IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
November 26, 2007 Session

MARK WILLETT v. UNITED PARCEL SERVICE ET AL.

Direct Appeal from the Circuit Court for Davidson County
No. 02C-2251 Walter Kurtz, Judge

No. M2006-02488-WC-R3-WC - Mailed - July 9, 2008
Filed - August 11, 2008

This appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) (Supp. 2007) for a hearing and a report of findings of fact and conclusions of law. It involves a delivery driver who asserts that he sustained two work-related back injuries in 1999. Following surgery in 2002, the delivery driver's surgeon assigned him a twenty-eight percent impairment and opined that the 1999 injuries had exacerbated a pre-existing back condition. The delivery driver later filed a complaint seeking benefits under the Workers' Compensation Law in the Circuit Court for Davidson County. Following a bench trial, the trial court awarded the delivery driver sixty percent permanent partial disability and temporary total disability from March 2000 to September 2004. The trial court also directed the delivery driver's employer to pay some of his medical expenses. On this appeal, the employer asserts that the trial court erred (1) by admitting the second deposition of the delivery driver's surgeon, (2) by finding that the delivery driver had sustained a permanent impairment as a result of his work-related injuries, (3) by awarding the delivery driver temporary total disability benefits, and (4) by requiring it to pay a part of the delivery driver's medical expenses. For his part, the delivery driver asserts that the trial court erred by failing to award him some of his claimed medical expenses and for declining to impose a bad faith penalty against the employer. We have determined that the award of temporary total disability benefits should be reduced and that the medical expenses awarded by the trial court should be paid directly to the providers rather than in a lump sum to the delivery driver. Therefore, we affirm the judgment as modified by this opinion.

Tenn. Code Ann. § 50-6-225(e) (Supp. 2007) Appeal as of Right; Judgment of the Circuit Court Modified and Affirmed

WILLIAM C. KOCH, JR., J., delivered the opinion of the court, in which ALLEN W. WALLACE and JERRY SCOTT, SR.JJ., joined.

David T. Hooper, Nashville, Tennessee, for the appellants, United Parcel Service and Liberty Mutual Insurance Company.

Allen Barnes, Nashville, Tennessee, for the appellee, Mark Willett.

MEMORANDUM OPINION

I.

Mark Willett began working for United Parcel Service ("UPS") as a part-time employee in 1978 when he was sixteen years old. He continued working for UPS while he attended David Lipscomb University, and, following his graduation with majors in biology and chemistry, he began working for UPS on a full-time basis.

Mr. Willett sustained work-related low back injuries in 1982 and 1986. The latter injury led to a workers' compensation claim and settlement. On August 3, 1999, Mr. Willett injured his lower back again when he fell from his truck while working on a residential delivery route. He reported his injury to Lynn Woods, his supervisor. When UPS did not initiate the paperwork associated with a workers' compensation claim, Mr. Willett requested that a claim or injury report be filed. He did not, however, request medical treatment. On August 30, 1999, Mr. Willett filed a grievance because UPS had not generated an injury report. Again, he did not request medical treatment for the August 3, 1999 incident.

Approximately one month later, on September 8, 1999, Ted Patterson, a UPS manager, accompanied Mr. Willett on his route. Mr. Patterson was observing Mr. Willett work because of questions about Mr. Willett's performance of this job. According to Mr. Willett, he felt a sharp pain while lifting a box, and he immediately told Mr. Patterson what had happened.[1] When he returned to UPS's distribution center, Mr. Willett reported the injury to Liberty Mutual Insurance Company ("Liberty Mutual").[2] When asked if he desired to seek medical care, Mr. Willett declined.

Mr. Willett continued to work at his regular job. He took one week of vacation in September and again in November, and he did not work during several holidays during that time. Even though he later insisted that he was experiencing a great deal of pain and that he was having difficulty performing his job, he did not seek or receive medical treatment. He received medical care for an unrelated illness in December 1999, but the record of that illness does not mention a back injury or any other problems with his back.

Mr. Willett first sought medical treatment for his back on February 17, 2000. UPS referred him to Dr. Bradley Rudge, a physician in general practice at Baptist Care Center.[3] Dr. Rudge and other physicians at Baptist Care Center had examined and treated Mr. Willett for back problems in 1992 and 1998 and in June and July 1999. Dr. Rudge examined Mr. Willett on February 22, 2000 and referred him to Dr. Robert Clendenin, a physiatrist.

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[1]Mr. Patterson denied that Mr. Willett ever told him that he had experienced a sharp pain while lifting a box.

[2]Liberty Mutual is UPS's workers' compensation insurance carrier.

[3]The clinic has had several name changes. However, we will refer to it in this opinion as "Baptist Care Center."

Dr. Clendenin first met with Mr. Willett on March 3, 2000. He initially diagnosed Mr. Willett with thoracic and lumbar strains and prescribed medication and physical therapy. He also placed Mr. Willett on light duty. Later MRI scans of Mr. Willett's thoracic and lumbar spines showed arthritic change in both areas, as well as disc bulges at L4-5 and L5-S1. However, Dr. Clendenin did not believe that Mr. Willett's reported symptoms corresponded to the MRI findings.

Dr. Clendenin also prescribed an epidural steroid injection, but that procedure did not improve Mr. Willett's symptoms. Dr. Clendenin last saw Mr. Willett on April 20, 2000. He recommended that Mr. Willett consult a rheumatologist to determine if there was an underlying disease such as rheumatoid arthritis or lupus. An appointment with a rheumatologist was made and then cancelled after Liberty Mutual decided that the purpose of the referral was unrelated to a work-related injury.

Mr. Willett's relationship with UPS soured during 1999 and 2000. He continued to perform only light duty assignments after being seen by Dr. Rudge. At the same time, UPS cited him for deficiencies in his work and gave him a notice of proposed disciplinary action. For his part, Mr. Willett filed several grievances concerning his injury and other matters. Finally, on March 24, 2000, a supervisor told Mr. Willett that he could no longer work in a light duty capacity and that he would not be permitted to return to work until he received a full release. By the time this case was tried, Mr. Willett had not returned to work in any capacity.

Mr. Willett claims that he attempted unsuccessfully to obtain additional care beginning in January 2001 through his medical insurance and the Tennessee Department of Labor and Workforce Development. On April 5, 2001, Dr. David Gaw, an orthopaedic surgeon, conducted an independent medical examination of Mr. Willett at the request of his lawyer.

Dr. Gaw diagnosed Mr. Willett as having lumbar disc disease and thoracic spine strain. He opined that Mr. Willett had reached maximum medical improvement as of April 5, 2001, the date of the examination. Dr. Gaw found "no evidence upon which to give a permanent physical impairment" and recommended EMG testing of Mr. Willett's lower extremities. Dr. Gaw did not recommend surgery and did not place any restrictions on Mr. Willett's activities.

Mr. Willett was dissatisfied with Dr. Gaw's diagnosis. In September 2002, he sent a letter to Dr. Gaw which included additional medical records. Mr. Willett asked Dr. Gaw to reconsider the opinions stated in his report. Dr. Gaw, however, adhered to his original conclusions.

Shortly after being examined by Dr. Gaw, Mr. Willett flew to Minnesota for a consultation at the Mayo Clinic. While there, he received a functional capacity evaluation ("FCE"), occupational therapy, and pain management. The only records of this visit to the Mayo Clinic in the record are copies of the bills and the FCE report that was conducted on September 6 and 7, 2001. The report described Mr. Willett's symptoms as "generalized muscle pain and pain in hips, knees, right wrist and tailbone and diagnosed his condition as 'Chronic Pain Syndrome.'"

In July 2002, Mr. Willett was examined by Dr. Melvin D. Law, a Nashville orthopaedic surgeon. Dr. Law ordered X-rays, an MRI, and a discogram.[4] Based upon the results of these tests, Dr. Law recommended a surgical fusion of the L4, L5 and S1 vertebrae. That procedure was carried out on March 31, 2003.

In August 2002, Mr. Willett filed suit against UPS and Liberty Mutual in the Circuit Court for Davidson County.[5] The trial court conducted a bench trial from July 31 through August 2, 2006. During the proceeding, the trial court heard the testimony of Mr. Willett, his wife, and thirteen other witnesses. In addition, the trial court accepted into evidence the depositions of Dr. Rudge, Dr. Clendenin, Dr. Gaw, and Dr. Law, as well as six other non-expert witnesses.

The trial court filed its memorandum decision on August 21, 2006. The court specifically credited Dr. Law's testimony as "augmented by Mr. Willett's testimony" and determined that Mr. Willett had sustained compensable injuries to his low back in August and September 1999. The court awarded temporary total disability benefits from March 2000 until September 2004 and assessed a six percent penalty regarding those benefits in accordance with Tenn. Code Ann. § 50-6-205 (Supp. 2007). The trial court also awarded Mr. Willett sixty percent permanent partial disability to the body as a whole, as well as the medical expenses for the treatment provided or ordered by Dr. Law. The court declined to require UPS to pay for other medical expenses and to impose a twenty-five percent bad faith penalty against UPS in accordance with Tenn. Code Ann. § 50-6-225(j) (Supp. 2007). In response to the post-trial motions filed by both parties, the trial court amended its order to remove the requirement that UPS pay a six percent penalty on the temporary total disability benefits. UPS has perfected this appeal, and Mr. Willett has also raised issues on appeal.

II.

Courts reviewing an award of workers' compensation benefits must conduct an in-depth examination of the trial court's factual findings and conclusions. *Wilhelm v. Krogers*, 235 S.W.3d 122, 126 (Tenn. 2007). When conducting this examination, Tenn. Code Ann. § 50-6-225(e)(2) requires the reviewing court to "[r]eview . . . the trial court's findings of fact . . . de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise." The reviewing court must also give considerable deference to the trial court's findings regarding the credibility of the live witnesses and to the trial court's assessment of the weight that should be given to their testimony. *Tryon v. Saturn Corp.*, ___ S.W.3d. ___, ___, 2008 WL 2098104 at *4 (Tenn. 2008); *Whirlpool Corp. v. Nakhoneinh*, 69 S.W.3d 164, 167 (Tenn. 2002). However, the reviewing courts need not give similar deference to a trial court's findings based upon documentary evidence such as depositions, *Orrick v. Bestway Trucking, Inc.*, 184 S.W.3d 211, 216 (Tenn. 2006); *Bohanan v. City of Knoxville*, 136 S.W.3d 621, 624 (Tenn. 2004), or to a trial court's conclusions of law, *Perrin v. Gaylord Entm't Co.*, 120 S.W.3d 823, 826 (Tenn. 2003).

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[4] A discogram is a test that uses radio contrast dye to determine the mechanical competency of a disc.

[5] Mr. Willett had originally filed suit in August 2000 but took a voluntary dismissal in August 2001.

III.

UPS first takes issue with the trial court's decision to accept two depositions from Dr. Law. It asserts that the trial court should not have permitted Mr. Willett to depose Dr. Law a second time to bolster his testimony following his cross-examination during the first deposition. Mr. Willett, on the other hand, insists that the trial court did not err by accepting Dr. Law's second deposition. We agree with Mr. Willett.

Dr. Law was first deposed on May 26, 2005. He opined that Mr. Willett had degenerative disc disease at the L4-5 and L5-S1 levels, and he characterized the condition at the L5-S1 level as severe. He opined that Mr. Willett's lumbar spine symptoms at L4-5 and L5-S1 were caused by his work-related injuries in August and September 1999. Dr. Law also assigned twenty-eight percent permanent partial impairment to the body as a whole as a result of the injury and surgery.

During his cross-examination of Dr. Law, UPS's lawyer showed Dr. Law records and a summary of the medical treatment for low back pain that Mr. Willett had received between 1982 and July 1999.[6] Dr. Law had never seen many of these records and was unaware of the extent or timing of medical treatment that Mr. Willett had received for low back pain prior to the August 1999 incident. Dr. Law stated that these records were inconsistent with the history that Mr. Willett had provided him, especially Mr. Willett's representation to him that he had been pain-free for approximately thirteen years prior to August 1999. As a result of this information, Dr. Law equivocated on his previous opinion regarding causation and stated that he would need further consultation with Mr. Willett to clarify some details of his medical history.

Mr. Willett personally met with Dr. Law on August 4, 2005. His lawyer also met with Dr. Law and provided him with a summary of the medical treatment that Mr. Willett had received. He also provided Dr. Law with additional, and presumably more extensive, medical records regarding Mr. Willett's low back.

Following these consultations, Mr. Willett's lawyer deposed Dr. Law a second time on September 9, 2006. Based on the additional medical records he had been provided in the interim, Dr. Law testified that he adhered to his original opinion on causation. He stated that the records of 1992, 1998, and June and July 1999 showed treatment for "simple strains" and were not inconsistent with his understanding that Mr. Willett had a pain-free interval of three to six months.

UPS objected to Dr. Law's testimony during the second deposition. It also filed a motion in limine to exclude the second deposition from evidence. The trial court denied that motion.

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[6] These records included (1) a 1986 radiologist's report stating that Mr. Willett had a herniated disc at L5-S1, (2) records of treatment rendered by Dr. Vaughn Allen in 1987 and 1988, and (3) records of treatment at Baptist Care Center for low back pain in 1992, 1998, and June and July 1999.

Decisions regarding the admissibility of expert testimony in cases seeking benefits under the Workers' Compensation Law, as in any other case, are discretionary ones. *Chandler v. Cracker Barrel Old Country Store, Inc.*, No. E2006-00956-WC-R3-WC, 2007 WL 1710572, at *5 (Tenn. Workers' Comp. Panel June 13, 2007); *Rogers v. Winchester Utils.*, No. M2005-01516-WC-R3-WC, 2007 WL 715487, at *3 (Tenn. Workers' Comp. Panel Mar. 8, 2007). UPS cites no statutes or court decisions that prevent the taking of a second causation deposition in a case involving workers' compensation benefits and has failed to present a persuasive argument that second depositions should be inadmissible.

There is no question that UPS's lawyer successfully undermined the weight of Dr. Law's testimony during the first deposition regarding the cause of Mr. Willett's low back problems. It is, therefore, neither surprising nor unexpected that Mr. Willett and his lawyer would undertake to rehabilitate Dr. Law. That is clearly what they did prior to deposing Dr. Law for the second time. Dr. Law was again cross-examined during his second deposition and was asked to explain the bases for his opinion. The events that occurred between the first and second depositions affect the weight, rather than the admissibility, of the opinions that Dr. Law offered in his second deposition. In the absence of any authority for excluding Dr. Law's second deposition, it is appropriate to leave to the trial court, and then ultimately to the reviewing courts, the decision regarding the weight that should be given to Dr. Law's opinion regarding the cause of Mr. Willett's low back condition.[7]

IV.

UPS next asserts that the evidence preponderates against the trial court's finding that Mr. Willett's accidents on the job in August and September 1999 were the cause of his low back injury. For his part, Mr. Willett insists that the record contains ample evidence to support the trial court's finding that his low back condition was caused by these work-related injuries. Again we agree with Mr. Willett.

UPS supports its challenge to the evidentiary foundation of the causal link between the on-the-job incidents in August and September 1999 and Mr. Willett's low back condition on the following circumstances: (1) Mr. Willett had a long history of low back problems that manifested themselves before August 1999, including a compensable work-related lumbar injury; (2) Mr. Willett sought medical treatment for low back problems in June and July 1999; (3) Mr. Willett continued working and did not seek treatment for his back until six months after the injuries occurred; (4) Mr. Willett did not seek medical treatment until he was facing disciplinary action

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[7] Mr. Willett supports his argument that the trial court properly accepted Dr. Law's second deposition by citing cases in which reviewing courts remand cases to trial courts for the purpose of taking additional medical proof. *See, e.g.*,
Batson v. Cigna Prop. and Cas. Cos., 874 S.W.2d 566 (Tenn. 1994); *American Ins. Co. v. Ison*, 519 S.W.2d 778 (Tenn. 1975); *Kayser-Roth Hosiery, Inc. v. Johnson*, No. 03S01-9212-CH-00109, 1994 WL 901454 (Tenn. Workers' Comp. Panel Apr. 5, 1994). These cases provide no support for his argument because the remands were necessitated by ambiguities in the medical evidence. There are no ambiguities in this case. Mr. Willett deposed Dr. Law a second time not to clear up ambiguities but rather to rehabilitate Dr. Law's testimony regarding the cause of Mr. Willett's low back problems.

because of his performance; (5) the opinions of Drs. Clendenin and Gaw that Mr. Willett had not sustained a permanent injury and was not a candidate for surgery; (6) the inconsistencies in Dr. Law's testimony; and (7) the Mayo Clinic did not consider Mr. Willett to be a surgical candidate.

Mr. Willett does not take direct issue with any of these facts. Instead, he points to his own testimony regarding the immediate onset of his symptoms and their continuous nature after August 1999. He identifies testimony of several lay witnesses that tends to support his own testimony regarding the progression of his symptoms. He also points to the portions of Dr. Law's testimony expressing the opinion that the August and September 1999 injuries caused the condition which required surgery to correct.

The existence of a causal relationship between Mr. Willett's employment and the injury must be established by the preponderance of the expert opinions supplemented by the lay evidence. The proof of the causal connection may not be speculative, conjectural, or uncertain. *Clark v. Nashville Mach. Elevator Co.,* 129 S.W.3d 42, 47 (Tenn. 2004); *Simpson v. H.D. Lee Co.*, 793 S.W.2d 929, 931 (Tenn. 1990); *Tindall v. Waring Park Ass'n*, 725 S.W.2d 935, 937 (Tenn. 1987). Absolute certainty with respect to causation is not required, however, and the reviewing courts should recognize that, in many workers' compensation cases, expert opinions will contain an element of uncertainty and speculation. *Fritts v. Safety Nat'l Cas. Corp.*, 163 S.W.3d 673, 678 (Tenn. 2005).

The evidence concerning the causation of Mr. Willett's low back condition is voluminous, complex, and contradictory. Some facts are relatively clear. Mr. Willett promptly reported alleged on-the-job injuries to UPS in August and September 1999. He was offered medical treatment in September 1999 but declined. He neither requested nor received medical treatment until February 2000. There is no question that he had pre-existing degenerative disc disease. The facts beyond these are less clear.

Dr. Clendenin testified that Mr. Willett's symptoms did not match his objective findings, that he had sustained no permanent impairment as a result of the injuries of August and September 1999, that he was able to return to work in April 2000, and that he was not a surgical candidate. Dr. Gaw examined Mr. Willett one year later and reached the same conclusions. In contrast, Dr. Law believed that Mr. Willett was unable to work from March 2000 forward and that he had sustained a serious injury in 1999 that required a very significant surgical procedure to repair. Lay testimony on the issue was similarly conflicting.

The trial court approached its task in a methodical manner. It issued a thoughtful, well-reasoned written decision that sorted through the evidence in a logical manner and reached the conclusion that Mr. Willett had demonstrated by a preponderance of the evidence that his degenerative back problems became debilitating as a result of the August and September 1999 work-related incidents. The trial court considered the credibility issues raised by the circumstances surrounding Dr. Law's two depositions but ultimately found Dr. Law's testimony "to be the most logical and reasonable." Our examination of the record, including our independent examination of the medical depositions, leads us to the conclusion that, while the trial court could have reasonably reached the opposite result, the evidence does not preponderate against the result it reached in this case.

V.

UPS next asserts that the trial court erred by awarding Mr. Willett temporary total disability benefits from March 2000 through September 30, 2004. It argues that the evidence does not support the trial court's decision to begin the period of temporary total disability in March 2000. Mr. Willett disagrees and insists that the evidence supports the trial court's determination of the period of his temporary total disability. We have concluded that the evidence preponderates against the award as granted by the trial court.

The trial court's temporary total disability award is presumably based on Dr. Law's testimony that Mr. Willett was totally disabled from March 2000 through September 30, 2004, the date of his maximum medical improvement. However, Dr. Clendenin testified that Mr. Willett had reached maximum medical improvement and was able to work as of the date of his last examination in April 2000. Similarly, Dr. Gaw testified that Mr. Willett was at maximum medical improvement and was able to work at the time he examined Mr. Willett in April 2001. Dr. Law, however, did not examine Mr. Willett until July 2002.

Dr. Law's testimony regarding the period of Mr. Willett's temporary total disability was based on his understanding that Mr. Willett stopped working on March 2000 because he was physically unable to work. That assumption is not consistent with the evidence. The symptoms that Dr. Law observed in July 2002 were far more serious and debilitating than the symptoms observed by Dr. Clendenin in 2000 or by Dr. Gaw in 2001. In fact, Dr. Law himself testified that "at the level of workup that was done at the time he was evaluated by Dr. Gaw, I don't see any impairment myself." We thus conclude that the evidence preponderates against the trial court's finding that Mr. Willett was entitled to receive temporary total disability benefits prior to July 9, 2002. The judgment is therefore modified to award temporary total disability from July 9, 2002 until September 30, 2004.

VI.

The trial court awarded Mr. Willett the expenses for the medical care provided or ordered by Dr. Law but declined to award him the other medical expenses he incurred on his own referral, such as the expenses associated with his trip to the Mayo Clinic. Both parties take issue with this decision.

Dr. Law testified that his treatment was necessary and the expenses associated with that treatment were reasonable. He also testified regarding some of the claimed medical expenses that were denied. However, these expenses related to treatment Dr. Law neither rendered nor ordered. In some instances, the record contains little or no evidence regarding the nature of the services provided other than the information in the bills.

As with any other medical testimony, the trial court was not bound to accept Dr. Law's opinion on this subject, especially given his limited knowledge concerning the nature of the other medical treatment. *See Hinson v. Wal-Mart Stores, Inc.*, 654 S.W.2d 675, 677 (Tenn. 1983). The approach taken and choices made by the trial court in determining which expenses should be

awarded and which expenses should be denied was practical and was based upon the evidence before it. We conclude that the evidence does not preponderate against the trial court's findings on this issue. For the same reason, the trial court's denial of Mr. Willett's claim for travel expenses associated with the medical treatment found not to be recoverable was also appropriate. The judgment is affirmed as to those matters.

We note, however, that the trial court awarded the medical expenses as a lump sum to be paid directly to Mr. Willett. In *Moore v. Town of Collierville*, 124 S.W.3d 93, 100 (Tenn. 2004) and *Staggs v. Nat'l Health Corp.*, 924 S.W.2d 79, 81 (Tenn. 1996), the Tennessee Supreme Court held that the correct method for awarding medical expenses is to require the employer to pay the providers directly, rather than award the amount to the injured. Consistent with these decisions, we modify the judgment accordingly.

VII.

Mr. Willett asserts that the trial court erred by awarding him only $2,000.00 of the $6,156.36 in travel expenses he claimed for traveling to and from his medical providers. He asserts that he presented sufficient evidence to establish that all his claimed travel expenses were recoverable. We have determined that the trial court did not err when it declined to award Mr. Willett $4,156.36 of his claimed expenses.

Mr. Willett is a resident of Nashville. All, or nearly all, of the mileage expense requested was for treatment rendered in Nashville. Mr. Willett's brief states that the providers for whom this reimbursement is sought were outside the fifteen-mile radius described in Tenn. Code Ann. § 50-6-204(a)(1). There is no evidence in the record to substantiate that assertion. Mr. Willett submitted an Internet mapping tool printout in support of his motion to alter or amend which purported to show that the routes from his residence to the locations of some providers were slightly longer than fifteen miles. In an affidavit submitted in support of the same motion, he stated that he was unable to take a more direct route to these providers due to road construction. We have determined that the record does not contain sufficient evidence to support Mr. Willett's claim for travel expenses.

VIII.

Mr. Willett claims that the trial court erred by failing to require UPS to pay the twenty-five percent bad faith penalty available in Tenn. Code Ann. § 50-6-225(j). He insists that UPS acted in bad faith by failing to pay him temporary total disability benefits. On the other hand, UPS contends that Mr. Willett failed to prove that it had acted in bad faith. We agree with UPS.

In denying Mr. Willett's claim, the trial court noted that Mr. Willett was represented by counsel beginning in February 2000, yet he never requested the trial court to order UPS to pay either temporary total disability benefits or medical benefits. In addition, the record contains evidence – specifically the opinions of Drs. Clendenin and Gaw – that tended to support UPS's position on the issue. The trial court found no "credible evidence" to support a finding of bad faith. We have concluded that the trial court's decision reflects an accurate assessment of the record.

IX.

The trial court's judgment is modified in the following particulars: (1) the temporary total disability benefits are awarded for the period from July 9, 2002 through September 30, 2004 and (2) the award of medical expenses is modified to require UPS to pay all providers directly for the treatment that the trial court has deemed to be compensable. The judgment is affirmed in all other respects. We tax one-half of the costs of this appeal to Mark Willett and one-half to United Parcel Service and its surety for which execution, if necessary, may issue.

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WILLIAM C. KOCH, JR., JUSTICE

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

MARK WILLETT v. UNITED PARCEL SERVICE, ET AL.

Circuit Court for Davidson County
No. 02C-2251

No. M2006-02488-WC-R3-WC - Decided - August 11, 2008

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 one-half to Mark Willett and one-half to United Parcel Service and its surety, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM