

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT KNOXVILLE  
October 24, 2011 Session

**TETON TRANSPORTATION, INC. v. TODD WHITE**

**Appeal from the Chancery Court for Blount County  
No. 2009-153 Telford E. Forgety, Jr., Judge**

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**No. E2010-02522-WC-R3-WC-MAILED-JAN. 4, 2012 / FILED-FEB. 7, 2012**

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Pursuant to Tennessee Supreme Court Rule 51, this workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law. The employee alleged that he injured his back at work. His employer denied the claim. While the trial court found that the employee was not a credible witness, it found that he had sustained a compensable injury based upon the testimony of an independent lay witness and the treating physician. The trial court awarded 78% permanent partial disability benefits. The employer has appealed, asserting that the evidence preponderates against the trial court's finding of compensability. We affirm the judgment.

**Tenn. Code Ann. § 50-6-225(e) (2008) Appeal as of Right; Judgment of the Chancery Court Affirmed**

JON KERRY BLACKWOOD, SR. J., delivered the opinion of the Court, in which GARY R. WADE, J. and E. RILEY ANDERSON, SP. J., joined.

Robert M. Asbury, Knoxville, Tennessee, for the appellant, Teton Transportation, Inc.

David D. Noel, Knoxville, Tennessee, for the appellee, Todd White.

**MEMORANDUM OPINION**

**Factual and Procedural Background**

Todd White ("Employee") worked as a diesel mechanic for Teton Transportation ("Employer") from April 2008 to June 2008. He alleged that he suffered two work-related

lower back injuries. The first injury occurred on June 12, 2008, when he slipped and fell while working in a “grease pit.” He reported the injury to Employer on the same day and was transported to a doctor for treatment at that time. The second alleged injury occurred on June 19, 2008, while lifting a truck battery. Employee testified that he gave notice of that injury to Employer on the day it occurred. Walter Smith, Employer’s Safety Director, testified at trial that he was never informed of that event. Employee worked only two days, at most, after the alleged June 19 incident and did not return to work for Employer thereafter.

Employee was referred to Dr. Kent Sauter, a neurosurgeon, for treatment of his injury. Dr. Sauter first examined him on July 2, 2008. An MRI scan of Employee’s lower back had previously been taken. That study showed a left-sided disc herniation at the L5-S1 level. However, Employee’s symptoms at that time were primarily on his right side. For that reason, Dr. Sauter recommended conservative treatment. Employee returned to Dr. Sauter on July 23. He had not improved, and his left leg had become more painful than the right. Dr. Sauter then recommended a microdiscectomy to remove the herniated disc. That procedure took place on August 7. On August 25, Employee complained to Dr. Sauter of difficulty urinating. Concerned about the possibility of a recurrent herniated disc, Dr. Sauter ordered an MRI. That study showed only normal post operative findings.

Employee’s condition improved for a time. However, by December 9, 2008, it had worsened. Dr. Sauter ordered another MRI, which showed scar tissue and a recurrent disc herniation. As a result of these findings, a second surgery was carried out on January 16, 2009. That procedure was followed with physical therapy and other conservative treatment. Dr. Sauter released Employee from his care on May 6, 2009. He assigned 12% permanent anatomical impairment to the body as a whole and recommended that Employee be restricted to sedentary work, with a lifting limitation of ten pounds. He referred Employee to Dr. Robert Chironna, a physical medicine specialist, for further treatment. Dr. Chironna ultimately assigned an additional impairment of 1% to the body as a whole.

Dr. Sauter opined that Employee’s condition was consistent with either the June 12 or June 19, 2008 incident, as described to him by Employee. During cross-examination, he stated that Employee had not told him that he had suffered an injury in January 2008 while working on a truck tire that exploded. Employee also failed to tell him of a 1998 automobile rollover accident he had been involved in. Dr. Sauter also stated that his opinion on causation was based upon the history provided by Employee that he did not have any back pain prior to June 2008.

Employee testified at trial that, prior to being hired by Employer, he had worked for three other employers in 2008: Hawley Transportation in Newport, where he had been a diesel mechanic; Angus Palm Company in Greeneville, where he had been a painter; and

Crick Enterprises in Greeneville, where he was a diesel mechanic. While at Hawley, Employee had injured his left leg when a truck tire exploded. He filed a workers' compensation claim, which was denied by the Tennessee Department of Labor and Workforce Development because Hawley did not have five employees and was therefore not covered by the workers' compensation law. The date of the denial was June 18, 2008, the day before the alleged battery-lifting incident. Employee also testified that he had been fired from Angus Palm for poor attendance.

Employee did not disclose his employment with Hawley or Angus Palm on the job application he completed for Employer. He testified that he did this at the direction of Edward Jett, Employer's Maintenance Manager. Employee and Mr. Jett had worked together for a previous employer. Employee testified that he told Mr. Jett about his employment and injury at Hawley and that Jett told him not to put that information on the application. Mr. Jett, who testified at trial, denied Employee's allegation, stating that he had no knowledge of Employee's work for Hawley or his injury there. Mr. Jett also testified that he had privately reprimanded Employee for poor job performance. Employee testified that both of those statements were lies.

Employee testified at trial that he had been hospitalized for narcotics abuse in 2001 and had received treatment at a later time for the same problem from a Dr. Stanton. In addition, he stated that he was treated for liver cancer in 2002. He did not disclose any information concerning those treatments in his response to an interrogatory requesting information concerning medical treatment prior to his work injury. Further, he did not disclose the identity of his primary care physician in response to a separate interrogatory requesting information concerning current medical treatment not related to his work injury. Employee also admitted that he had once asked his son to provide a urine sample in order to pass a drug screen.

Employee testified that he had not worked regularly since June 2008. In exchange for rent, he assisted his mother-in-law in maintaining the mobile home park where he lived. In addition, he received some income from selling "Hot Wheel" cars at flea markets. He stated that he had unsuccessfully applied for approximately ten jobs. At the time of the trial, he was enrolled as a full-time student in a training program through a state-sponsored rehabilitation program. The anticipated length of that program was four years

According to Employee, the first surgery by Dr. Sauter did not provide him with any relief. However, the second surgery brought some improvement. He walked with a cane most of the time. Activities such as bending, lifting, and twisting were difficult for him.

Anthony Black, a co-worker of Employee, testified that, prior to June 12, 2008,

Employee complained of back pain after moving furniture at home. On cross examination, Mr. Black stated that this incident occurred approximately two months prior to June 12. He further testified that Employee was able to perform all of his job duties, albeit at a slow pace, after the furniture-moving incident.

Another co-worker, Enrique Cabriaes, testified that he saw Employee slip and fall in the grease pit, although he could not remember the date of that incident. He recalled that Employee went to the doctor after the fall. Mr. Cabriaes had no knowledge of the alleged June 19 battery-lifting incident.

Emily Greenier was Employee's ex-sister-in-law. She testified that Employee "said he hurt his back" as a result of the January work accident at Hawley Transportation. She and her sister stayed with Employee in Greeneville from February to April 2008, and he complained of "back problems" during that entire period. Ms. Greenier also testified that Employee, with his current wife and children, moved from Greeneville to Maryville on June 11, 2008. She agreed that her sister and Employee had an "impetuous" relationship and also that her own relationship with Employee was "strained" as a result of child custody issues between her sister and Employee.

Dan White, Employee's father, testified that the injury at Hawley Transportation involved Employee's left leg only. He also testified that there was friction between his son and ex-daughter-in-law over child custody.

Employee introduced the deposition of Rodney Caldwell, a vocational evaluator, into evidence. Mr. Caldwell opined that Employee had a vocational disability of 95% due to his injury. Employer also introduced a deposition of a vocational evaluator, Craig Colvin, who opined that Employee's disability was 75%-80%. Neither side has raised any issues concerning the trial court's finding regarding the extent of disability, so it is not necessary to set out their testimony in detail.

The trial court issued its findings from the bench. It expressed reservations concerning Employee's credibility and resolved many disputed factual issues against him on that basis. However, in light of the testimony of Mr. Cabriaes, a neutral witness, and the medical testimony of Dr. Sauter, the trial court found that Employee had sustained a work-related injury as alleged and awarded permanent partial disability benefits of 78% to the body as a whole. Employer has appealed, contending that the evidence preponderates against the trial court's finding of causation.

### **Standard of Review**

In Tennessee workers' compensation cases, this Panel reviews the trial court's findings of fact de novo, accompanied by a presumption of correctness of the finding, unless the evidence preponderates otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2008); *Wilhelm v. Krogers*, 235 S.W.3d 122, 126 (Tenn. 2007). "This standard of review requires us to examine, in depth, a trial court's factual findings and conclusions." *Galloway v. Memphis Drum Serv.*, 822 S.W.2d 584, 586 (Tenn. 1991) (citing *Orman v. Williams Sonoma, Inc.*, 803 S.W.2d 672, 675 (Tenn. 1991)). We give considerable deference in reviewing the trial court's findings of credibility and assessment of the weight to be given to that testimony, when the trial court has heard the in-court testimony. *Whirlpool Corp. v. Nakhoneinh*, 69 S.W.3d 164, 167 (Tenn. 2002). On questions of law, our standard of review is de novo with no presumption of correctness. *Wilhelm*, 235 S.W.3d at 126. The extent of vocational disability is a question of fact to be decided by the trial judge. *Johnson v. Lojac Materials, Inc.*, 100 S.W.3d 201, 202 (Tenn. Workers' Comp. Panel 2001). Although workers' compensation law must be construed liberally in favor of an injured employee, it is the employee's burden to prove causation by a preponderance of the evidence. See *Thomas v. Aetna Life & Cas. Co.*, 812 S.W.2d 278, 283 (Tenn. 1991).

### **Analysis**

Employer argues that the trial court erred by finding that Employee sustained a compensable injury. It bases this argument on Employee's lack of credibility. There were inconsistencies among Employee's trial testimony, his written discovery responses, and his deposition testimony. Moreover, his trial testimony was in direct conflict with the testimony of other witnesses. In its findings, the trial court judge directly referred to many of those inconsistencies and conflicts and ultimately concluded "I just do not believe very much of what he has to say."

However, the trial court was also presented with the testimony of a neutral witness, Mr. Cabriaes. Mr. Cabriaes testified that Employee did, in fact, slip and fall in a grease pit in the course of his employment during June 2008. The trial court found that testimony to be credible, and that finding is entitled to deference from us. See *Whirlpool*, 69 S.W.3d at 167. It is undisputed that Employee reported that event on the day it occurred and received medical treatment at that time. Within a few weeks of that event, an MRI study revealed the presence of a herniated disc in Employee's lumbar spine. Dr. Sauter, the treating physician, testified that this condition was consistent with the type of event described to him by Employee. While there was evidence presented that Employee complained of back pain prior to the date of the alleged injury, his supervisor and co-workers testified that he was able to perform his job, which required physical exertion and occasional heavy lifting, until the injury occurred. There was no evidence that he had received any medical treatment for back pain or advised any doctor or health care provider of lower back symptoms before June 12,

2008.

Our Supreme Court has repeatedly noted that absolute certainty with respect to causation is not required in workers' compensation cases. *Fritts v. Safety Nat'l Cas. Corp.*, 163 S.W.3d 673, 678 (Tenn. 2005). Further, all reasonable doubts as to the causation of an injury and whether the injury arose out of the employment should be resolved in favor of the employee. *Phillips v. A&H Constr. Co.*, 134 S.W.3d 145, 150 (Tenn. 2004); *Reeser v. Yellow Freight Sys., Inc.*, 938 S.W.2d 690, 692 (Tenn. 1997). Applying those standards, and according the trial court's findings the presumption of correctness required by Tennessee Code Annotated section 50-6-225(e)(2), we are unable to conclude that the evidence preponderates against the trial court's conclusion that Employee sustained a compensable injury.

### **Conclusion**

The judgment is affirmed. Costs are taxed to Teton Transportation, Inc. and its surety, for which execution may issue if necessary.

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JON KERRY BLACKWOOD, Senior Judge

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
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**JUDGMENT**

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 appeals 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 fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs of this appeal are taxed to Teton Transportation, Inc., and its surety, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM