IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
May 20, 2019 Session

RICHARD MOSER v. HARA, INC. d/b/a HOT SHOT DELIVERY, ET AL.

Appeal from the Davidson County Circuit Court
No. 16C660 Joe P. Binkley, Judge

No. M2018-02045-SC-R3-WC – Mailed August 16, 2019

Richard Moser ("Employee") worked for Hara, Inc. d/b/a Hot Shot Delivery ("Employer") as a truck driver. Employee filed this action against Employer and its workers' compensation insurance carrier, Auto-Owners Insurance Company, alleging that he sustained a compensable injury in August 2013, when he attempted to pull a duffel bag out of his truck. Employer asserts that the injury occurred in August 2014, when Employee used a crank to lower the landing gear on a trailer. In its defense, Employer specifically asserts that Employee's failure to provide adequate notice of the 2014 injury contravenes his claim for compensation. Employee concedes he did not provide adequate notice of the 2014 injury. The trial court found that Employee suffered a compensable injury in August 2013 during the course and scope of his employment and retained a permanent anatomical impairment of 25% to the body as a whole as a result of the 2013 injury. Employer has appealed that decision. The 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 pursuant to Tennessee Supreme Court Rule 51. We affirm the judgment.

Tenn. Code Ann. § 50-6-225(e) (2014) (applicable to injuries occurring prior to July 1, 2014) Appeal as of Right; Judgment of the Circuit Court Affirmed

WILLIAM B. ACREE, SR.J., delivered the opinion of the court, in which CORNELIA A. CLARK, J., and AMY V. HOLLARS, SP.J., joined.

Michael L. Haynie, Nashville, Tennessee, for the appellants Hara, Inc. d/b/a Hot Shot Delivery, and Auto Owners Insurance Company

Stanley A. Davis, Brentwood, Tennessee, for the appellee Richard Moser.

OPINION

Factual and Procedural Background

Employee was born on September 9, 1956. After graduating from high school in 1974, he attended college for one year. He then worked as a locksmith for five years and subsequently as a computer and electronics technician for twenty-five years. Employee then drove tractor-trailer trucks for fifteen years. He began working for Employer on October 5, 2010, where he worked until he voluntarily left in May 2016.

Employee testified that when he began working for Employer, his health was good and he did not have serious back or foot problems. Prior to working for Employer, Employee experienced back strains, but they always improved. Employee acknowledged that he temporarily injured his back in 2007, while working for a different employer, but he treated that injury as well as other previous "flare ups" with home remedies.

Employee testified that he had not been able to recover from the back injury he sustained while working for Employer on August 12, 2013, when Employee attempted to pull a duffel bag that contained his work gear out of his truck. Employee testified that the bag was stuck between the gear shift and the seat, and when he twisted and pulled on the bag to free it, he immediately experienced a sharp pain in his back that extended down his right leg. Employee described this pain as the worst pain he had ever experienced.

Employee provided timely notice of the injury to Employer, but Employer refused to provide any benefits. Employee initially went back to work a few days after the incident, but the pain became worse, and he ultimately did not work for thirty-two days. After Employee told his primary care physician, Dr. Kenneth Sullivan, that he needed to work to financially support himself, Dr. Sullivan released Employee to return to work.

In July 2014, Employee filed a *pro se* request with the Department of Labor requesting assistance for his August 2013 injury. After Employee filed the request, he was injured again in August 2014 when he was using a crank to lower the landing gear on a trailer.[1] Employee testified that he was straining to turn the crank and felt pain in his back. He missed approximately one week of work after that incident and sought medical treatment for the pain. The Department of Labor subsequently issued an administrative order requiring Employer to provide Employee a panel of physicians related to the 2013 injury. Employee selected Dr. William Casey Bearden, a chiropractor, to be his authorized treating physician.

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[1] At trial, Employee conceded that he is not entitled to compensation for the August 2014 injury because he failed to give Employer timely notice of the injury.

Employee testified that since the August 2013 injury, he has had difficulty walking and at times his leg will give out on him causing him to fall. At one point following the 2013 incident, he called a friend to help him because he could not walk and was attempting to crawl on the floor of his home to get to the bathroom. Employee testified that he continues to have pain in his back that runs down his right leg, and that he has pain every day with every step. He also continues to have trouble with his foot and ability to walk and his leg continues to give out on him. He testified that he was very active prior to his injury, but now there are a number of things he can no longer do. He testified that he cannot walk well or stand in an upright position for extended periods of time because of constant pain that gets worse as he stands. He said that he has difficulty getting dressed and feels crippled. When he attempts to walk for exercise, his toe will catch the ground causing him to fall. Employee described the falls as embarrassing because he does not know when they will occur.

Employee's primary care physician, Dr. Kenneth Sullivan testified by deposition. Dr. Sullivan has been in practice since 1986, and is currently in family practice in Joelton, Tennessee. Dr. Sullivan first saw Employee on January 11, 2007, for low back pain, hypertension, and weight issues. At the time, Employee had a positive modified straight leg raise in his right leg and tingling in his leg. The straight leg raise subsequently returned to normal.

On August 19, 2013, Employee went to Dr. Sullivan's office, complaining of low back pain and hypertension, and was seen by a nurse practitioner, who documented that Employee had normal strength, stability, and range of motion examinations. The nurse practitioner did not document a straight leg raise.

On August 29, 2013, Employee was seen by Dr. Sullivan. At that appointment, Employee's blood pressure was extremely high. Employee had recently been hospitalized for a pre-stroke transient ischemic attack, which lasted two or three hours and had resolved by the time of his appointment with Dr. Sullivan. At that appointment, Employee's physical examination was relatively normal, although Employee complained about heaviness in his right leg.

Employee next saw Dr. Sullivan on September 6, 2013. Employee complained of increased pain in his back and down his right leg and said that his right leg occasionally felt weak. Employee informed Dr. Sullivan that he had experienced these symptoms before and that the pain usually resolved with conservative therapy. However, this episode was one of the worst he had experienced. The examination at the September 6, 2013, appointment was normal. Dr. Sullivan gave Employee an intramuscular injection of Depo-Medrol, prescribed a steroid Medrol Dosepak, and instructed him to ice the area and come back in five to six days for follow-up. Dr. Sullivan also referred Employee to physical therapy.

Employee returned to Dr. Sullivan on September 10, 2013, for a follow-up regarding his pre-stroke incident. Employee returned again on September 18, 2013. At that appointment, Dr. Sullivan noted that Employee's low back pain and right leg pain had resolved, and he released Employee back to work with physical therapy. Employee returned to Dr. Sullivan on October 30, 2013, and the examination was normal.

Following the 2014 cranking incident, Employee returned to Dr. Sullivan on August 22, 2014, and saw the nurse practitioner. She documented that Employee was having low back pain and that he had not had a "flare-up" in a year. The physical examination showed that his back was tender and that he had decreased range of motion of his lumbar spine. He was given Lortab for his pain, a cortisone shot, and a Medrol Dosepak.

Employee returned to Dr. Sullivan on August 28, 2014, and stated that he was still having some difficulty with low back pain following the August 2014 cranking incident. Employee informed Dr. Sullivan that this was the first bad exacerbation of his back in almost a year. The physical examination showed tenderness over the lumbar spine with increased paraspinal muscle spasms, and a positive straight leg raise in both legs with referred pain to the lumbar spine. Dr. Sullivan's working diagnosis for Employee was acute low back pain, chronic lumbar degenerative disc disease, right lumbar radiculopathy in the L4-5 nerve root distribution, and hypertension. Dr. Sullivan gave Employee a steroid shot and two Medrol Dosepaks, and kept Employee off work for several days.

When Employee returned to Dr. Sullivan on November 19, 2014, Dr. Sullivan noted that Employee had low back pain with an exacerbation of that pain and "reinjury" following the cranking incident. Dr. Sullivan testified that the cranking incident in 2014 exacerbated Employee's original injury from 2013. Dr. Sullivan testified that "reinjury" means Employee "reexacerbated what he had hurt and the symptoms that he had." Dr. Sullivan's notes indicated that after the reinjury, Employee "ha[d] been unable to lift up his toes." The physical examination on November 19, 2014, also indicated that Employee could hardly lift his toes on his right foot, referred to as "foot drop."

Dr. Sullivan testified that following the August 12, 2013 duffel bag incident, Employee had trouble ambulating, was in severe pain, and described a heaviness in his right leg. Dr. Sullivan provided testimony regarding the opinions of two other physicians, Dr. C.M. Salekin and Dr. William Casey Bearden, who also testified by deposition, discussed *infra*. Specifically, Dr. Sullivan reviewed a report prepared by Dr. Salekin and agreed with Dr. Salekin's conclusion that the August 2013 incident caused Employee's permanent injury. Dr. Sullivan further agreed with Dr. Salekin and Dr. Bearden that Employee's foot drop was caused by the August 2013 injury. When asked whether Employee's foot drop relates to the 2013 injury, Dr. Sullivan explained:

> In my opinion it does because it's in the same nerve root distribution as the initial injury was. It may not have presented initially with the first injury, but at the same time he had had continued leg pain. And as many reexacerbations of symptoms he had following that even before the injury I think of 2014, he was having trouble with it.
>
> So you don't always have a foot drop when you have a rupture — a rupture of an annulus of a disk immediately. It depends on how long that pressure has been sitting on that nerve.

When asked "would you agree that, more likely than not, [E]mployee's protrusions were a result of the [August 12, 2013] injury," Dr. Sullivan responded, "Definitely." Dr. Sullivan further testified that the disc protrusions eventually led to the development of the foot drop. Dr. Sullivan also testified that the foot drop is now permanent, which supports his conclusion that it was caused by the 2013 injury because it "usually takes a year, year-and-a-half" for nerve damage to become permanent.

Dr. Sullivan testified that Employee wanted to go back to work following his 2013 injury because of his financial situation. At that time, Dr. Sullivan felt that Employee had not fully recovered but had recovered "enough," and Dr. Sullivan "wasn't pressing any issues because [Employee] needed to work." Dr. Sullivan testified that he wanted Employee to have an MRI after the 2013 injury, but Employee did not have insurance and could not afford it.

Dr. Sullivan also testified that when a person has an injury like Employee had in August of 2013, that person will be more susceptible to aggravation of that injury in the future. Dr. Sullivan testified that the 2013 and 2014 incidents involved the same nerve root level. Dr. Sullivan opined that the 2014 incident did not cause the permanent impairment and merely aggravated the initial 2013 injury. He testified that Employee will continue to have aggravations of the 2013 injury for the rest of his life. He explained that the 2014 incident "exacerbated the previous injury he had in the same nerve root distribution, causing more pressure on the nerve, affecting that nerve, and then causing difficulty with weakness distally affecting the toe." Dr. Sullivan went on to state that the foot drop "still goes back to the initial [2013] injury. It's the same dis[c] level." He reiterated that the 2014 incident "just caused a worsening of the injury that was already there."

Dr. Sullivan further explained that discs are covered by a hard outer layer, and that a tear to that layer is referred to as a protrusion or herniation, which is a change to the anatomy of the disc. Dr. Sullivan opined that Employee's disc was torn more likely than not on August 12, 2013. He further testified that once Employee had that tear, performing every day activities caused increased pain and problems, and that is what

occurred in 2014. Dr. Sullivan testified that he did not believe anything had changed to the anatomy of Employee's spine following the 2014 incident, only that the disc bulged out further at the same level that was torn in 2013. Dr. Sullivan testified that this bulging is not an anatomical change, only a change in symptoms.

Dr. Salekin testified by deposition. He is a board certified neurologist and a board certified disability specialist. Dr. Salekin testified that in order to be certified as a disability specialist, he was required to complete numerous reports in which he evaluated patients and provided permanent impairment ratings using the AMA Guides.

At Employee's request, Dr. Salekin performed an independent medical examination of Employee on February 19, 2018, spending two hours and forty-five minutes with Employee. Dr. Salekin opined that Employee injured his lumbar spine at work on August 12, 2013, involving the L4-5 and S1 nerve roots. Dr. Salekin assigned a 25% permanent impairment rating to the body as a whole for the lumbar radiculopathies, utilizing the AMA Guides, Sixth Edition, page 570, Table 17-4. Dr. Salekin also agreed with Dr. Bearden's diagnosis of Employee.

On cross-examination, Dr. Salekin stated that he was not aware Employee had a prior back injury in 2007, but that, the 2013 injury would have made Employee's back condition worse. Dr. Salekin testified that Employee's back pain was stable until the work injury on August 12, 2013, when Employee could not continue with his work responsibilities. Dr. Salekin further testified that, regardless of whether Employee injured his back previously in 2007, the AMA Guides require an impairment rating based on his current state of impairment, which Dr. Salekin opined is 25%. Dr. Salekin explained that he placed Employee in Class 4 on Table 17-4 because Employee has intervertebral disc herniation at multiple levels as indicated on the MRI, which is consistent with Employee's physical symptoms. Dr. Salekin testified that given those MRI findings, 25% was the lowest impairment rating that could be assigned.

On re-direct examination Dr. Salekin testified that a person can have a back strain that gets better. He testified that, regardless of what may have happened in 2007, the MRI findings are consistent with the duffel bag incident and trauma Employee described occurring on August 12, 2013. Dr. Salekin testified that the August 12, 2013 incident caused new injuries and changes to Employee's back in addition to aggravating any pre-existing injuries. On re-cross-examination, Dr. Salekin stated he was unaware of any other injuries before or after August 2013.

Dr. Bearden also testified by deposition. Dr. Bearden is a chiropractor who has been practicing for twenty-five years. Employee selected Dr. Bearden as his authorized treating physician after the Department of Labor ordered Employer to provide medical benefits related to the August 12, 2013, injury. Dr. Bearden treated Employee thirty-one

times. He first saw Employee on November 24, 2014. The physical examination showed an injury consistent with nerve involvement as well as a structural issue with the lumbar spine, and he referred Employee for an MRI. The MRI, performed on December 20, 2014, showed a disc protrusion at the L4-5 level, which coincided with the pain radiating into Employee's right leg and his foot drop. Dr. Bearden testified that the August 12, 2013, duffel bag incident caused a new injury at the L4-5 level given the significant amount of nerve involvement and the protrusion on the MRI. He further testified that the jerking and twisting motion Employee described regarding the duffel bag incident was consistent with the injury.

Dr. Bearden testified that Employee had a permanent injury and assigned an 11% impairment rating to the body as a whole using Table 17-4, at page 570 of AMA Guides, Sixth Edition. Dr. Bearden further testified that he reviewed Dr. Salekin's report, and agreed with Dr. Salekin's diagnosis and his findings on causation, including that Employee injured his lumbar spine at work on August 12, 2013, involving the L4-5 and S1 nerve roots. Dr. Bearden further testified that he did not disagree with Dr. Salekin's higher impairment rating because that rating took into account "the entire clinical picture," and Employee's condition had regressed and become more significant by the time Dr. Salekin performed his evaluation almost two years after Dr. Bearden had evaluated Employee. On cross-examination, Dr. Bearden testified that Employee had not told him about injuring his back in 2007. Dr. Bearden's testimony did not address the 2014 incident.

Dr. Tarek G. Elalayli, an orthopedic spine surgeon, also testified by deposition. At Employer's request, Dr. Elalayli performed an independent medical examination of Employee on July 1, 2018. Dr. Elalayli acknowledged that he spent less than thirty minutes with Employee. Dr. Elalayli testified that on August 12, 2013, Employee "strained his back and aggravated a preexisting condition and made it symptomatic." Dr. Elalayli estimated that Employee reached maximum medical improvement following that injury on September 10, 2013. Dr. Elalayli testified that based on his review of the records, there was no permanent impairment following the August 2013 incident. Instead, he concluded that it was the August 2014 incident that caused Employee's foot drop. He testified that foot drop develops and progresses over a period of days to weeks after an injury. Dr. Elalayli stated that the December 2014 MRI cannot be used to determine whether Employee's disc protrusion was caused by the 2013 or 2014 incident because it was taken after both injuries had occurred.

On cross-examination, Dr. Elalayli testified that he agrees with Dr. Bearden and Dr. Salekin that Employee has lumbar radiculopathy and permanent foot drop. He further agreed that there are objective findings of nerve injury on physical examination, motor weakness consistent with radiculopathy, and deficits on sensory examination. Dr. Elalayli testified that he did not assign Employee a permanent anatomical impairment

rating because Employer did not ask him to do so. Dr. Elalayli disagreed with Dr. Salekin that the August 2013 incident caused Employee's permanent injury because Dr. Salekin did not discuss the 2014 incident. However, Dr. Elalayli agreed that if someone has to crawl on the floor, has heaviness in his leg, has to use a cane, and is out of work for an extended period of time, those conditions are consistent with the type of permanent injury Dr. Elalayli agrees Employee has. Dr. Elalayli also agreed that prior to 2013 there was no record of Employee being diagnosed with lumbar radiculopathy, needing a cane to ambulate, needing to crawl on the floor, having heaviness in his right leg, or being out of work for more than a month related to lumbar radiculopathy.

Dr. Elalayli also reviewed emergency medical services records dated August 20, 2013, and agreed that those records indicate that Employee was having severe weakness, was unable to ambulate, and could not move except to crawl on the floor due to his back pain. Dr. Elalayli further agreed that the emergency room records related to that incident show that Employee had poor control of his body, was unable to sit up, and had to crawl on the ground. Dr. Elalayli would not agree that those symptoms describe severe lumbar radiculopathy, but did agree that following the 2014 incident, Employee did not experience any period of time where he had to crawl to ambulate or require emergency medical services because he could not ambulate.

Dr. Elalayli testified that given the amount of time that has passed since the onset of Employee's foot drop, it is unlikely that surgery could correct the condition. Dr. Elalayli agreed with Dr. Bearden and Dr. Salekin that Employee has a permanent injury. Dr. Elalayli also testified that Employee seems to be very motivated to keep working, and appears honest and truthful.

On re-direct, Dr. Elalayli testified that Dr. Sullivan's notes from the November 19, 2014 appointment were the first documentation of the onset of the L5 weakness and foot drop, and that he believes the foot drop was in the process of developing at that point in time. Dr. Elalayli testified that the medical records going back to September 2013 indicate that Employee was doing much better until the 2014 incident. He testified that the earlier problems with weakness and inability to sit up were "a more global problem" that was not nerve related.

At the conclusion of trial, the trial court made detailed findings of fact and conclusions of law from the bench. The trial court found that Employee suffered an injury during the course and scope of his employment on August 12, 2013, that caused Employee a permanent anatomical impairment of 25% to the body as a whole. The parties had stipulated that the 1.5 multiplier cap applied, and the trial court applied a 1.25 multiplier, equating to a permanent partial disability of 31.25% to the body as a whole, for an award of $75,187.50 based on the stipulated compensation rate of $601.50. The trial court also awarded temporary total disability for 4.3 weeks for a total of $2,586.45 as

stipulated by the parties, and awarded attorney's fees at 20% and discretionary costs. The trial court further ordered Employer to provide Employee with a panel of spine surgeons to select an authorized treating physician for open medical care related to his August 12, 2013 injury for his lifetime, and to pay unpaid authorized medical care provided by Dr. Bearden.

Employer appealed the trial court's decision.

Standard of Review

The standard of review of issues of fact in a workers' compensation case is de novo upon the record of the trial court accompanied by a presumption of correctness of the findings, unless the preponderance of evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (Supp. 2013). Considerable deference is afforded to the trial court's findings with respect to the credibility of witnesses and the weight to be given their in-court testimony. *Tryon v. Saturn Corp.*, 254 S.W.3d 321, 327 (Tenn. 2008); *Richards v. Liberty Mut. Ins. Co.*, 70 S.W.3d 729, 733 (Tenn. 2002). No similar deference need be afforded to the trial court's findings based on documentary evidence such as depositions. *Glisson v. Mohon Int'l, Inc./Campbell Ray*, 185 S.W.3d 348, 353 (Tenn. 2006). Questions of law are reviewed de novo with no presumption of correctness. *Gray v. Cullon Machine, Tool & Die*, 152 S.W.3d 439, 443 (Tenn. 2004).

'"Except in the most obvious, simple and routine cases,' a claimant must establish by expert medical evidence the causal relationship between the claimed injury and the employment activity." *Cloyd v. Hartco Flooring Co.*, 274 S.W.3d 638, 643 (Tenn. 2008) (quoting *Orman v. Williams Sonoma, Inc.*, 803 S.W.2d 672, 676 (Tenn. 1991)). The opinion of an authorized treating physician "shall be presumed correct on the issue of causation but said presumption shall be rebutted by a preponderance of the evidence[.]" Tenn. Code Ann § 50-6-102(12)(A)(ii) (Supp. 2013). In addition, our courts have recognized that "physicians having greater contact with the Plaintiff would have the advantage and opportunity to provide a more in-depth opinion, if not a more accurate one." *Orman*, 803 S.W.2d at 677. Importantly, "absolute medical certainty is not required to establish causation." *White v. Werthan Indus.*, 824 S.W.2d 158, 159 (Tenn. 1992). Additionally, for injuries occurring prior to July 1, 2014, any reasonable doubt as to causation should be construed in favor of the employee. *Crew v. First Source Furniture Grp.*, 259 S.W.3d 656, 665 (Tenn. 2008). As already noted, Employee conceded at trial that he is not entitled to relief for the August 2014 incident because he failed to provide timely notice of that incident to Employer. Thus, only the pre-2014 standard is applicable in this case because Employee is seeking compensation solely for his 2013 injury.

Analysis

Employer raises two issues in this appeal: (1) whether the evidence preponderates against the trial court's finding that Employee's permanent injury was caused by the August 2013 incident so as to entitle him to permanent partial disability and medical benefits; and (2) whether the evidence preponderates against the trial court's award of permanent partial disability benefits based on a 25% anatomical impairment rating to the body as a whole.

Causation

Employer argues that Employee sustained a subsequent low back injury in August 2014 while forcibly turning a crank at work which severed the causal link between the August 2013 injury and Employee's physical impairment, vocational disability, and need for medical treatment. Employer contends that Employee's forcibly turning a crank in August 2014 is the sort of intentional conduct that serves as an independent intervening cause. Employer relies on *Anderson v. Westfield Group,* 259 S.W.3d 690 (Tenn. 2008). In *Anderson,* employee suffered a work-related injury for which he was compensated. Then, he was injured again when he burned his hand on a stove and once more when he fell into a creek. The employee filed a petition seeking medical expenses for his subsequent injuries contending they were a direct and natural consequence of the original compensable injury. In denying the claim, the court stated:

> [N]egligence is the appropriate standard for determining whether an independent intervening cause relieves an employer of liability for a subsequent injury purportedly flowing from a prior work-related injury . . . .
>
> The negligence standard . . . is consistent with the view espoused by Professor Larson in his treatise on workers' compensation law. Professor Larson submits that "an appropriate pair of principles" would be that "[w]hen the injury following the initial compensable injury arises out of a quasi-course [of employment] activity, such as a trip to the doctor's office, the chain of causation should not be deemed broken by mere negligence in the performance of that activity, but only by intentional conduct" by the employee. However, when the injury following the initial compensable injury does not arise out of a quasi-course activity, as when a claimant with an injured hand engages in a boxing match, the chain of causation may be deemed broken by either intentional or negligent misconduct.

Anderson, 259 S.W.3d at 699 (internal citations omitted).

Anderson is distinguishable from the present case. In *Anderson,* the subsequent

injuries did not occur at work and resulted from negligence of the employee. By contrast, Employee herein was injured at work while performing job-related duties. Negligence in an on-the-job injury is not relevant. Additionally, there is no evidence of negligence by Employee. The contention that the August 2014 accident is an independent intervening cause which severed the causal link between the August 2013 injuries and Employee's impairment is without merit.

Employer also contends that the evidence preponderates against the trial court's finding that Employee's permanent injury was caused by the August 2013 incident. We disagree. Significantly, the MRI showing the ruptured disc was not taken until after the 2014 incident. As a result, the trial court relied on Employee's own description of his injury and symptoms, the medical records, and the testimony of the four physicians. The trial court made detailed findings in support of its conclusion that the August 12, 2013, incident caused the permanent injury. The trial court repeatedly stated that it found Employee to be a credible witness. The trial court specifically found that, since the 2013 incident, Employee has had difficulty walking, has had pain in his lower back and right leg, has had his right leg give out, and has used a cane. The trial court also pointed to the incident on August 20, 2013, when paramedics came to Employee's house because he could not ambulate and was taken to the emergency room.

With respect to the medical testimony, the trial court noted that Dr. Bearden and Dr. Salekin agreed that the permanent injury was caused by the August 2013 incident, but the trial court ultimately gave that testimony little weight because those physicians did not address the August 2014 incident. The trial court then weighed the testimony of Dr. Sullivan and Dr. Elalayli and found the testimony of Dr. Sullivan to be more persuasive because he had treated Employee over the longest period of time. The trial court also relied on Dr. Sullivan's notes from the September 6, 2013, appointment that documented radicular pain to Employee's right foot as an indication that Employee was beginning to experience some foot drop issues as of that date, prior to the 2014 incident. The trial court also relied on Dr. Sullivan's opinion that the disc protrusions were "definitely" caused by the 2013 injury, which eventually led to the foot drop, and that the 2014 incident was only an exacerbation of the pre-existing injury Employee already had. Considering that all reasonable doubts on causation must be resolved in favor of Employee, *White*, 824 S.W.2d at 159, we conclude that the evidence does not preponderate against the trial court's finding that Employee's permanent injury was caused by the August 2013 accident.

Impairment Rating

Employer next argues that the trial court erred in assigning a 25% impairment rating "because it takes causation into account." As we previously stated, the trial court did not err in finding that the August 12, 2013, injury caused Employee's permanent

injury. Moreover, although Employer agreed that Employee has a permanent injury, Employer never provided an impairment rating. Instead, Dr. Elalayli simply testified that there was no impairment related to the 2013 incident. Thus the only impairment ratings were given by Dr. Bearden, who assigned an 11% impairment rating, and Dr. Salekin, who assigned a 25% impairment rating. The trial court found that Dr. Salekin was in the best position to provide the impairment rating because he is a board certified disability specialist with extensive experience providing permanent impairment ratings using the AMA Guides. The trial court found that Dr. Bearden was not as accustomed as Dr. Salekin in rating his patients based upon the AMA Guides, and noted that Dr. Bearden ultimately agreed with Dr. Salekin's impairment rating. The trial court also found that 25% was an appropriate rating based on its own review of the AMA Guides. We conclude that the evidence does not preponderate against the trial court's award of permanent partial disability benefits based on a 25% impairment to the body as a whole.

Conclusion

The judgment of the trial court is affirmed. Costs on appeal are taxed to Hara, Inc. d/b/a Hot Shot Delivery and Auto Owners Insurance Company, for which execution may issue if necessary.

WILLIAM B. ACREE, SR.J.