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

SAMUEL F. SANCHEZ v. SATURN CORP.

Direct Appeal from the Circuit Court of Williamson County
No. 02577, Hon. R. E. Lee Davies, Judge

No. M2003-01894-WC-R3-CV - Mailed - July 28, 2004
Filed - August 31, 2004

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with Tenn. Code Ann. §50-6-225(e)(3). The employee suffered a biceps tendon rupture in the course and scope of his employment. While performing arthroscopic surgery to confirm the existence of a rotator cuff tear, the treating physician performed a resection of the employee's distal clavicle. The employee contends that the trial judge erred in failing to consider any impairment for this resection in the calculation of the employee's vocational disability and therefore rendered an inadequate award. The Panel finds that medical testimony refutes any causal connection between the work-related injury and the clavicle resection. The Panel also concludes that the employee has failed to meet his burden of showing that the resection was reasonably necessary to treat the work-related injury. We affirm the judgment of the trial court.

Tenn. Code Ann. § 50-6-225(e)(3) Appeal as of Right; Judgment of the Circuit Court Affirmed.

JOHN A. TURNBULL, Sp. J., delivered the opinion of the court, in which FRANK F. DROWOTA, III, C.J., and JAMES L. WEATHERFORD, SR. J., joined.

Joseph K. Dugman, Richard Ashe House, and A. Allen Smith, III, for the appellant, Samuel F. Sanchez.

Clifford Wilson, for the appellee, Saturn Corporation.

OPINION

I. Facts and Procedural Background

Samuel F. Sanchez ("Sanchez"), the appellant, is 47 years old and has worked as a general laborer for several divisions of General Motors, including the employer-appellee, Saturn Corporation ("Saturn"), for over 28 years. On March 22, 2002, Mr. Sanchez was lifting a bin of automotive parts at the Saturn plant when he heard a pop and experienced immediate pain in his left shoulder.

Mr. Sanchez reported his injury the same day and chose Dr. Angelo DiFelice from Saturn's list of physicians. On April 8, 2002, Dr. DiFelice diagnosed Mr. Sanchez as having a biceps tendon rupture and a possible torn rotator cuff. The biceps tendon was inoperable, but Dr. DiFelice decided to perform arthroscopic surgery on the left shoulder to confirm the existence of a rotator cuff tear. The June 4, 2002 surgery revealed that Mr. Sanchez had a torn biceps tendon, but did not have a torn rotator cuff. During the procedure Dr. DiFelice performed a debridement of the shoulder area, a subacromial decompression, and a distal clavicle resection.

Dr. DiFelice testified that the distal clavicle resection was a "time of surgery" decision performed to prevent the patient from having any future trouble. Mr. Sanchez had some wear-and-tear degenerative changes to the collarbone, which could have been caused by any number of activities, including Mr. Sanchez's work. However, Dr. DiFelice did not believe that the resection he performed had anything to do with the injury that Mr. Sanchez sustained at work. Dr. DiFelice testified that the resection can affect someone's use of the shoulder, but that he did not feel that it would affect Sanchez's ability to work or recover. He assigned Mr. Sanchez a four percent permanent anatomical impairment to the body as a whole for weakness from the biceps rupture, which did not include any impairment for the resection of the distal clavicle. On October 2, 2002, Dr. DiFelice determined that Mr. Sanchez reached maximum medical improvement. Dr. DiFelice did not assess any permanent restrictions.

On November 20, 2002, Mr. Sanchez saw Dr. David Gaw for an independent medical evaluation. Dr. Gaw concurred in the treatment of Dr. DiFelice, but disputed the impairment rating that Dr. DiFelice assigned.

While Dr. Gaw agreed that the distal clavicle had not been injured on March 22, 2002, he interpreted the AMA Guidelines as dictating an impairment because the resection was performed. In his opinion, the fact that the clavicle was resected means that Mr. Sanchez should be assigned impairment for the resection. Dr. Gaw believed that the clavicle resection and the subacromial decompression were done to prevent pressure on the rotator cuff and labrum through which the biceps tendon passes. He testified that the resection has not caused any of the weakness Mr. Sanchez has experienced, but has changed the anatomy and probably weakened the joint. Following AMA Guidelines, Dr. Gaw assigned Mr. Sanchez a nine percent anatomical impairment to the body as a whole, which included impairment for the resection.[1]

Mr. Sanchez has returned to work full time at the same job he held before the accident. He experiences soreness from excessive lifting and has suffered some strength loss. However, he terms his shoulder "workable" as his injuries are not substantial enough to prevent him from performing his duties.

The trial court awarded employee nine percent permanent partial disability benefits to the body as a whole, based on Dr. DiFelice's anatomical impairment rating of four percent to the body as a whole. The award did not include impairment for the resection of the distal clavicle, which the trial court found was based on an arthritic condition and not work-related.

II. Analysis

The standard of review on appeal is de novo, with a presumption that the factual findings of the trial court are correct unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). The trial court's evaluation of credibility of live testimony is given considerable deference on appeal. Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 167 (Tenn. 2002). However, where medical testimony is presented by deposition, this Panel may make an independent assessment of that proof

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[1] Dr. Gaw's assigned five percent permanent partial impairment ("PPI") to the upper left extremity for weakness from the biceps injury plus ten percent PPI for the resection. These combined equaled fifteen percent PPI to the upper left extremity, which translated into a nine percent PPI for the whole person

to determine where the preponderance of the evidence lies. Id.

A. Causation from Lay and Medical Testimony

Proof of causation requires expert testimony in all but the most obvious cases. Thomas v. Aetna Life & Cas. Co., 812 S.W.2d 278 (Tenn. 1991). An award may be based on expert medical testimony that a given incident "could be" the cause of an injury when that testimony is coupled with lay testimony from which it may be reasonably inferred that the incident was in fact the cause of the injury. P & L Const. Co. v. Lankford, 559 S.W.2d 793, 794 (Tenn. 1978). In cases where common knowledge establishes a causal connection between the employee's injury and his inability to work, no expert medical testimony is needed. Simpson v. Satterfield, 564 S.W.2d 953, 956 (Tenn. 1978). While causation may not be based upon speculation, Simpson v. H.D. Lee Co., 793 S.W.2d 929, 931 (Tenn. 1990), absolute certainty is not required, Tindall v. Waring Park Ass'n, 725 S.W.2d 158, 159 (Tenn. 1992). Any reasonable doubt in this regard is to be construed in favor of the employee. White v. Werthan Industries, 824 S.W.2d 158, 159 (Tenn. 1992).

In this case, we find that causation is not obvious from common knowledge. Therefore, the lay testimony from Mr. Sanchez regarding the cause of his clavicle injury is insufficient to prove causation. Our review of the record indicates an absence of expert medical testimony that the work-related injury of March 22, 2002, was the cause of the clavicle injury, as both physicians testified that the clavicle was not injured on that day. Thus, under White, there is no reasonable doubt to resolve. 824 S.W.2d at 159. Dr. DiFelice could not state with any reasonable degree of medical certainty what caused the degenerative changes to the clavicle, but admitted that they could be caused by work over time. We cannot say the trial court erred in finding this proof insufficient to prove causation since the "could be" medical testimony is not coupled with lay testimony from which it may be reasonably inferred that distal clavicle resection was caused by the work.

B. Causation from Medical Treatment

Mr. Sanchez also argues that he should be compensated for the resection because it was reasonably necessary and a direct and natural result of the biceps tear. Tenn. Code Ann. § 50-6-204(a)(1); Rogers v.

Shaw, 813 S.W.2d 397, 399-400 (Tenn. 1991) (quoting A. Larson, The Law of Workers' Compensation § 13.00 (1991)). In support of this proposition, Mr. Sanchez relies specifically on Rogers, where the employee received compensation for consequences of a treatment that the treating physician felt was reasonably required in order to treat an occupational disease. 813 S.W.2d at 399-400.

Dr. Gaw testified that Mr. Sanchez should be assigned impairment for the resection because that procedure was "part of the surgical procedure that he [Dr. DiFelice] felt was necessary to take care of this gentleman." Dr. Gaw also opined that the clavicle resection and the subacromial decompression were both done to prevent pressure on the rotator cuff and biceps. Dr. DiFelice agreed that the subacromial decompression was done to create space for the rotator cuff and address inflamation from the biceps rupture. However, he testified that the resection was not done to create more space for the biceps and, in fact, had nothing to do with the biceps rupture. Dr. DiFelice explicitly refuted Dr. Gaw's opinion that the resection was part of the treatment for the biceps rupture. Thus, unlike the treating physician in Rogers, the treating physician here did not feel that this aspect of the treatment was reasonably required to treat the occupational injury.

When the medical testimony in a workers' compensation case differs, it is within the discretion of the trial judge to accept one opinion over another. Kellerman v. Food Lion, Inc., 929 S.W.2d 333 (Tenn. 1996). The trial judge accredited Dr. DiFelice's testimony as to causation and his medical impairment rating of four percent to the body as a whole. We find that Mr. Sanchez has failed to meet his burden to show that the preponderance of evidence is otherwise. Considering Mr. Sanchez's age, education, training, work history, and the fact that he has returned to work without restrictions, we find that the award of just over two times the impairment rating is reasonable.

III. Conclusion

We conclude that the trial court's judgment should be affirmed in all respects. The costs on appeal are assessed against the appellant, Samuel F. Sanchez.

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JOHN A. TURNBULL, SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
JUNE 10, 2004 Session

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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 will be paid by the appellant, Samuel F. Sanchez, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM