

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT JACKSON  
March 23, 2009 Session

**WILLIE JACKSON v. CORPORATE LEASING SYSTEMS, INC.**

**Direct Appeal from the Chancery Court for Shelby County  
No. CH-06-1610-1 Walter L. Evans, Chancellor**

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**No. W2008-02035-WC-R3-WC - Mailed July 1, 2009; Filed August 6, 2009**

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Employee alleged that he sustained a compensable injury to his wrist. There was conflicting medical evidence concerning causation and impairment. The trial court ruled that Employee had sustained a compensable injury and assigned 10% permanent partial disability to the right arm. On appeal, Employer contends that the trial court erred by admitting the testimony of Employee's medical expert and by finding that Employee sustained a compensable injury and permanent disability. We affirm the judgment.<sup>1</sup>

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

WALTER C. KURTZ, SR. J., delivered the opinion of the court, in which JANICE M. HOLDER, C. J., and WILLIAM C. COLE, SP. J, joined.

Vickie L. Moffett, Memphis, Tennessee for the appellant, Corporate Leasing Systems, Inc.

Christopher L. Taylor, Memphis, Tennessee for the appellee, Willie Jackson.

**MEMORANDUM OPINION**

**Factual and Procedural Background**

Corporate Leasing Systems ("Employer") is a provider of temporary employees. Its primary client is a metal fabrication business known as NKC. Willie Jackson ("Employee") is a weldor who began working for Employer, at NKC, in October 2005. On December 5, 2005, Employee was assisting a coworker in moving a large piece of metal when the coworker dropped his end, causing

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<sup>1</sup> 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 a hearing and a report of findings of fact and conclusions of law.

Employee's wrist to be pinned briefly between the metal and a table. Employee stated that his wrist became swollen and painful, with "knots" eventually appearing. Employee testified that sometime after this incident he informed his supervisor, an employee of NKC, of the injury. Employee was unable to say whether that conversation occurred within days or weeks of the event. Employee believed that the supervisor would file a report concerning the accident, but the supervisor did not.

On February 23, 2006, Employee went to a walk-in medical clinic, from which he was referred to Dr. William Moffatt, an orthopaedic surgeon. Dr. Moffatt found that Employee had a ganglion cyst. Dr. Moffatt also suspected that Employee had carpal tunnel syndrome, but a neuromatrix test for that condition was negative. Dr. Moffatt surgically removed the ganglion cyst on March 7, 2006. Employee last saw Dr. Moffatt on April 11, 2006. At that time, Employee had full range of motion, tenderness at the surgical incision, and pain at a different part of his wrist.

Dr. Moffatt testified by deposition that Employee did not mention a work injury at any time. Dr. Moffatt's preoperative history states that Employee reported "a year and a half history of recurring and now painful volar wrist mass." Dr. Moffatt opined that the ganglion cyst was not work-related. He assigned no impairment or restrictions due to the cyst. On cross-examination, Dr. Moffatt identified an undated document in his file as a "Workers' Compensation Patient Information Form." Dr. Moffatt testified that he did not know when the document was placed in his file and that the information on the form differed from that given to him by Employee.

Dr. Apurva Dalal, also an orthopaedic surgeon, performed an independent medical examination at Employee's request on April 9, 2007. Prior to trial, Employer filed a motion in limine to exclude Dr. Dalal's deposition, but that motion was denied. Dr. Dalal found that Employee had reduced range of motion and wrist pain. He opined that Employee had a triangular fibrocartilagenous complex ("TFCC") tear, an injury which he testified often coincides with a ganglion cyst. He assigned 8% anatomical impairment to the right arm for that injury. He further recommended that Employee avoid repetitive use of his wrist and hand and not lift weights in excess of twenty-five pounds.

On cross-examination, Dr. Dalal stated that Employee's clinical examination suggested the possibility of a TFCC tear. He did not confirm his diagnosis with a Magnetic Resonance Imaging ("MRI") study. Dr. Moffatt denied that Employee had exhibited any clinical evidence of a TFCC tear during treatment, testifying that it would be "really hard to make that diagnosis without an MRI."

Employee was thirty years old on the day of trial. He was a high school graduate with an associate's degree in auto machinery. Employee worked as a welder prior to working for Employer. After his injury in December 2005, Employee worked with Employer until February 2006. Employee then attempted to work for Employer again while undergoing physical therapy but was unable to work a full day due to wrist pain. Employer subsequently terminated Employee after three unexcused absences. At the time of trial, Employee was employed as a pipe fitter and pursuing a pipe fitter's apprenticeship.

Issuing its findings from the bench, the trial court found that Employee had sustained a compensable injury, causing a permanent disability. The court assigned 10% permanent partial disability to the right arm. Employer appealed, contending that the trial court erred by admitting Dr. Dalal's testimony and by finding that Employee suffered a compensable injury. In the alternative, Employer argues that the trial court erred by finding that Employee sustained a permanent disability.

### **Standard of Review**

Our standard of review of factual issues in a workers' compensation case is de novo upon the record of the trial court, accompanied by a presumption of correctness of the trial court's factual findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2005); Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 167 (Tenn. 2002). Considerable deference must be accorded to the trial court's factual findings on issues of witness credibility and the weight to be given to their testimony. Richards v. Liberty Mut. Ins. Co., 70 S.W.3d 729, 732 (Tenn. 2002); Krick v. City of Lawrenceburg, 945 S.W.2d 709, 712 (Tenn. 1997). When expert medical testimony differs, it is within the trial judge's discretion to accept the opinion of one expert over another. Hinson v. Wal-Mart Stores, Inc., 654 S.W.2d 675, 676-77 (Tenn. 1983). When expert medical testimony is involved and all the medical proof is by deposition, this Court may draw its own conclusions about the weight and credibility to give that testimony. Krick, 945 S.W.2d at 712. Questions of law are reviewed de novo with no presumption of correctness afforded to the trial court's conclusions. Gray v. Cullom Machine, Tool & Die, Inc., 152 S.W.3d 439, 443 (Tenn. 2004); Tucker v. Foamex, L.P., 31 S.W.3d 241, 242 (Tenn. 2000).

### **Analysis**

#### **1. Admission of Dr. Dalal's Deposition**

Employer first contends that the trial court erred by admitting Dr. Dalal's deposition. Employer argues that Dr. Dalal's conclusion is too speculative to be meaningful and thus should not have been admitted as expert medical testimony. Employer cites Tennessee Rule of Evidence 702 and McDaniel v. CSX Transp., Inc., 955 S.W.2d 257, 265 (Tenn. 1997) in support of its argument. Specifically, Employer points to the language in Dr. Dalal's report, confirmed on cross-examination, that his opinion was based on a "clinical suggestion" of a "possibility" of a TFCC tear. Employer notes the absence of any objective testing, such as an MRI, to support the opinion.

Employee contends that Dr. Dalal's opinion was reasonable under the circumstances. Employee cites Dr. Dalal's testimony to support his argument:

[T]he fact that [Employee] has a loss of motion clinically and developed a volar ganglionic cyst, clinically, it appears that he has a tear of the [TFCC], which is a – which is a cartilage. It's like a meniscus in the knee which we have in the wrist, which you can tear up specially with the kind of mechanism he describes. . . . And

usually when you have a TFCC tear and degenerative disease, it shows up as a ganglionic cyst.

In addition, Dr. Dalal testified that the TFCC tear was “due to the injury which [Employee] described where he got jerked in his wrist and sustained an injury.”

Reviewing the record, we find that the trial court did not abuse its discretion in admitting the deposition testimony of Dr. Dalal. Admission of expert testimony is reviewed on an “abuse of discretion” basis. Brown v. Crown Equipment Corp., 181 S.W.3d 268, 273 (Tenn. 2005). A trial court abuses its discretion when it applies an incorrect legal standard or reaches an illogical or unreasonable decision that causes an injustice to the complaining party. Id. (citing State v. Stevens, 78 S.W.3d 817, 832 (Tenn. 2002)). The trial court did not apply an erroneous legal standard in its decision to admit the deposition testimony of Dr. Dalal, nor was the trial court’s decision on this issue illogical or unreasonable. Discerning no abuse of discretion, we therefore conclude that the trial court did not err in admitting Dr. Dalal’s deposition into evidence.

## **2. Causation and Permanency**

Employer asserts that the evidence preponderates against the trial court’s conclusion that Employee had a TFCC tear as a result of his work accident and that he sustained a permanent injury. Employer argues that the trial court should have afforded more weight to Dr. Moffatt’s testimony than to Dr. Dalal’s testimony.

Employer notes Dr. Dalal’s testimony during cross-examination that his diagnosis was based on a “clinical suggestion” of the “possibility” of a TFCC tear. Employer emphasizes Dr. Moffatt’s affirmative testimony that Employee did not present clinical evidence of a TFCC tear and gave no history of a work injury while under his care. Employer also notes that Employee did not seek medical care until two months after his alleged injury and that he did not consult Dr. Dalal until nearly four months after the alleged injury.

Employee relies on Dr. Dalal’s testimony that his clinical examination suggested a TFCC tear and that such an injury was consistent with the event described by Employee. In addition, Employee testified that he believed the cause of his injury to be the work-related incident.

Expert opinion is always “more or less uncertain and speculative.” Kellerman v. Food Lion, Inc., 929 S.W.2d 333, 335 (Tenn. 1996). Absolute certainty of medical testimony is not required to support a workers’ compensation award when equivocal medical testimony combined with other evidence supports a finding of causation. Id. After reviewing both Dr. Moffatt’s and Dr. Dalal’s depositions, and Employee’s lay testimony, we conclude that the evidence does not preponderate against the trial court’s decision.

### **Conclusion**

The judgment of the trial court is affirmed. Costs are taxed to Employer, Corporate Leasing Systems, Inc., and its surety, for which execution may issue if necessary.

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WALTER C. KURTZ, SENIOR JUDGE

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**JUDGMENT ORDER**

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 on appeal are taxed to the Appellant, Corporate Leasing Systems, Inc., and its surety, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM