he fell while descending from his truck. He testified he felt immediate pain in his low back and felt it resulted more from the twisting movement of his body rather than the impact with the ground.

He reported the incident to his employer, saw a doctor shortly thereafter and was eventually seen by several doctors between the date of the accident and the trial during September 1997.

Plaintiff's wife and daughter testified as to his physical limitations since the incident and the record indicates plaintiff never returned to work for defendant.

Dr. Christopher R. Morris, a physician specializing in internal medicine and rheumatology, first saw plaintiff on October 24, 1995 and found some tenderness in his back muscles but thought he had a good range of motion. He saw him on several occasions and testified by deposition stating that all studies (x-ray and C.T. Scan) were normal. He felt his back pain was of a chronic nature and opined he had some permanent impairment but did not have an opinion as to any percentage of impairment.

Dr. John M. Marshall, a physical medicine and rehabilitation doctor, first saw plaintiff on December 6, 1995 upon referral by Dr. Morris. He testified by deposition and stated there were no positive findings from his examination and the various studies performed. He was of the opinion he probably had a strain which would eventually clear up. He could not relate any of his symptoms to the incident at work and stated there was no permanent impairment.

During January 1996 plaintiff had M.R.I. study which indicated a bulge of the disc at the L4-L5 level in the back. Dr. Morris stated it was either a disc extrusion or annular bulge causing mild narrowing of the spinal canal and that it could have resulted from the incident at work. Dr. Marshall testified the study indicated osteoarthritis and degenerative disc disease and a possible disc extrusion versus a bulge; that an extrusion or bulge can be normal; that when he considered the M.R.I. study along with the history and other studies conducted, he thought it was possible the condition was work-related but he could not say it probably resulted from the incident at work.

The testimony of Dr. Harry W. Bachman, Jr., an orthopaedic surgeon, was presented by the filing of his written report dated August 13, 1996. He only saw plaintiff one time and was of the opinion he did not have any permanent impairment.

The trial court also heard the oral testimony of Chris Hodge, a private investigator, who followed plaintiff to Cincinnati, Ohio during August 1996 where he engaged in bowling activities. He testified plaintiff walked, carried his bags into the motel and bowled on two different days without any evidence of physical limitations.

The Circuit Judge found plaintiff had violated the medical restrictions imposed by the doctors and chose to accept the medical testimony of Dr. Marshall and Dr. Bachman over the testimony of Dr. Morris.

The case is to be reviewed de novo accompanied by a presumption of the correctness of the findings of fact unless we find the preponderance of the evidence is otherwise. T.C.A. § 50-6-225(e)(2).

An employee has the burden of proving every element of the case, including causation and permanency by a preponderance of the evidence. *Tindall v. Waring Park Ass'n,* 725 S.W.2d 935, 937 (Tenn. 1987).

In choosing which medical testimony to accept, the trial court may consider the qualifications of the experts, the circumstances of their examination, the information available to them and the evaluation of the importance of that information by other experts. *Orman v. Williams-Sonoma, Inc.,* 803 S.W.2d 672, 676 (Tenn. 1991).

We have reviewed the case under these rules and cannot say the evidence preponderates against the conclusion of the trial court. Therefore, the judgment is affirmed. Costs of the appeal are taxed to plaintiff.

_____
Roger E. Thayer, Special Judge

CONCUR:

_____
Frank F. Drowota III, Justice

_____
John K. Byers, Senior Judge

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C. DOUGLAS GIBSON,	)	HAWKINS CIRCUIT
	)	No. 7810
Plaintiff-Appellant,	)	
	)	No. 03S01-9806-CV-00064
v.	)	
	)	
WILLIAM GIBSON	)	Hon. Earl H. Henley
(MORRISTOWN DRIVERS SERVICE)		Chancellor
Defendant-Appellee	)	

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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 plaintiff, C. Douglas Gibson and Phillip L. Boyd, Surety, for which execution may issue if necessary.

08/04/99