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

(November 30, 2000 Session)

L.D. MANGRUM v. SPRING INDUSTRIES and ZURICH AMERICAN INSURANCE COMPANY

Direct Appeal from the Chancery Court for Williamson County
No. II-26196 Russell Heldman, Judge

No. M2000-01262-WC-R3-CV - Mailed - March 7, 2001
Filed - April 9, 2001

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated § 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. The employer appeals and contends (1) the trial court abused its discretion in refusing to admit and consider the deposition testimony of a physician and (2) erred in awarding the employee sixty-five percent disability to each leg. We sustain the contentions of the employer and modify the award to sixty-five percent to both legs.

Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Williamson County Chancery Court Modified.

HOWELL N. PEOPLES, SP. J., delivered the opinion of the court, in which ADOLPHO A. BIRCH, JR., JUSTICE, and JOE C. LOSER, JR., SP. J., joined.

Kent E. Krause, Nashville, Tennessee, for the Appellant Spring Industries and Zurich Insurance Company.

James F. Conley, Tullahoma, Tennessee, for the Appellee L. D. Mangrum

MEMORANDUM OPINION

I.

L. D. Mangrum, age 60, quit school in the eighth grade to work on the family farm. He went to work at Spring Industries in 1964 and for the last 29 years of the 35 years he worked there, he operated a forklift. The forklift was driven backwards and Mangrum was required to operate the controls with his hands and feet. For five to seven hours each day, he was required to stand with his body turned or twisted so he could look over his shoulder to see where he was going. He testified that he began to experience pain in his knees in 1989-90. He "would feel the pressure, the strain, the grinding and popping in (his) knee" when he would operate the forklift. He eventually sought medical attention in July 1998. Dr. Roy Terry testified, by deposition, that while it was unusual to have Mangrum's type of injury in the absence of some traumatic event, "in his case, it appeared that, due to his long-term job that he had, he appeared to have developed tears of the anterior cruciate ligaments on both sides and the meniscus tears which were present." Dr Terry assigned a medical impairment of ten percent to each leg or 19 percent to both legs, and expressed the opinion that Mangrum could not return to his job at Spring Industries. Dr. Terry testified that his initial impression was that the anterior cruciate tears were not work-related, but he changed his opinion after he learned more about the manner in which Mangrum performed his job.

Mangrum testified that he has to sleep with pillows between his knees "to keep the bones from rubbing" because he has pain when his knees contact each other. He often sleeps in a recliner, climbs stairs one at a time and uses a cane to avoid stress on his knees if he stumbles, cannot sit or stand in one position very long, suffers sleep deprivation due to pain, and feels he cannot safely operate equipment around other people.

At the trial, counsel for the employer offered the deposition of Dr. Thomas J. O'Brien, which had been taken six days before the trial. The record shows the trial court received the deposition at 9:24 a.m. on Friday, April 7, 2000. The trial began on April 10, 2000. The trial court refused to permit the deposition to be entered into evidence because the deposition had not been filed with the Clerk of the court in accordance with Rule 9 of the Local Rules of Practice for the 21st Judicial District, which, in pertinent part, provides:

> "In all civil actions set for trial on the merits, at least 72 hours prior thereto:
> . . .
> Depositions to be used as evidence (other than for impeachment) shall be filed with the clerk, but do not become trial exhibits unless proper request is made at trial.

The employer contends (1) that the trial court erred in refusing to consider the testimony of Dr. O'Brien that Mangrum's ACL tears were not work-related and (2) that

Dr. Terry's testimony was equivocal and does not support the conclusions of the trial court.

II.

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); *Spencer v. Towson Moving and Storage Inc.*, 922 S.W.2d 508, 509 (Tenn. 1996). However, where questions of law are presented, appellate review is *de novo* without a presumption of correctness. *Smith v. U.S. Pipe & Foundry Co.*, 14 S.W.3d 739, 742 (Tenn. 2000). Where the trial judge has made a determination based upon the testimony of witnesses whom he has seen and heard, great deference must be given to that finding in determining whether the evidence preponderates against the trial judge's determination. *Humphrey v. David Witherspoon, Inc.*, 734 S.W.2d 315 (Tenn. 1987). When the medical testimony is presented by deposition, as it was in this case, this Court is able to make its own independent assessment of the medical proof to determine where the preponderance of the evidence lies. *Cooper v. INA*, 884 S.W.2d 446, 451 (Tenn. 1994); *Landers v. Fireman's Fund Ins. Co.*, 775 S.W.2d 355, 356 (Tenn. 1989).

III.

The trial court excluded the deposition testimony of Dr. Thomas J. O'Brien solely on the basis that it was not filed with the court prior to the trial in accordance with the local rules. Trial courts have the authority to promulgate local rules of practice and procedure in their respective courts so long as the local rules do not conflict with a substantive rule of state law. *In re International Fidelity Ins. Co.*, 989 S.W.2d 726 (Tenn. Crim. App. 1998. Rule 32 of the Tennessee Rules of Civil Procedure governs the use of depositions in court proceedings. As pertinent here, the rule provides:

> **32.01. Use of Depositions. –** At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rule of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, . . ."

Rule 32 imposes no requirement that a deposition be filed prior to the trial before it can be used at the trial. In fact, Rule 30 of the Tennessee Rules of Civil Procedure provides: "If the deposition contains material relevant to a hearing, the party who requested the taking of the deposition shall have it present in the courtroom along with exhibited documents and things on the day of the hearing unless otherwise stipulated." Rule 30.06, T.R.C.P.

The function of a trial is to permit each party to offer all the legally admissible evidence supporting that party's position. Exclusion of otherwise admissible evidence is not permitted except for reasons (such as misleading the jury, undue delay, abuse by counsel) which are not present here. Rule 4.02 of the Tennessee Rules of Evidence provides:

> All relevant evidence is admissible except as provided by the Constitution of the United States, the Constitution of Tennessee, these rules, or *other rules of general application in the courts of Tennessee.* Evidence which is not relevant is not admissible." (emphasis supplied)

The local rules of the 21st Judicial District are not "rules of general application." There is no contention that the testimony is not relevant, and there is nothing in the record to indicate that unfair prejudice to the employee would result from the admission of the testimony of Dr. O'Brien. We find, therefore, that the trial court erred in excluding the deposition testimony of Dr. O'Brien.

Because we can conduct a *de novo* comparison of the deposition testimony of Dr. Terry and Dr. O'Brien, we deem it unnecessary to remand this case to the trial court to consider the testimony of Dr. O'Brien. Dr. O'Brien never saw or examined Mangrum. He based his opinion a on a review of medical records of doctors who had treated Mangrum and the deposition of Mangrum. He testified that the ACL tears were not work-related, but that Mangrum had a two percent impairment to the right and left knees due to the meniscal tears. Dr. Terry treated and performed surgery on Mangrum's knees and we find his testimony concerning causation and impairment following the surgery to be more persuasive than that of a physician who never saw the patient.

The trial court awarded Mangrum a 65 percent disability to each leg. The record establishes that the industrial loss of Mr. Mangrum is at least that amount for each leg. Dr. Terry testified that Mangrum had a 20 percent medical impairment to each leg, which he said was equivalent to a 19 percent impairment of both legs. We note that Tenn. Code Ann. § 50-6-207(3)(A)(ii)(y) delineates the loss of two legs as a scheduled injury and bases the award on 400 weeks. SEE *Lock v. Nat. Union Fire Ins.Co. of Pa.*, 809 S.W.2d 483 (Tenn. 1991). We deem it appropriate to clarify that Mangrum's award is 65 percent for both legs, or a total of 260 weeks, and accordingly, so modify the judgment and remand it for enforcement. The costs of the appeal are taxed against the Appellant.

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Howell N. Peoples

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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 appears 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 will be paid by the appellant, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM