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IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs March 1, 2023

TORRANCE TAYLOR v. BOARD OF ADMINISTRATION, CITY OF MEMPHIS RETIREMENT SYSTEM

Appeal from the Chancery Court for Shelby County
No. CH-20-0911-1 Gadson W. Perry, Chancellor

No. W2022-00896-COA-R3-CV

JEFFREY USMAN, J., dissenting.

The majority thoughtfully examines the evidence in the present case and may even have reached a better understanding of the actual cause of Officer Torrance Taylor's injury than was arrived at by the City of Memphis Pension Board and the hearing officer. However, in its analysis, the majority has engaged, at least in my view, in a reweighing of the evidence that exceeds the scope of this court's authority when reviewing such decisions under the Uniform Administrative Procedures Act. Therefore, I respectfully dissent.

I.

The City of Memphis Pension Board concluded that Officer Taylor was entitled to an ordinary disability retirement rather than a line-of-duty disability. The relevant Memphis ordinance defines line-of-duty disability as follows:

> *Line-of-duty disability* means a physical or mental condition arising as the direct and proximate result of an accident sustained by a participant, after he or she became a participant and while in the actual performance of duties for the city at some definite time and place without willful negligence on his or her part which totally and permanently prevents him or her from engaging in the duties for which he or she was employed by the city. The determination of the line-of-duty disability of a participant shall be made on medical evidence by at least two qualified physicians, one of whom may be the physician who makes disability determinations as to such participant for purposes of worker's compensation claims.

City of Memphis Code of Ordinances, § 25-1(27).

Three physicians, Officer Taylor's treating physician Dr. Harold Knight, and two independent medical examiners, Drs. Michael Hood and Jeffrey Dlabach, offered their expert opinions as to whether Officer Taylor was "permanently and totally disabled from his job" as a police officer as "a result of his employment (>51%) at the City of Memphis." All three concluded that he was not. While Drs. Hood and Dlabach, unlike Dr. Knight, concluded that Officer Taylor was totally and permanently disabled from his job as a police officer, both physicians determined that this disability was not a result of his employment.

The majority concludes the physicians were mistaken as to the cause of Officer Taylor's injury. In support of this conclusion, the majority observes that the medical records reflect that Officer Taylor's anterior cruciate ligament (ACL) was not torn in 2006, that his 2012 injury was an on-the-job injury, and that he worked effectively as a police officer until his 2016 on-the-job injury.

Turning to the assessment of the independent medical examiners, Dr. Hood determined that Officer Taylor suffered from a chronic left ACL deficient knee and chronic left medial meniscus tear. As a result, the condition of his left knee was such that he was unable to perform his duties as a police officer. Dr. Hood, however, concluded that Officer Taylor's July 23, 2016 injury was not the cause of these injuries. To the contrary, Dr. Hood observed that "MRI findings from 2012 as well as 2006 demonstrated anterior cruciate ligament injuries as well as medial meniscus tears." According to Dr. Hood, Officer Taylor "has a known chronic anterior cruciate ligament deficient knee since 2006."

Like Dr. Hood, Dr. Dlabach also concluded that Officer Taylor was suffering from a chronic left ACL deficient knee and chronic left medial meniscus tear that left him, without surgery, unable to perform his duties as a police officer. Dr. Dlabach explained as follows:

> I do not relate this disability to the work injury on 7-23, 2016. There are medical records from Dr. Harriman pertaining to a motor-vehicle accident in 2012, at which time the MRI was consistent with a left ACL tear and left medial meniscus tear. Going further back, there was another left knee injury related to a motorcycle accident under the care of Dr. George Wood which MRI is consistent with a medial meniscus tear, abnormality of the ACL and questionable abnormality of the PCL. It is my opinion that the ACL tear and medial meniscus tear of the left knee is chronic as documented by the MRIs prior to the date of the work-related injury. The primary cause of his left chronic ACL deficient knee and chronic medial meniscus tear is not related to his employment and injury of 07/23/2016.

Both doctors further elaborated on their conclusions in their depositions. In response to an inquiry, Dr. Hood agreed that Mr. Taylor "had both this ACL injury and medial meniscus tears in 2012 and then going back to 2006." Asked to address the significance of Officer Taylor's non-work-related 2006 motorcycle injury, Dr. Dlabach stated the following:

> The injury as detailed by the MRI of October 20, 2006 reveal[s] an injury to the ACL as well as the medial meniscus tear. Those were acute findings with edema or fluid around those structures at the time of the MRI that tells us that was an acute injury related somewhere around the time of that MRI.

Dr. Dlabach contrasted the 2006 MRI with the 2016 MRI as follows:

> The MRI of 2016 did not show any edema around those structures telling us that that was a chronic injury. There was no bone contusion, which you would see with an acute injury around that time. And again, the medial meniscus was torn and the ACL was torn. Those are structures that don't heal. Once it's torn it's torn. It can't heal and then retear. The ACL has to be reconstructed.

Addressing the 2012 MRI, Dr. Dlabach indicated that the 2012 MRI "revealed an ACL tear and a medial meniscus tear and," like the 2016 MRI, "those were chronic at that time as well." In other words, prior to the 2012 MRI, Officer Taylor's ACL and medial meniscus tears were already chronic, having been in existence for some time prior to the 2012 accident. Dr. Dlabach indicated that once the 2006 injury occurred, it essentially remained in existence. He agreed that the ACL and meniscus tears were "present as far back as 2006." He further indicated that, based on the MRI, an acute injury had occurred within six months of the time of the taking of the 2006 MRI. This timeline corresponds with Officer Taylor's off-duty motorcycle accident. In contrast, the 2016 MRI demonstrated that the injuries to the ACL and medial meniscus were old injuries. There were none of the indicators of a recent acute injury in the 2016 MRI.

Asked if the 2016 injury could have led to the instability in Officer Taylor's left knee, Dr. Dlabach stated the following:

> Unlikely. The instability is chronic. It's one of the unfortunate things with the more time we spend on the planet that we lose muscle mass. So we see a lot of patients in their 20s and early 30s who are able to compensate because of strength around the joint that has instability issues and as we age that the instability just becomes progressively worse.

Even without the 2016 injury, Dr. Dlabach indicated that at some point the instability in Officer Taylor's knee was going to prevent him from being able to continue working as a police officer. Dr. Dlabach asserted that this unfortunate reality was set in motion, caused by, the 2006 injury to Officer Taylor's knee.

Testifying before the hearing officer, Officer Taylor described the 2006 accident as the "real crucial accident for myself." He noted that, in addition to other broken bones that he suffered in the motorcycle accident, he had also injured his left knee. He had been hospitalized at the Regional Medical Center at Memphis ("the Med") in connection with his motorcycle accident from August 23 until September 3. After his release from the hospital, Officer Taylor was seen on more than one occasion in 2006 through Campbell Clinic Orthopaedics in connection with pain and soreness in his left knee. In late September, he went to Campbell Clinic Orthopaedics because of complaints regarding his left knee which had "been giving way and bothering him." A new MRI was performed. According to a report from Dr. George Wood, the following was revealed:

> There is marked thickening and abnormality signal throughout the posterior cruciate ligament compatible with tear. The anterior cruciate ligament appears intact although there is of course extensive edema in the intercondylar notch. There is also complete disruption of the proximal medial collateral ligament with extensive surrounding edema/soft tissue swelling. Fibular collateral ligament appears grossly intact. There is some minimal edema in its most proximal fibers, but there is no ligaments discontinuity.
>
> A small oblique tear is present involving the inferior articular surface antic posterior horn of the medial meniscus near its periphery. Remainder of the medial meniscus is normal. The lateral meniscus is intact. There is focal chondromalacia with subchondral cystic formation in the central trochlear sulcus. The patellar articular cartilage appears intact. Some mild marrow edema is noted in the lateral femoral condyle above the joint line. This may be related to a direct contusion. There is no evidence of disruption of the extensor mechanism/patellar retinacula. No additional sites of marrow pathology are noted. Small joint effusion is noted with a small popliteal fossa cyst.

In connection with Officer Taylor following up with Campbell Clinic Orthopaedics in November 2006, again because of continuing knee pain and soreness, Dr. S. Carrey Canale performed further tests. In the associated medical records, Dr. Canale observed that "[t]he films reveal a PCL tear, a high-grade MCL tear, oblique inferior articular surface tear of the posterior horn of the medial meniscus, mild bone contusion of the lateral femoral

condyle and focal to high grade chondromalacia in the trochlear sulcus centrally."

In discounting the conclusions of Drs. Dlabach and Hood regarding the import of the 2006 injury, the majority places significant weight upon a statement appearing in an earlier 2006 MRI administered while Officer Taylor was still a patient at the Med that describes the ACL as unremarkable. The same report, however, also notes that its findings are "[l]imited due to the patient's motion" and a "low field magnet." In terms of the weight of a finding that the ACL is unremarkable, it is worth noting that the same report similarly described the medial menisci as unremarkable while failing to note an oblique inferior articular surface tear of the posterior horn of the medial meniscus, which was discovered in subsequent 2006 testing. Additionally, there is no discussion in this MRI report of what would later be found in 2006 in connection with the ACL that "[t]he anterior cruciate ligament appears intact although there is of course extensive edema in the intercondylar notch." Most importantly, Drs. Dlabach and Hood indicated that they had reviewed the medical records including the MRIs themselves from 2006, 2012, and 2016, providing a basis for their own conclusions as to what the MRIs revealed.

II.

I agree with the majority that the record offers conflicting information that creates confusion as to the timing of Officer Taylor's left knee ACL tear. Did the ACL tear occur in 2006, 2012, or sometime between these dates? There is also uncertainty as to the relationship between the ACL tear that appears in the 2012 MRI and the 2006 knee injury that Officer Taylor suffered. Reviewing the depositions of Drs. Dlabach and Hood, Officer Taylor's counsel appears to have been operating on an understanding when deposing these critical witnesses that Officer Taylor's unrepaired ACL tear in his left knee had occurred in 2006 but that the timing of the tear was immaterial because Officer Taylor was able to work until 2016 when the 2016 injury caused complications that prevented Officer Taylor from continuing to serve as a police officer. In these depositions, counsel for Officer Taylor did not appear to attempt to draw meaningful distinctions between the extent of the knee injuries that existed in 2006 and 2012. At the time of the depositions, the theory being developed in support of a line-of-duty injury appears to have been tied to the 2016 injury as the causal injury rather than an amalgamation of the 2012 and 2016 injuries. Essentially, the theory seems to have been that whatever the status of Officer Taylor's knee in terms of preexisting conditions, he had, nevertheless, suffered an on-the-job injury in 2016 that prevented him from working as a police officer and that constituted a line-of-duty injury.

This understanding is further reflected in a statement from Officer Taylor's counsel at the August 28, 2019 hearing that in the weeks prior to the hearing, counsel had reviewed the 2006 medical records and reached the conclusion that there is no evidence therein of

an ACL tear in 2006. He attributed an earlier contrary understanding to the power of suggestion, noting that "there was some suggestion in some of the other reports and before the pension office that there was an ACL tear in 2006." The depositions of Drs. Hood and Dlabach had been taken months earlier, in November 2018 and March 2019 respectively. In other words, the independent medical examiners had been deposed long before counsel came to appreciate potential areas for exploration in showing deficiencies in Drs. Hood and Dlabach's testimony regarding the timing of the ACL injury. These deficiencies or inconsistencies are understandably the central focus of the majority's analysis in this case. They are also only thinly developed in the medical testimony due to the timeline of the evolution of Officer Taylor's theory of the case.

Drs. Dlabach and Hood reviewed the medical records and the MRIs. They both testified that serious damage occurred to Officer Taylor's knee, including the ACL, in 2006 from an off-duty motorcycle injury. Both doctors reached the conclusion that Officer Taylor's inability to work in 2016 can be traced back to that 2006 injury. Dr. Dlabach indicated that it was simply a matter of time before Officer Taylor's unrepaired knee was going to give out.

The majority also notes that, if the 2016 injury is not the cause of Officer Taylor's disability, then the 2012 injury was undisputedly an on-the-job injury that then would be the cause of the disability. Undermining this conclusion, Dr. Dlabach stated in his deposition that the 2012 MRI reflected that the ACL injury was already chronic by 2012.

The majority reverses the Shelby County Chancery Court's affirmance of the judgment of the hearing officer based upon a lack of substantial and material evidence to support the hearing officer's decision and the hearing officer having issued an arbitrary and capricious ruling. Both are certainly grounds for reversing when reviewing under the Uniform Administrative Procedures Act. Tenn. Code Ann. § 4-5-322(h). The problem is that our review is more narrowly limited and modest in scope than what the majority has engaged in in reaching these conclusions.

Under the Uniform Administrative Procedures Act, "[i]n determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact." Tenn. Code Ann. § 4-5-322 (h)(5)(A)(ii). "Substantial and material evidence is 'such relevant evidence as a reasonable mind might accept to support a rational conclusion' and to furnish a reasonably sound basis for the decision under consideration." *City of Memphis v. Civ. Serv. Comm'n of City of Memphis*, 238 S.W.3d 238, 243 (Tenn. Ct. App. 2007) (quotation omitted)). To meet this standard, the evidence need not rise to the level of a preponderance of the evidence but

must be more than a scintilla or glimmer of evidence. *StarLink Logistics Inc. v. ACC, LLC*, 494 S.W.3d 659, 669 (Tenn. 2016). Black's Law Dictionary defines "scintilla" as "a spark or trace." Black's Law Dictionary (11th ed. 2019).

The majority characterizes the evidence upon which the hearing officer relied as being less than a scintilla. I disagree with this conclusion. The hearing officer was presented with testimony from both independent medical examiners attributing the cause of the injury to a 2006 non-work-related motorcycle accident. Neither physician believed, in his expert opinion, that the 2016 injury was causal. With regard to the amalgamation of the 2012 and 2016 injuries as the cause of Officer Taylor's disability, Dr. Dlabach indicated in his deposition that the 2012 MRI reflected that Officer Taylor's injuries were chronic by 2012.

Perhaps, Drs. Dlabach and Hood were mistaken or insufficiently attentive to the matter before them as independent medical examiners. In other words, the majority may be right that this was a line-of-duty injury and that the hearing officer reached the wrong conclusion. This court, however, may reject a determination based on a lack of substantial and material evidence "only if a reasonable person would necessarily arrive at a different conclusion based on the evidence." *City of Memphis*, 238 S.W.3d at 243. Regardless of whether the conflicting evidence is sufficient to support a preponderance of the evidence determination, it is far beyond a scintilla. Based on the evidence presented, a reasonable person could arrive at a different conclusion than has been reached by the majority in the present case.

III.

As noted above, the majority also reverses the Shelby County Chancery Court's affirmance of the hearing officer's decision based upon its conclusion that the hearing officer's decision was arbitrary and capricious. The majority's analysis on this point focuses on the common sense perception of the circumstances surrounding Officer Taylor's injury. Officer Taylor was able to continue to serve as a police officer even after the 2006 and 2012 injuries, doing so until the 2016 injury. There is no question that the 2016 injury was an on-duty injury, and the only reasonable conclusion in the majority's view is that the 2016 injury caused Officer Taylor's disability.

There is significant appeal in the majority's analysis. In addition to being supported by the common sense understanding set forth by the majority, this conclusion finds further traction in Dr. Hood's medical opinion, which can be understood as consistent with viewing the 2016 injury as aggravating a pre-existing condition. Under such a view, the circumstances of the present case offer an interesting and important area for potential

exploration of legal questions related to how aggravation of pre-existing injury fits within the parameters of the Memphis line-of-duty ordinance.

Ultimately, however, resolution of these legal quandries is unnecessary in the present case for the same reason that the hearing officer's decision was not arbitary and capricious. In addressing the arbitrary and capricious standard, the Tennessee Supreme Court has noted the following:

> A decision is arbitrary or capricious if it is not based on any course of reasoning or exercise of judgment, or . . . disregards the facts or circumstances of the case without some basis that would lead a reasonable person to reach the same conclusion. If there is room for two opinions, a decision is not arbitrary or capricious if it is made honestly and upon due consideration, even though [a reviewing court] think[s] a different conclusion might have been reached.

StarLink Logistics, 494 S.W.3d at 669–70 (quotations and citations omitted).

The Memphis line-of-duty ordinance provides that "[t]he determination of the line-of-duty disability of a participant shall be made on medical evidence by at least two qualified physicians . . . ." City of Memphis Code of Ordinances, § 25-1(27). To qualify for a line-of-duty disability, the condition must arise "as the direct and proximate result of an accident sustained . . . while in the actual performance of duties for the city at some definite time and place." *Id*. Both independent medical examiners testified that the 2016 injury was not the cause of Officer Taylor's permanent disability. Expert medical testimony established that the 2016 MRI revealed no recent acute injury; to the contrary, the 2016 MRI revealed chronic injuries to Officer Taylor's left knee arising from earlier incidents. While Dr. Hood's medical opinion offers support for Officer Taylor's aggravation theory for finding a line-of-duty injury, Dr. Dlabach's medical opinion offers opposition.

Dr. Dlabach indicated that Officer Taylor's inability to continue working as a police officer, his permanent disability, was attributable to instability in his left knee. Asked if the 2016 injury could have led to the instability in Officer Taylor's left knee, Dr. Dlabach rejected the contention, explaining as follows:

> Unlikely. The instability is chronic. It's one of the unfortunate things with the more time we spend on the planet that we lose muscle mass. So we see a lot of patients in their 20s and early 30s who are able to compensate because of strength around the joint that has instability issues and as we age that the

instability just becomes progressively worse.

For Dr. Dlabach, Officer Taylor's left knee was essentially a ticking time bomb that was going to go off at some point as the muscle mass was no longer able to adequately make up for the structural deficiencies in Officer Taylor's knee. The injuries that prevented Officer Taylor from working had been already previously suffered.

I am in full agreement with the chancellor as to the merits of this appeal of the hearing officer's decision. Like the chancellor, while I am not certain that I would have reached the same decision as the hearing officer in the present case, I cannot conclude that the hearing officer's decision was arbitrary or capricious. The hearing officer's decision is consistent with the testimony of Dr. Dlabach, who offered a reasoned explanation for why the 2016 injury was not causal of Officer Taylor's disability. While I find the majority's analysis appealing, I cannot say that there is no room for two opinions. A reasonable person could look at the expert testimony and conclude that Officer Taylor's left knee was a ticking time bomb that was going to fail because of declining muscle mass as he aged. Under such a view, the cause of the disability was not the 2016 injury, which according to the 2016 MRI did no further damage, but instead the impact of the previous injuries combining with the loss of muscle mass as a natural result of the aging process. Officer Taylor's knee failed with the 2016 injury, but according to Dr. Dlabach, that was not the actual cause of his disability. While Dr. Hood's testimony offers a potential counter to this analysis, Dr. Dlabach's testimony is consistent with the above-described analysis. I cannot conclude that the hearing officer acted in an arbitrary and capricious manner in understanding the nature of Officer Taylor's knee injury in a manner consistent with Dr. Dlabach's reasoned expert testimony.

V.

Given the limited scope of this court's review of decisions such as the one at issue in the present case under the Uniform Administrative Procedures Act, I cannot concur in the majority's opinion. In my view, the Shelby County Chancery Court ruled correctly in affirming the decision of the hearing officer. For the reasons set forth above, while I find the majority's analysis to be a thoughtful exploration of the evidence in the present case, I must respectfully dissent.

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JEFFREY USMAN, JUDGE