

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

FILED

October 20, 1999

Cecil Crowson, Jr.  
Appellate Court  
Clerk

KENNETH KERR, JR.,	)	
	)	
Plaintiff/Appellee	)	JEFFERSON CIRCUIT
	)	
v.	)	NO. 03S01-9803-CV-00032
	)	
MUNICIPAL CORPORATION OF	)	HON. REX HENRY OGLE,
JEFFERSON CITY,	)	JUDGE
	)	
Defendant/Appellant	)	

**For the Appellant:**

John T. Batson, Jr.  
Nathan D. Rowell  
Watson, Hollow & Reeves  
P.O. Box 131  
Knoxville, TN 37901\_\_\_\_\_

**For the Appellee:**

A. Benjamin Strand, Jr.  
Johnnie D. Sellars  
Strand and Goddard  
P.O. Box 219  
Dandridge, TN 37725

**MEMORANDUM OPINION**

**Members of Panel:**

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

REVERSED

BYERS, Senior Judge

## 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. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

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 findings, 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 application of this standard requires this Court to weigh in more depth the factual findings and conclusions of the trial court in a workers' compensation case. See *Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988).

The trial judge entered a judgment in favor of the plaintiff and fixed his recovery at 25 percent permanent partial disability to the body as a whole.

The defendant says the evidence preponderates against the judgment. We agree with the defendant and reverse the judgment and dismiss this case.

On July 11, 1994, the plaintiff was involved in an automobile accident while in the course of his employment with the defendant.

The plaintiff was treated by Dr. Archer W. Bishop, Jr., an orthopedic surgeon, whose report was submitted as medical evidence in the case. Dr. Bishop's report, in essence, shows that the plaintiff had some degenerative disc disease and that he had some temporary symptoms as a result of the accident but no permanent effects therefrom. Dr. Bishop found the plaintiff had a five percent medical impairment as a result of the degenerative disc disease but no impairment as a result of the accident.

The plaintiff testified concerning pain and difficulties which he was having. This is called greatly into question by Dr. Bishop's findings concerning pain:

He states that he is having severe pain in his back. He even described pain in his hair, in his neck and in his skin. He seems to have complaints that outweigh his findings.

Because of the complaints of pain, Dr. Bishop had an MRI done on the plaintiff. This showed no support for the plaintiff's complaints of pain.

The plaintiff sought the opinion of Dr. Wade H. Penny, III, an orthopedic surgeon. Dr. Penny's report is not enlightening. It is somewhat vague as to the

conclusion reached and does not assign any disability to the plaintiff as a result of the accident.

We find the evidence preponderates against the findings of the trial judge and we reverse the judgment and dismiss this case.

The cost of this appeal is taxed to the plaintiff.

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John K. Byers, Senior Judge

CONCUR:

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Frank F. Drowota, III, Justice

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William H. Inman, Senior Judge

IN THE SUPREME COURT OF TENNESSEE  
AT KNOXVILLE

KENNETH KERR, JR.,	)	JEFFERSON COUNTY
	)	NO. 14,026
Plaintiff/Appellee	)	
	)	HON. REX HENRY OGLE
v.	)	JUDGE
	)	
MUNICIPAL CORPORATION OF	)	S. CT. NO. 03S01-9803-CV-00032
JEFFERSON CITY,	)	
	)	
Defendant/Appellant	)	

<b>FILED</b>
October 20, 1999
Cecil Crowson, Jr. Appellate Court Clerk

**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 the appellee, Kenneth Kerr, Jr., for which execution may issue if necessary.

It is so ordered.

PER CURIAM

DROWOTA, J. NOT PARTICIPATING

APRIL 26, 1999

**VIA E-MAIL ONLY**

**TO:** CAROLYN WILLIAMS, DEPUTY CLERK, KNOXVILLE  
**FROM:** WILLIAM M. BARKER, JUSTICE  
**RE:** KENNETH KERR, JR. V. MUNICIPAL CORPORATION OF  
JEFFERSON CITY - JEFFERSON COUNTY  
NO. 03S01-9803-CV-00032

MOTION FOR REVIEW:

DENIED

DISPOSITION OF RECORD:

RETURNED VIA UPS