

BIBLER BROTHERS LUMBER COMPANY
et al v. Jimmy CHISUM

79-51

580 S.W. 2d 958

Opinion delivered May 21, 1979
(In Banc)

WORKMEN'S COMPENSATION — TRAUMATIC APPENDICITIS ALLEGEDLY CAUSED BY BLOW TO AREA — SUBSTANTIALITY OF EVIDENCE TO SUPPORT AWARD OF COMPENSATION. — The testimony of a claimant's family physician was a reasoned conclusion, rather than mere speculation, and was sufficient to support an award of compensation by the Workmen's Compensation Commission, despite conflicting testimony by the surgeon who operated on claimant for appendicitis, where the family physician testified that within a few minutes after claimant was kicked in the side by a chain saw while on the job he became too ill to work; his condition worsened and three days later he was diagnosed as having a ruptured appendix; there is ample authority for a finding that appendicitis can result within a few days after a blow to the area; it is unlikely that claimant, at his age, would have had appendicitis unless there had been a trauma; and it was in the degree of probability that the blow caused traumatic appendicitis.

Appeal from Pope Circuit Court, *John Lineberger*, Judge on Exchange; affirmed.

Niblock & Odom, for appellants.

Dale W. Finley, for appellee.

GEORGE ROSE SMITH, Justice. This is a claim under the workers' compensation law for compensation incident to a surgical operation for a ruptured appendix suffered by the claimant. Upon conflicting medical testimony the Commission awarded compensation. In its opinion the Commission cited seven out-of-state cases in which it was found, upon conflicting medical testimony, that a blow or strain had caused or contributed to cause appendicitis. That point is not argued here. Instead, it is insisted that Dr. Luker's testimony in favor of the award is so speculative that it cannot be regarded as substantial evidence. We agree with the Com-

mission's decision, which was affirmed by the circuit court.

Chisum was injured at work when a chain saw kicked back, with the handle striking him in the lower right side. Within a few minutes he became too ill to work and was taken to Dr. Luker's office. Dr. Luker thought that he had a contusion, possible strain, or abdominal tear to the musculature. Chisum was sent home to rest, but his condition worsened. Three days later Dr. Luker's associate diagnosed the ruptured appendix, and Dr. Bachman, a surgeon, performed the operation. It was Dr. Bachman's opinion that the claimant's work had nothing to do with his appendicitis.

Dr. Luker, a family practitioner, was of the opposite view. We do not consider his testimony as being too speculative to constitute substantial evidence. He recognized that appendicitis can be caused by a blow. He said that the time interval between the claimant's injury and the development of appendicitis was about right. He also said that the claimant's age made him favor the diagnosis of traumatic appendicitis, adding that "he's the kind that, all other things being constant, is you just wouldn't expect a diagnosis of appendicitis unless there was a trauma." He could not say with certainty that the blow caused the condition, but it was "in the degree of probability." When Dr. Luker's testimony is considered as a whole, his conclusion that the blow from the chain saw probably caused the appendicitis appears to be a reasoned conclusion rather than mere speculation.

Affirmed, with an allowance of a \$250.00 attorney's fee to the appellee.

BYRD, J., dissents.