

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

ANTHONY PHILLIPS,	:	APPEAL NO. C-080390
	:	TRIAL NO. A-0704146
Plaintiff-Appellant,	:	
	:	JUDGMENT ENTRY.
vs.	:	
MARSHA P. RYAN,	:	
ADMINISTRATOR, BUREAU OF	:	
WORKERS' COMPENSATION,	:	
	:	
Defendant,	:	
	:	
and	:	
RELIABLE CASTING CORP.,	:	
	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Plaintiff-appellant Anthony Phillips claimed that he was injured in a workplace accident on April 15, 2005. Following the Industrial Commission's affirmance of a hearing officer's denial of Phillips's right to participate in the workers' compensation system, he appealed to the trial court for a de novo review of the determination. The case was tried to the bench, and the trial court entered judgment for the employer and the Bureau of Workers' Compensation. In two related assignments of error, Phillips now argues that this decision was incorrect.

In reviewing the judgment of a trial court following a bench trial, we are guided by a presumption that the fact-finder's findings are correct.² The trial court is best able to

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

² *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 79-80, 461 N.E.2d 1273.

view the witnesses and observe their demeanor, gestures, and voice inflections, and to use these observations in weighing the credibility of the proffered testimony.³

The Ohio Supreme Court has stated that an appellate court “should not substitute its judgment for that of the trial court when there exists * * * competent and credible evidence supporting the findings of fact and conclusions of law rendered by the trial judge.”⁴ Thus, we will not reverse the trial court’s judgment unless it is against the manifest weight of the evidence.⁵

In this case, the trial court issued findings of fact and conclusions of law. In that entry, the trial court outlined the four different versions of events that appeared in the record, including the reference to a second incident at work. The trial court also noted that records from the emergency room indicated that Phillips “did not recall any specific trauma” to his shoulder. The trial court further noted that the records did not indicate an objective manifestation of injury, noting that the left shoulder x-rays “were negative for an acute pathology” and showed no “pathologic change,” and that the radiological report indicated “a normal left shoulder.” The trial court noted that the treating physician’s diagnosis of left-shoulder instability was based on “Plaintiff’s account attributed to the claimed events of April 15, 2005.”

The trial court concluded that “[o]n the evidence presented, and taking into account the exhibits admitted and Plaintiff’s presentation on the witness stand, the court cannot conclude by the greater weight of the evidence that Plaintiff suffered his injury at work. Put another way, the court does not find that the injury of which he complains was work-related.

“If Plaintiff suffered injury as a result of either of the two episodes he describes, alone or in combination, he would be eligible to participate in the workers’ compensation

³ Id.; see, also, *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, 376 N.E.2d 578.

⁴ *Seasons Coal Co.*, 10 Ohio St.3d at 80.

⁵ Id.; see, also, App.R. 12(C).

program. Ohio's workers' compensation statutes are liberally construed in favor of employees. Plaintiff need not establish the exact date of injury, and the law does not require that he report an injury to the employer on the day or days that he claims to have sustained the injury.

"Plaintiff must, however, prove that his injury was somehow connected with his work.

"Having seen Plaintiff's testimony and after review of the exhibits, the court cannot conclude that Plaintiff's shoulder injury was sustained at work. Memories do dim over time, but there [are] simply too many inconsistencies in the accounts for the court to find by a preponderance of the evidence that the Plaintiff suffered an injury at work."

We have reviewed the record and determine that it contains competent and credible evidence supporting the findings of fact and conclusions of law rendered by the trial court. The judgment of the trial court to deny Phillips's claim for workers' compensation benefits was supported by the record and not contrary to the weight of the evidence. We overrule his two assignments of error and affirm the trial court's judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

PAINTER, P.J., SUNDERMANN and DINKELACKER, J.J.

To the Clerk:

Enter upon the Journal of the Court on March 4, 2009

per order of the Court _____.

Presiding Judge