

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT NASHVILLE  
September 22, 2008 Session

**KARL TARTT v. CITY OF LAVERGNE ET AL.**

**Direct Appeal from the Chancery Court for Rutherford County  
No. 06-0383WC Robert E. Corlew, III, Chancellor**

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**No. M2007-01051-WC-R3-WC - Mailed - April 1, 2009  
Filed - June 11, 2009**

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This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Tennessee Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) (2008) for a hearing and a report of findings of fact and conclusions of law. After sustaining injuries to his head and leg in a work-related motor vehicle accident, the employee filed suit seeking workers' compensation benefits in the Chancery Court for Rutherford County. Following a bench trial, the trial court awarded the employee a 14% permanent partial disability to the leg and an additional 2% to the body as a whole due to chronic headaches. The employer has appealed, contending that the trial court erred in awarding benefits for the headaches. We disagree and affirm the judgment.

**Tenn. Code Ann. § 50-6-225(e) (2008) Appeal as of Right;  
Judgment of the Chancery Court Affirmed**

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

Stephen W. Elliott and Alison D. Hunley, Nashville, Tennessee, for the appellants, City of LaVergne and TML Risk Management Pool.

Jill T. Draughon, Nashville, Tennessee, for the appellee, Karl Tartt.

**MEMORANDUM OPINION**

**I.**

Karl Tartt, a police officer employed by the City of Lavergne since 2001, was injured in an automobile accident on March 3, 2004. The accident arose from and occurred in the course of his employment. Officer Tartt sustained fractures of bones in his foot and ankle. The collision also

caused his automobile's airbag to deploy, and his head either struck the roof of the automobile<sup>1</sup> or was struck by some other loose object in the passenger compartment. He was taken to a local hospital where surgery was performed on his foot.

Following his injury, Officer Tartt returned to work on a limited duty basis until August 26, 2004. On that date, Dr. Roger Passmore, the orthopaedic surgeon who had taken over the care of his foot injury, released him to return to full duty. On March 8, 2006, Officer Tartt filed a complaint seeking workers' compensation benefits in the Chancery Court for Rutherford County. The trial court conducted a bench trial on March 21, 2007. Officer Tartt testified that he continued to have headaches "constantly," but that these headaches did not prevent him from engaging in any activities on the job or away from it. The trial court also received the opinions of three physicians regarding Officer Tartt's injuries.

Dr. Teresa Zyglewska, a neurologist, testified that she had been requested to consult on the case because Officer Tartt was complaining of headaches with nausea. Her initial diagnosis was "post-concussion syndrome." She also continued to treat Officer Tartt on an outpatient basis. Following her last examination in January 2007, Dr. Zyglewska opined that Officer Tartt's headaches were of multifactorial origin. She opined that "obstructive sleep apnea [was a] contributing factor. Secondary, pulmonary: Control blood pressure. And we cannot . . . exclude trauma-induced headache/migraine." Neither the sleep apnea nor the hypertension were related to Officer Tartt's employment.<sup>2</sup> Dr. Zyglewska also believed that work-related stress might be a contributing factor to Officer Tartt's headaches. Notwithstanding her conclusion that the headaches were "chronic" and "persistent," Dr. Zyglewska declined to assign permanent impairment because she considered assessment of impairment under the American Medical Association Guides to be the role of an occupational physician. She did not assign any permanent restrictions to Mr. Tartt.

Dr. Richard Fishbein, an orthopaedic surgeon, conducted an independent medical examination at the request of Officer Tartt's lawyer. Although the focus of his examination and report concerned Mr. Tartt's foot injury, Dr. Fishbein opined in his deposition that Officer Tartt had a 5% impairment "to the head," due to the headaches. He also assigned 5% permanent impairment to the body as a whole (11% to the foot) for the foot injury. Dr. David Gaw, an orthopaedic surgeon who also conducted an independent medical examination, declined to address Mr. Tartt's headaches because he considered this problem to be outside of his area of expertise. Dr. Gaw assigned 7% impairment to the leg for the foot injury.

In its May 3, 2007 order, the trial court awarded Officer Tartt a 14% permanent partial disability to the leg for the foot/ankle injury. It also found that Officer Tartt's ongoing headaches were causally related to the work injury and that he had a 1% anatomical impairment as a result of the headaches. Accordingly, the trial court awarded Officer Tartt a 2% permanent partial disability

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<sup>1</sup>Officer Tartt was not wearing his seatbelt when the accident occurred.

<sup>2</sup>Officer Tartt had been diagnosed with high blood pressure prior to his injury. He was diagnosed with sleep apnea after Dr. Zyglewska began her treatment.

to the body as a whole. The City has appealed, asserting that the trial court erred by awarding permanent partial disability benefits for Officer Tartt's headaches.

## 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.*, 254 S.W.3d 321, 327 (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).

## III.

The City argues that Officer Tartt failed to prove that his continuing headaches were permanent and were caused by the March 3, 2004 accident. Specifically, the City asserts that Dr. Zyglewska's testimony did not establish that Officer Tartt's condition was permanent, did not sufficiently link the condition to the work injury, and did not assign a permanent impairment. Officer Tartt responds that Dr. Zyglewska's testimony was sufficient to support a finding of causation and a permanent partial disability award. He also relies upon the testimony of Dr. Fishbein.

We note at the outset that Dr. Fishbein's opinion is of limited value. He agreed that Mr. Tartt's headaches were not an orthopaedic problem, and that he had no expertise on the subject. He also prescribed a medication for those symptoms which Dr. Zyglewska considered to be problematic due to side effects from everyday use.

Dr. Zyglewska's deposition is, therefore, the pivotal evidence regarding both the permanency and impairment of Officer Tartt's head injury. While Dr. Zyglewska's idiom and the subject matter of her testimony require close and careful reading in order to be understood, her testimony provides ample support for the trial court's decision regarding the compensability of Officer Tartt's headaches.

Dr. Zyglewska's diagnosis of "post-concussion syndrome" is consistent with the undisputed evidence that Officer Tartt sustained a blow to the head. His symptoms appeared immediately after the accident and remained fairly consistent over the period of time Dr. Zyglewska treated him. She continued to prescribe medication throughout that time, some of which improved Officer Tartt's

symptoms. Dr. Zyglewska referred to Officer Tartt's headaches as "chronic" and "persistent." Although she declined to assign a particular impairment, she testified:

Class I is from 1 to 9%, and he does not have any abnormality on neurological exam . . . . And the biggest number, if we really want to be theoretical, would be maybe one or two. Because if headache persists, if -- all the symptoms what he's talking about would be, like, global.

Questioned further on the subject, she stated:

Well, again, this is the first category on that impairment [table] related to . . . neurological symptoms or pain. . . . Exam is normal. His symptoms [are] not affecting daily activity. . . . So the highest that we can give nine and lowest which is one. So based on my interaction would be on the lower side. . . . One, two. The maximum maybe four or five.

Officer Tartt testified that he had headaches before the work accident but also that these had become more severe after the March 3, 2004 collision. He added that he had headaches "constantly" and that he had learned to "deal with the pain." He also testified that those symptoms had not improved since the accident. However, the headaches did not prevent him from engaging in any activities.

Absolute certainty with respect to causation is not required, and, in many cases, expert opinions in this area contain an element of uncertainty and speculation. *Fritts v. Safety Nat'l Cas. Corp.*, 163 S.W.3d 673, 678 (Tenn. 2005). Applying that standard here, our independent evaluation of this record leads us to the conclusion that the evidence does not preponderate against the trial court's decision.

#### IV.

The judgment of the trial court is affirmed. Costs are taxed to the appellants, City of LaVergne and TML Risk Management Pool, and their surety, for which execution may issue if necessary.

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WILLIAM C. KOCH, JR., JUSTICE

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**No. M2007-01051-SC-WCM-WC - Filed - June 11, 2009**

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**JUDGMENT ORDER**

This case is before the Court upon the motion for review filed by the City of LaVergne and TML Risk Management Pool pursuant to Tennessee Code Annotated section 50-6-225(e)(5)(A)(ii), 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.

It appears to the Court that the motion for review is not well-taken and is therefore denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to the appellants, City of LaVergne and TML Risk Management Pool, and their surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

William C. Koch, Jr., J., not participating