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

January 26, 2009 Session

CHARLES R. NEWMAN v. CITY OF KNOXVILLE

Direct Appeal from the Chancery Court for Knox County
No. 160193-1 John F. Weaver, Chancellor

Filed May 12, 2009

No. E2008-00924-WC-R3-WC Mailed March 30, 2009

This appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated section 50-6-225(e)(3) (2008). While serving as a police officer, an employee developed coronary artery disease and made a claim for workers' compensation benefits. The trial court granted an award of permanent and total disability. The City appealed, contending that the trial court erred (1) by holding that the employee's claim not to be barred by a prior settlement agreement, (2) by permitting hearsay testimony to be admitted as parol evidence, and (3) by calculating the rate of compensation based on when the coronary artery disease became disabling, rather than on the condition addressed by the prior settlement. The judgment of the trial court is affirmed.

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

GARY R. WADE, J., delivered the opinion of the court, in which DONALD P. HARRIS, SP. J., and VERNON NEAL, SP. J., joined.

James T. Shea IV, Knoxville, Tennessee, for the appellant, City of Knoxville.

J. Anthony Farmer, Knoxville, Tennessee, for the appellee, Charles R. Newman.

MEMORANDUM OPINION

Facts and Procedural Background

Charles R. Newman (the "Employee") was a police officer for the City of Knoxville (the "City"). In 1987, he was diagnosed with hypertension and made a medical coverage claim for workers' compensation benefits. When the claim was denied, he filed suit. On June 8, 1989, while the litigation was pending, the Employee, while on duty, suffered a "slight myocardial infarction" in an attempt to break up a fight. Subsequently, he amended his complaint to seek benefits for the myocardial infarction.

On July 18, 1990, the Knox County Chancery Court approved a settlement as to both the worker's compensation claim for hypertension and the subsequent claim for temporary and permanent disability and medical expenses for the myocardial infarction. The order provided in relevant part as follows:

> [T]he Court finds that Plaintiff has sustained a hypertensive condition as a result of his employment with the Knoxville Police Department, and that his hypertensive condition has contributed to a slight myocardial infarction . . . .
>
> [The] settlement is in all things approved and . . . the City of Knoxville shall be and stand forever discharged, except as to future medical expenses . . . under the Compensation Act of Tennessee and ordinances of the City of Knoxville on account of the hypertensive condition for which the purposes of this compensation occurred on May 26, 1987.

After the 1990 settlement, the Employee returned to work and continued to serve as a police officer. By March of 2000, he developed coronary artery disease and his treating physician recommended surgery for the insertion of stents. Shortly after the surgery, the Employee returned to his regular employment. In January of 2001, he filed suit in Knox County Chancery Court, seeking workers' compensation benefits for his coronary artery disease. The Employee retired effective August 1, 2001.

The City filed a motion for summary judgment, asserting that any claim for disability benefits was barred by the 1990 settlement. The motion was granted. The Employee appealed, and the Worker's Compensation Panel reversed, holding that the Employee "should be afforded the opportunity to present evidence . . . ." Newman v. City of Knoxville, No. E2003-00841-WC-R3-CV, 2003 WL 22715119 (Tenn. Worker's Comp. Panel Nov. 18, 2003). On remand, the Employee filed a voluntary nonsuit before refiling his claim on January 20, 2004, again in Knox County Chancery Court. At trial, the Employee testified on his own behalf and introduced two depositions from his primary care physician, Dr. Charles Bozeman. Dr. Hal Roseman, a cardiologist, testified on behalf of the City.

The Employee testified that he was able to return to work without restrictions or difficulties after his 1989 heart attack. He claimed, however, that since his diagnosis in 2000 and the subsequent surgery, he had been unable to perform any task involving even moderate physical exertion.

Dr. Bozeman testified that the Employee had a Class III (30%-49%) or Class IV (50%-100%) impairment as a result of his coronary artery disease. He opined that the stress of the Employee's job as a police officer contributed to hypertension, which is a component of coronary artery disease – a deterioration of the arteries. Dr. Bozeman acknowledged that the Employee had other risk factors for coronary artery disease, such as a history of smoking, obesity, diabetes, alcohol use, high cholesterol, and a family history of heart disease. He

conceded that in light of these risk factors, the Employee would likely have developed coronary artery disease, even without hypertension. It was his opinion, however, that the hypertension accelerated that process.

Dr. Roseman, on behalf of the City, offered similar testimony. Based upon his analysis of the risk factors, it was his opinion that the Employee would probably have developed coronary artery disease during the same period of time without reference to hypertension. Yet, under cross-examination, he agreed that hypertension could have accelerated the disease.

After considering further argument and proposed findings of fact and conclusions of law by each of the parties, the trial court issued a memorandum opinion and order on January 10, 2007, re-opening the proof as to "what exactly the 1990 agreed order encompassed." In a hearing scheduled some six months later, J. Anthony Farmer, counsel for the Employee in both the 1990 litigation and in the claim at issue, testified that while the earlier settlement was intended to provide future medical care for the Employee's hypertension and to pay permanent disability benefits for the 1989 heart attack, it did not preclude future claims for any deterioration of his condition or subsequent heart attacks or strokes. The City objected to the testimony of Mr. Farmer, both in general and as to several of the questions asked. The City argued that the testimony was not relevant, contending that the terms of the settlement should be interpreted from the four corners of the order of approval, and not from parol evidence. The City objected on the grounds of hearsay as to testimony about in court statements made either by Chancellor David Cate, who approved the 1990 settlement, or the attorney who had represented the City in that proceeding. The Employee also testified, contending that the terms of the settlement as approved by Chancellor Cate did not preclude claims for subsequent heart attacks or strokes related to his employment.

At the conclusion of the supplemental hearing, the trial court found that the 1990 order addressed only future medical care for the Employee's hypertension and that his claim for disability benefits due to coronary artery disease in this proceeding was not, therefore, precluded by its terms. The trial court awarded benefits for his permanent total disability and assigned the entire responsibility for the claim to the City.[1]

In this appeal, the City contends that the 1990 order barred any additional award for disability arising out of the Employee's hypertension. The City argues that hypertension in connection with his employment was only one of the possible risk factors for coronary artery disease, and that the 1990 order served as a full and complete accord and satisfaction of the claim. The City also contends that the four corners of the order of settlement governed the disposition and, because the order was unambiguous, the trial court erred by considering parol evidence. The City submits that the trial court incorrectly interpreted the 2003 Panel opinion indicating that the order was ambiguous. The City specifically contends that much of Mr.

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[1] The trial court dismissed an action against the Second Injury Fund based on the statute of limitations, specifically citing the Tennessee Supreme Court's holding in Roettgen v. Metropolitan Govt. of Nashville and Davidson Cty., 991 S.W.2d 244, 245 (Tenn. 1999).

Farmer's testimony was inadmissable. Finally, the City argues that the trial court erred by using a compensation rate based upon a March 2000 date of injury, rather than the original 1987 date of injury.

In response, the Employee argues that the 2003 Panel opinion, as the law of the case, clearly declared that the 1990 order was ambiguous and specifically held that testimony as to the parties' intent should be allowed into evidence. The Employee also submits that his actual injury did not occur until 2000, when his coronary artery disease required surgical intervention, and that recovery for the injury therefore could not logically be barred by the prior settlement.

Standard of Review

We review the judgment of the trial court "de novo upon the record . . . accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise." Tenn. Code Ann. § 50-6-225(e)(2) (2008). When the trial court has seen and heard the witnesses, considerable deference must be afforded to the trial court's findings of credibility and the weight that it assessed to those witnesses' testimony. Tryon v. Saturn Corp., 254 S.W.3d 321, 327 (Tenn. 2008) (citing Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 167 (Tenn. 2002)). The same deference need not be extended to findings based upon documentary evidence, such as depositions. Glisson v. Mohon Int'l, Inc./Campbell Ray, 185 S.W.3d 348, 353 (Tenn. 2006). Indeed, where medical expert testimony is presented by deposition, we may independently assess the medical proof to determine where the preponderance of the evidence lies. Crew v. First Source Furniture Group, 259 S.W.3d 656, 665 (Tenn. 2008) (quoting Wilhelm v. Krogers, 235 S.W.3d 122, 127 (Tenn. 2007)). The standard of review for questions of law is de novo without a presumption of correctness. Perrin v. Gaylord Entm't Co., 120 S.W.3d 823, 826 (Tenn. 2003) (citing Richards v. Liberty Mut. Ins. Co., 70 S.W.3d 729, 732 (Tenn. 2002)).

Applicable Law

Any employee seeking to recover workers' compensation benefits must prove that the injury both arose out of and occurred in the course of the employment. See Tenn. Code Ann. § 50-6-102(12) (2008). "The phrase 'arising out of' refers to the cause or origin of the injury and the phrase 'in the course of' refers to the time, place, and circumstances of the injury." Crew, 259 S.W.3d at 664 (citing Hill v. Eagle Bend Mfg., Inc., 942 S.W.2d 483, 487 (Tenn. 1997)). An injury arises out of employment when there is a causal connection between the conditions under which the work is required to be performed and the resulting injury. Fritts v. Safety Nat'l Cas. Corp., 163 S.W.3d 673, 678 (Tenn. 2005) (citing Phillips v. A&H Constr. Co., 134 S.W.3d 145, 150 (Tenn. 2004)). Except in the most obvious cases, causation must be established by expert medical evidence. Glisson, 185 S.W.3d at 354 (citing Orman v. Williams Sonoma, Inc., 803 S.W.2d 672, 676 (Tenn. 1991)). Although evidence of causation may not be speculative or conjectural, "absolute medical certainty is not required, and reasonable doubt must be resolved in favor of the employee." Id. (citing Long v. Tri-Con Indus., 996 S.W.2d 173, 177 (Tenn. 1999)). Accordingly, "benefits may be properly awarded to an employee who presents medical evidence showing that the employment could or might have been the cause of his or her injury when lay testimony reasonably suggests causation." Id.; see also Fitzgerald v. BTR Sealing Sys.

N. Am. – Tenn. Operations, 205 S.W.3d 400, 404 (Tenn. 2006) (quoting Fritts, 163 S.W.3d at 678).

Equally well-settled is the principle that an employer takes an employee "as is" and assumes the responsibility of having a pre-existing condition aggravated by a work-related injury which might not affect an otherwise healthy person. Hill, 942 S.W.2d at 488 (citing Fink v. Caudle, 856 S.W.2d 952, 958 (Tenn. 1993); White v. Werthan Indus., 824 S.W.2d 158, 161 (Tenn. 1992); Talley v. Virginia Insur. Reciprocal, 775 S.W.2d 587, 592 (Tenn. 1989)). Thus, an employer is "liable for disability resulting from injuries sustained by an employee arising out of and in the course of his employment even though it aggravates a previous condition with resulting disability far greater than otherwise would have been the case." Baxter v. Smith, 364 S.W.2d 936, 942-43 (Tenn. 1962). There is no requirement that the injury be traceable to a definite moment in time or triggering event in order to be compensable. Trosper v. Armstrong Wood Products, Inc., 273 S.W.3d 598, 604 (Tenn. 2008).

Analysis

I. Prior Settlement and Law of the Case

We first turn to the 1990 settlement and the question of whether the trial court erred by holding that the law of the case doctrine applies, thereby permitting the introduction of parol evidence[2] to determine the terms of the settlement. Specifically, the question before us is whether the 2003 Panel holding as to the interpretation of the 1990 settlement should now control. We find that it does. Had the four corners of the 1990 settlement been sufficient to have clearly barred recovery, the summary judgment should have been upheld in the first appeal.

The law of the case doctrine is a longstanding rule of judicial practice. Memphis Publ'g Co. v. Tenn. Petroleum Underground Storage Tank Bd., 975 S.W.2d 303, 306 (Tenn. 1998) (citing Ladd v. Honda Motor Co., Ltd., 939 S.W.2d 83, 90 (Tenn. Ct. App. 1996)). The doctrine promotes finality and efficiency in litigation, ensures consistent results in the same litigation, and assures that lower courts follow appellate decisions. State v. Jefferson, 31 S.W.3d 558, 561 (Tenn. 2000). When the doctrine applies, the ruling of an appellate court becomes the law of a specific case and is binding in later trials and appeals of the same litigation if the facts in the second trial are substantially the same as the facts in the first trial or appeal. Memphis Publ'g Co., 975 S.W.2d at 306. While the doctrine applies to issues that were actually decided by the appellate court and to issues that were necessarily decided by implication, it does not apply to dicta. Id. The doctrine does not prevent reconsideration of a previously decided issue when (1) the evidence offered on remand is substantially different from the evidence offered in the initial

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[2] The parol evidence rule, which is designed to uphold the integrity of written contracts, precludes the admission of evidence which tends to alter the meaning of an unambiguous agreement. Faithful v. Gardner, 799 S.W.2d 232, 235 (Tenn. Ct. App. 1990) (citing Starnes v. First Am. Nat. Bank of Jackson, 723 S.W.2d 113, 117 (Tenn. Ct. App. 1986); Brown v. Brown, 320 S.W.2d 721, 728 (Tenn. Ct. App. 1958)). See also Tenn. Code Ann. § 47-2-202 (2008). Conversely, parol evidence is admissible if the agreement is sufficiently imprecise to be considered ambiguous. Ingram v. Earthman, 993 S.W.2d 611, 641 (Tenn. Ct. App. 1998).

proceeding, (2) the prior ruling is clearly erroneous and would result in manifest injustice if allowed to stand, and (3) the prior decision is contrary to a change in the controlling law that occurred between the first and second appeal. Id.

The question before us involves the scope of the 1990 settlement as to the Employee's claim for worker's compensation for his coronary artery disease. The Panel addressed this issue in 2003:

> [T]here is a dispute as to what exactly the 1990 Agreed Order encompassed. That is, whether the Agreed Order covered the myocardial infarction or the plaintiff's hypertension, or both. There is also a dispute as to the relationship between the plaintiff's injury in 1989 and the hypertension and coronary artery disease that the plaintiff presently suffers from. The testimony of Dr. Bozeman is not sufficient to support summary judgment, and the plaintiff should be afforded the opportunity to present evidence that there is a difference between the myocardial infarction he suffered and the coronary artery disease he currently suffers from.

Newman v. City of Knoxville, 2003 WL 22715119, at *2 (emphasis added). At that time, the matter was before the Panel because the trial court had granted summary judgment to the City, based on the 1990 order. The Panel reversed, ruling that additional proof should be considered as to the meaning of the 1990 order. By implication, the Panel found ambiguities in the order of settlement, such that parol evidence could be considered in determining whether its terms precluded a subsequent claim for coronary artery disease.

In this appeal, the parties continue to debate the scope of the 1990 order, and the City again asserts that the four corners of the order, standing alone, bar the Employee's claim. Because, however, the previous Panel had determined that the order was facially ambiguous and the Employee should have been "afforded the opportunity to present evidence" for an appropriate interpretation, parol evidence was admissible. The facts now are substantially the same as those under consideration in 2003; therefore, the law of the case doctrine applies. Moreover, none of the exceptions are present: (1) the evidence at issue is not substantially different; (2) the prior ruling was not clearly erroneous, as required under our law; and (3) no change has occurred in the controlling law. Because the trial court properly applied the law of the case doctrine, parol evidence was admissible to assist in the interpretation of the 1990 order.

II. Mr. Farmer's Testimony

We next turn to the admissibility of Mr. Farmer's testimony concerning statements purportedly made by Chancellor Cate, while approving the 1990 order. Generally, questions concerning the admissibility of evidence rest within the sound discretion of the trial court and this Court will not interfere with the exercise of this discretion in the absence of a clear showing of abuse appearing on the face of the record. State v. Lewis, 235 S.W.3d 136, 141 (Tenn. 2007); see Pylant v. State, 263 S.W.3d 854, 870 (Tenn. 2008) (citing State v. Dotson, 254 S.W.3d 378, 392 (Tenn. 2008)); State v. Van Tran, 864 S.W.2d 465, 477 (Tenn. 1993) (citing State v. Teague,

645 S.W.2d 392, 397 (Tenn. 1983)); State v. Harris, 839 S.W.2d 54, 73 (Tenn. 1992) (citing State v. Allen, 692 S.W.2d 651 (Tenn. Crim. App. 1985)). An abuse of discretion occurs when the trial court applies an incorrect legal standard or reaches a conclusion that is "illogical or unreasonable and causes an injustice to the party complaining." State v. Ruiz, 204 S.W.3d 772, 778 (Tenn. 2006); see also State v. Shirley, 6 S.W.3d 243, 247 (Tenn. 1999). "[D]iscretionary choices are not left to a court's inclination, but to its judgment; and its judgment is to be guided by sound legal principles." Martha S. Davis, Standards of Review: Judicial Review of Discretionary Decisionmaking, 2 J. App. Prac. & Process 47, 58 (2000) (citations and internal quotation marks omitted). "Abuse is found when the trial court has gone outside the framework of legal standards or statutory limitations, or when it fails to properly consider the factors on that issue given by the higher courts to guide the discretionary determination." Id. at 59.

The City argues that the trial court should have excluded Mr. Farmer's testimony regarding the chancellor's 1990 statements as inadmissible hearsay.[3] Hearsay, of course, is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Tenn. R. Evid. 801(c). If a statement is not offered for the truth of the matter asserted, it is not hearsay. The Supreme Court recently illustrated this important distinction:

> For instance, if a police officer testifies that the victim told him, "Mr. Jones shot me," the statement is hearsay if it is offered to prove that Mr. Jones was the shooter. However, if this statement is offered to prove that the police officer had probable cause to arrest Mr. Jones, the statement is not hearsay because it is not being offered for the truth of the matter asserted. Instead, the statement is offered to show the reason for the police officer's arrest of Mr. Jones.

Pylant, 263 S.W.3d at 870.

The record reflects several objections by the City about the purpose of statements offered by the Employee:

> MR. SHEA: Your Honor, I object. This is hearsay, what the Chancellor said in his presence, if there's no court record, this is essentially hearsay. . . .
>
> THE COURT: Okay. Let me ask this, Mr. Shea. I mean, it depends on what it is offered for; doesn't it? If they are saying that what Chancellor Cate said was true –

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[3] Arguably, some of Mr. Farmer's statements may have been appropriate for exclusion under Rule 408, which reads in relevant part that "[e]vidence of . . . accepting . . . valuable consideration in compromising . . . a claim, whether in the present litigation or related litigation, which claim was disputed or was reasonably expected to be disputed as to either validity or amount, is not admissible to prove liability for or invalidity of a civil claim or its amount . . . Evidence of conduct or statements made in compromise negotiations is likewise not admissible." Tenn R. Evid. 408. However, a contemporaneous objection was not made at trial, and the issue was not raised on appeal.

MR. SHEA: That’s right.

THE COURT: I mean, if he is saying that – excuse me, not that what he said was true but if they are offering it for the truth of what he said, then it would be hearsay.

MR. DREISER: But we are offering –

THE COURT: But if they are offering it for some other purpose, such as a premise –

MR. SHEA: They are saying the statement was made, but what they are actually doing is trying to introduce the substance of the statement in saying that it is true that this statement was made. What I am saying is, that’s hearsay.

THE COURT: I’m saying – what I am asking you about this, if they are offering what Chancellor Cate said for the truth of what he said –

MR. SHEA: That would clearly be hearsay.

THE COURT: – that’s clearly hearsay. If they are offering what Chancellor Cate said as a premise for an action taken by side or the other or a decision made by one side or the other, it is not hearsay; is it?

MR. SHEA: The substance of the communication would be. The fact that a statement of some sort was made that ultimately led to activity would not be. I am saying they can say that a statement was made . . . by the Chancellor, but there’s no need to say what that statement was . . . because that is essentially saying, in the underlying part, it is true that the Chancellor had this in his mind. It is being offered for the truth of what the Chancellor was saying.

THE COURT: Okay. I am not going to receive it for the truth of the matter, but I am going to have to hear what the statement is in order to rule on your objection, if you still have an objection.

MR. SHEA: All right.

THE WITNESS: Chancellor Cate knew Officer Newman. Officer Newman was well known in the downtown community. He had been the mall master for a number of years and he and Chancellor Cate were at least acquaintances. Chancellor Cate asked Officer Newman if he understood that if he suffered a subsequent heart attack or stroke, or – I don’t remember what other conditions Chancellor Cate referred to, that he would still be entitled to make a claim.

Q: Would you have advised your client to settle his –

MR. SHEA: Renew the objection, Your Honor.

THE COURT: All right. Overruled. But I am not going to receive it for the truth of the matter that he could make another claim, but I am going to receive it as a premise and that the verbal act of the statement occurred.

Thus, the trial court admitted the testimony with the express limitation that it would not be considered for the truth of any matter asserted by Chancellor Cate.

The City takes issue with a particular excerpt of the trial court's opinion, in which there is a reference to a question by Chancellor Cate:

> At the settlement hearing, the claimant discussed with his counsel in the presence of the Court and opposing counsel that "we would have further claims if we have further problems." The court itself inquired of the claimant as to whether or not he understood that the settlement would not prevent the claimant from making a claim for subsequent heart attacks or a stroke.

The City contends that this excerpt establishes that the trial court, contrary to its earlier ruling, relied upon Chancellor Cate's out-of-court statements, as related by Mr. Farmer, for the truth of a matter asserted. We disagree. The trial court's reference to the question provided context to the testimony of the Employee and his understanding of the settlement terms.[4] Out-of-court statements offered to show their effect on the listener, rather than the truth of the matter asserted, are not hearsay. Neil P. Cohen, Sarah Y. Sheppeard & Donald F. Paine, Tennessee Law of Evidence, § 8.01[7] (5th ed. 2005). Thus, the excerpt does not establish that the trial court failed to limit the use of Chancellor Cate's statement.

Regardless, even if the trial court had erred, the error would qualify as harmless under these circumstances. Tennessee Rule of Appellate Procedure 36(b) provides that "[a] final judgment from which relief is available and otherwise appropriate shall not be set aside unless, considering the whole record, error involving a substantial right more probably than not affected the judgment or would result in prejudice to the judicial process." See also Benson v. Tenn. Valley Elec. Co-op., 868 S.W.2d 630, 641-42 (Tenn. Ct. App. 1993) (addressing admission of hearsay testimony and finding harmless error). In our view, the record contains sufficient evidence to support the trial court's conclusion, even without any consideration of the statement by Chancellor Cate. The Employee testified to his understanding of the settlement and to the

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[4] The excerpt cited by the City appears at the end of a paragraph that begins, "Although the claimant's hypertension contributed to his heart attack, the claimant understood that he was settling only the medical treatment aspect of his hypertension claim but that he was settling his heart attack claim, as a whole, for three (3) components consisting of a lump sum payment, a credit to sick leave and annual leave, and medical expenses." (emphasis added). Nothing in the paragraph suggests that the court was relying upon the veracity of any statement made by the chancellor.

discussions surrounding its approval in 1990. Employee's counsel was present at the time and so was the City's. At the trial of this case, the City elected not to cross-examine. Further, Mr. Farmer testified to the various pleadings surrounding the original litigation, much of which was entered into the record, enabling the trial court to gain a better understanding of the context of the proceeding. In summary, the trial court does not appear to have relied upon the truth of the purported statement by Chancellor Cate in its effort to ascertain the intentions of the parties in the 1990 settlement.

III. Rate of Compensation

Finally, we turn to the City's argument that the trial court erred by setting the rate of compensation based on the date of the Employee's surgery for coronary artery disease, rather than the date of the Employee's original hypertension.[5] An occupational disease becomes compensable when the employee knows or reasonably should know that she has an occupational disease and that it has injuriously affected her capacity to work to a sufficient degree. Brown v. Erachem Comilog, Inc., 231 S.W.3d 918, 923 (Tenn. 2007); see also Adams v. Am. Zinc Co., 326 S.W.2d 425, 428 (Tenn. 1959). In the instant case, the Employee was not incapacitated until the March of 2000, so the use of the March 2000 date is correct. In our view, therefore, the trial court correctly set the rate of compensation based on the date of the coronary artery disease, rather than the original hypertension.

Conclusion

The judgment of the trial court is affirmed. Costs are taxed to the Employer, the City of Knoxville, for which execution may issue if necessary.

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GARY R. WADE, JUSTICE

[5] The Employee argues that the City failed to raise this issue before the trial court. Both parties, however, advanced their respective arguments before the trial court in motions concerning the entry of judgment, and the trial court considered their positions before filing its order.

IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE, TENNESSEE

CHARLES R. NEWMAN V. CITY OF KNOXVILLE, ET. AL

Knox County Chancery Court

No.160193-1

Filed May 12, 2009

No. E2008- 00924-WC-R3-WC

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 facts and conclusions of law are adopted and affirmed and the decision of the Panel is made the Judgment of the Court.

The costs on appeal are taxed to the appellant, City of Knoxville, and its surety, for which execution may issue if necessary.