IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
August 15, 2016 Session Heard at Knoxville

AMERICAN MINING INSURANCE COMPANY v. TERRY H. CAMPBELL

Appeal from the Chancery Court for Grundy County
No. 6306 Jeffrey F. Stewart, Judge

No. M2015-01478-SC-R3-WC – Mailed November 7, 2016

In 1992, Terry Campbell ("Employee") suffered injuries to his lumbar and cervical spine as a result of a workplace accident. In 1998, the trial court awarded permanent and total disability benefits and ordered the employer's insurer, American Mining Insurance Company ("Insurer"), to provide medical treatment in accordance with Tennessee Code Annotated section 50-6-204. Dr. Gregory Ball was Employee's treating physician. In 2008, and again in 2010, Employee filed contempt petitions alleging Insurer failed to provide medical treatment recommended by Dr. Ball. On each occasion, the trial court found in favor of Employee. In 2013, Insurer filed a petition, asserting Dr. Ball's treatment was neither reasonable nor necessary and seeking the removal of Dr. Ball as Employee's physician. The trial court denied the petition and awarded attorney fees to Employee. Insurer appealed, asserting the trial court erred by denying its petition and awarding attorney fees. The Supreme Court referred this appeal to the Special Workers' Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law pursuant to Tennessee Supreme Court Rule 51. We affirm the judgment.

Tenn. Code Ann. § 50-6-225(a) (2014)
(applicable to injuries occurring prior to July 1, 2014) Appeal as of Right;
Judgment of the Chancery Court Affirmed

WILLIAM B. ACREE, JR., SR.J., delivered the opinion of the Court, in which SHARON G. LEE, J., and KRISTI M. DAVIS, J., joined.

Alexander B. Morrison, Knoxville, Tennessee, for the appellant, American Mining Insurance Company.

Stephen T. Greer, Dunlap, Tennessee, for the appellee, Terry H. Campbell.

OPINION

Factual and Procedural History

This appeal results from a post-trial petition filed by Insurer to limit Employee's future medical care and remove Dr. Ball as Employee's authorized treating physician. A review of the history of this case is important in understanding the issues and the decision of this Court.

Employee was a coal miner for approximately sixteen years. He suffered work-related injuries in 1992 and underwent lower back and neck surgery as a result. In 1998, Dr. Ball, a pain management specialist, became Employee's treating physician and continues to treat Employee. On June 15, 1998, the trial court entered its original Decree finding Employee to be permanently and totally disabled and awarded benefits including future medical care.

In 2008, Insurer unilaterally withdrew medical treatment and payment for medical expenses after a utilization review.[1] Employee filed a Petition for Contempt and Other Relief, alleging Insurer failed to provide medical treatment in accordance with the 1998 Decree. The trial court approved an Agreed Order granting Employee's petition and awarding Employee reimbursement for medical expenses, other related expenses, and attorney fees. The Agreed Order provided for Dr. Ball's continued treatment of Employee and authorized Dr. Ball to determine if his treatment was causally connected to the 1992 work-related injury. In addition, the trial court authorized an epidural steroidal injection in the cervical area and an epidural steroidal injection in the lumbar area.

In 2010, Employee filed a second Petition for Contempt and Other Relief due to Insurer's denial of services requested by Dr. Ball. As justification, Insurer claimed the amount of narcotics prescribed to Employee endangered his life. During a two-day hearing, the trial court considered Insurer's experts. Drs. Jeffrey Hazlewood and Suzanne Novak opined the steroid injections were not necessary. Dr. Hazlewood thought Employee should be weaned from the narcotics and begin detoxification. Dr. Hazlewood also noted that an evaluation by Dr. Pam Auble indicated Employee might be suffering from a psychological disorder. In rejecting these opinions, the trial court noted Employee was satisfied with Dr. Ball's treatment and wanted to continue under his care. The trial

[1] In 1992, the legislature created programs for the management of medical care services in workers' compensation cases. *Kilgore v. NHC Healthcare*, 134 S.W.3d 153, 157 (Tenn. 2004) (citing Tenn. Code Ann. § 50-6-122(a)(1) (1999)). "The legislature defined 'utilization review' in workers' compensation cases as the 'evaluation of the necessity, appropriateness, efficiency and quality of medical care services provided to an injured or disabled employee based on medically accepted standards and an objective evaluation of the medical care services provided....'" *Kilgore*, 134 S.W.3d at 157 (citing Tenn. Code Ann. § 50-6-102(17)(Supp. 2003) (applicable to injuries occurring prior to July 1, 2014)).

court concluded that as Employee's treating physician, Dr. Ball was in the best position to provide treatment for Employee, including the epidural steroid injections, and found the treatment rendered by Dr. Ball was reasonable, necessary, and causally related to the original workplace accident. After hearing the medical proof and observing Employee, the trial court found Employee was not addicted to the medication, but rather had developed a tolerance to them and ordered,

> [Employee] shall continue to receive reasonable and necessary medical care causally related to the accident at issue in this case by and under the direction of Dr. Gregory Ball, M.D., including but not limited to epidural steroid injections as recommended by Dr. Ball and the use of narcotic pain medications and all other medications as recommended by Dr. Ball.

The trial court again awarded attorney fees to Employee and denied Insurer's motion for an additional independent medical evaluation ("IME") noting Employee underwent IMEs on at least two occasions during the course of the litigation. The trial court did, however, state that Insurer was entitled to have Employee examined by a urologist to determine whether his treatment for low testosterone was reasonable, necessary, and causally related to his workplace injury.

In April 2013, Insurer filed a petition to limit future medical care and to remove Dr. Ball as the authorized treating physician. Although the trial court in 2008 and 2010 found Dr. Ball's pain management was reasonable and necessary, Insurer again raised this issue contending a change in state law made further judicial review appropriate.[2,3] The petition asserted Dr. Ball placed Employee on a regimen of high-dose narcotics and other medications that were both dangerous and ineffective. Insurer argued Dr. Ball violated Tennessee's Workers' Compensation Law through his failure to abide by decisions of utilization review and his failure to transmit requested medical records in a timely manner.

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[2] In 2012, the legislature amended the definition of "utilization review" to apply to pain management, including the prescription of Schedule II, III, or IV controlled substances, prescribed on or after July 1, 2012. *See* Editor's Notes Tenn. Code Ann. § 50-6-102 (applicable to injuries occurring prior to July 1, 2014).

[3] In 2014, the legislature amended Tennessee Code Annotated section 50-6-204 and added, among other things, section (j)(5) which provides, "[p]rescribing one (1) or more Schedule II, III, or IV controlled substances for pain management treatment of an injured or disabled employee for a period of time exceeding ninety (90) days from the initial prescription of any such controlled substances is considered to be medical care services for the purposes of utilization review...."

Employee responded that Dr. Ball's treatment regimen was necessary and that Employee had a right to rely upon the trial court's 2008 and 2010 orders concerning Dr. Ball's treatment.

The position of Insurer in the 2013 petition is essentially the same as in the 2010 petition. At the hearing, Insurer presented the expert testimony of Dr. Hazlewood, Dr. Gina Del Gardo, and Dane Higgins.

Dr. Hazlewood, a board-certified pain management specialist since 2002 and Insurer's primary witness, also testified in the 2010 proceeding. At the time of trial, Dr. Hazlewood was also serving as an Assistant Medical Director for the Tennessee Workers' Compensation Division. In that role, he worked with the Tennessee Department of Health to develop guidelines for pain management treatment. His Curriculum Vitae indicates numerous workers' compensation presentations for employers and their insurance companies. He has never been invited by, nor has he presented to, pro-employee groups.

In January 2007 and November 2009, Dr. Hazlewood conducted IMEs of Employee at Insurer's request. He reviewed Employee's medical records from 2009 to February 2013. Dr. Hazlewood testified that, as of February 5, 2013, Dr. Ball had prescribed the following medications to Employee: Percocet, Dilaudid, Oxycontin, Soma, Klonopin, Ambien CR, Norflex, Tigan, Omeprazole and Colace.[4] Percocet and Dilaudid are "short-term" opioid painkillers. Oxycontin is an extended-release opioid painkiller. Soma and Norflex are muscle relaxers. Ambien CR is an extended-release sleep aid. Klonopin is a benzodiazepine anti-anxiety medication also used as a sleep aid. The other medications treat side effects of extended narcotic use, such as constipation, acid reflux, and nausea.

Dr. Hazlewood disagreed with Dr. Ball's prescription regimen. According to Dr. Hazlewood, Employee receives approximately 500 mg me[5] of pain medication each day, which is a "high [dosage] and places [Employee] in an incredibly high risk for serious opioid-induced adverse effects." The dangers of the high-dose opioids were enhanced by the non-opioid medications included in Dr. Ball's treatment regimen. According to Dr. Hazlewood, medical literature uniformly recommends against mixing benzodiazepines, such as Klonopin, with opioids. Similarly, it is unsafe to mix muscle relaxers, such as

[4] These are trade names for these medications. They are used interchangeably with the generic names for the products throughout the record. The generic names are Oxycodone (Percocet), Hydromorphone (Dilaudid), Carisoprodol (Soma), Clonazepam (Klonopin), Zolpidem (Ambien) and Orphenadrine (Norflex). For clarity, we will use trade names to the extent possible in this opinion.

[5] The shorthand "me" indicates Morphine Equivalent, a common measurement of pain medication.

Soma and Norflex, with opioids. Current medical practice limits administration of Soma to periods of no longer than three weeks, and there is no medical support for administration of two muscle relaxers simultaneously. Further, the inclusion of Ambien in Employee's regimen increased the possibility of an unintentional overdose.

Dr. Hazlewood recommended Employee be placed into an inpatient detoxification facility to attempt to wean him from narcotics and that Employee receive cognitive behavioral therapy to learn alternative methods of coping with chronic pain. Dr. Hazlewood disagreed with Dr. Ball's recommendations that Employee receive additional epidural steroid injections because the injections will not provide long-term relief and are most effective for treating documented radiculopathy. Nothing in Employee's medical records indicates he suffers from such a condition. Further, the Food and Drug Administration recently issued a warning letter concerning the safety of the injection procedure.

Dr. Hazlewood also disagreed with Dr. Ball's proposal to implant an "intrathecal pain pump" or "spinal cord stimulator." He testified the Official Disability Guidelines ("ODG") criticized the use of pain pumps, which require the use of opioid pain medications. A spinal cord stimulator seeks to reduce the perception of pain by electronic pulses. Dr. Hazlewood testified the ODG approved these devices only in very limited circumstances and referenced studies indicating that "in the work[ers'] comp population, spinal cord stimulators have dismal outcomes, especially in a case of high-dose opioids."

Dr. Hazlewood reviewed the utilization review reports, contained in Employee's medical records, denying Dr. Ball's requests to continue high-dose opioid therapy, denying a lumbar MRI, and denying administration of epidural steroid injections. Dr. Hazlewood testified the utilization review reports and recommendations were consistent with medical guidelines and agreed with the conclusions.

Based on Dr. Hazlewood's recommendations, he disagreed with Dr. Ball's course of treatment and was concerned about the level of risk associated with Employee's opioid intake in conjunction with other medications.

Dr. Del Gardo, a clinical psychologist specializing in rehabilitation psychology and pain management, reviewed, at Insurer's request, Employee's medical records, including a psychological evaluation. Dr. Del Gardo treats several hundred chronic pain patients every year. She described the inpatient detoxification process and the associated risks as follows:

> For inpatient weaning from opiates, an individual is admitted to a hospital, under a doctor's care, and generally placed on medication to help reduce the side effects of the opiate withdrawal. And that is usually followed by a

> program of treatment which provides alternative method[s] for pain management.
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> ...
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> The inpatient weaning is medically supervised so ... the risks are reduced, compared to outpatient. A patient may undergo delirium tremens, but they do have medication and medical supervision, inpatient, with nursing and physicians, in order to reduce the negative effects of withdrawal from the opiates.

Inpatient treatment could last from one week to one month. Dr. Del Gardo described cognitive behavioral therapy ("CBT") as an effective method for enabling patients to manage pain behaviors and increase function. An alternative, "multidisciplinary" method combining CBT with other strategies, including relaxation techniques, distraction, focusing on less painful areas of the body, and breathing from the diaphragm, was also effective in reducing the experience of pain. These programs are fairly effective with minimal risk to the patient but unlikely to succeed if the individual patient is not open to them. Dr. Del Gardo considered Employee to be a good candidate for CBT or multidisciplinary treatment. During cross-examination, Dr. Del Gardo conceded she had not examined Employee and her opinions were based solely on the records she reviewed.

Dane Higgins, a consultant in pharmacotherapy, testified that pharmacotherapy involves examining drug therapy issues involving medication therapy management. Mr. Higgins is the Chief Operating Officer of Covington Healthcare Associates, a company that "provide[s] consulting services involving pharmacotherapy issues to various entities, businesses, insurance companies, [and] patient advocacy groups across the spectrum of clients." In this role, Mr. Higgins reviews complex files and evaluates prescription medication regimens in workers' compensation cases and has done so "on a daily basis" for ten years. He is a consultant for several insurance companies and often delivers presentations for employers and their insurance carriers.

Mr. Higgins evaluated Employee's medications and records at Insurer's request in March 2014 and produced a report based upon that review. His first concern was Employee's dosage of opioid intake. He described Employee's consumption of 500 mg me per day as a "very high end" dosage and testified the "most recognized" internal medicine journal found a threefold increase in risk of death at dosages more than 200 mg me. According to Mr. Higgins, based upon all of the studies of the efficacy of long-term opioid treatment, there was very limited evidence this treatment was effective. Treatment guidelines recommend weaning and discontinuing opioid medications if pain and function do not improve. Mr. Higgins agreed with Drs. Hazlewood and Del Gardo that there are two primary methods of discontinuing high-dose opioids: gradual weaning as an outpatient, or more intense inpatient programs. He observed mixed results from such

detoxification procedures. Some patients felt much better after discontinuing opioids; others went back to opioids, usually at reduced dosages.

Employee and his wife, Irene Campbell, testified and Employee submitted into evidence the deposition testimony of Dr. Ball. Employee testified he had been under Dr. Ball's care for eighteen years. His primary focus was on "obtaining the best medical care in order to live as good of [sic] life as [I] can live and be as active as [I] can be." He would be open to different or less dangerous treatments "[i]f it could be assured ahead of time" that the alternative treatment would provide relief. He indicated a distrust, however, of any treatments proposed by Insurer because of its efforts to deny care and remove Dr. Ball from his case.

Employee further testified that he discussed detoxification with Dr. Ball and would be willing to consider that treatment if Dr. Ball remained his treating physician. However, Employee was skeptical of detoxification because neither Dr. Hazlewood nor Dr. Del Gardo guaranteed its success. He had discussed with Dr. Ball the use of a spinal cord stimulator and a pain pump but was leery of any additional surgical procedures and preferred additional epidural injections. Employee described Dr. Hazlewood as a "thug." He recalled Dr. Hazlewood discussing the risks of high-dose opioids, including death, emergency room visits, osteoporosis, and respiratory problems.

Employee described his current condition as "pretty good" and rated his neck pain as a three and his low back pain as a five. He was able to tolerate his pain with his current medications. He was aware his dosage of opioids increased over the years and stated his pain level was currently "the best I've had" in eighteen years. He added that epidural steroid injections performed by Dr. Ball in 2010 and 2011 reduced his pain by one-half and improved his function by a factor of three. The effect lasted six months; however, Insurer declined to authorize any additional injections.

Mrs. Campbell testified that her son-in-law drove Employee to and from appointments with Dr. Ball, a distance of approximately forty miles. She stated that Employee's condition improved after the epidural injections in 2010 and 2011.

Dr. Ball, a pain management specialist since 1997, board-certified in anesthesiology and pain medicine, and Employee's treating physician since 1998, testified by deposition. He reviewed a summary of Dr. Hazlewood's deposition and 2013 report and the depositions of Dr. Del Gardo and Mr. Higgins. Dr. Ball stated he would not change his course of treatment based on that information.

Dr. Ball stated he last examined Employee on November 20, 2014. At that time, Employee complained of pain in his neck, left shoulder region, lower back, and left leg. Employee stated his medications provided enough relief to have some quality of life. He

discussed wanting to have another epidural injection but noted that "workers[']comp keeps denying the procedure." In November 2014, Dr. Ball prescribed to Employee Oxycontin, Dilaudid, Soma, Klonopin, Ambien CR, and several medications for gastric problems and constipation. Dr. Ball also stated that he ordered an epidural steroid injection on November 20, 2014, but Insurer declined the order.

Dr. Ball testified that 200 mg me was generally accepted as a high-dose opioid treatment but that sometimes a high-dose treatment can be appropriate. He later noted Tennessee law required dosages of more than 120 mg me per day have the approval of a pain specialist, and dosages of more than 200 mg me per day could only be prescribed through a certified pain clinic. Dr. Ball expressed frustration with the utilization review process but did not consider his treatment positions to be bound by utilization reviews. He was unsure what organization promulgated the ODG but described the authors as "a bunch of guys that wanted to make excuses not to provide care for patients."

Because of the length of time Employee had taken narcotic medications, Dr. Ball thought it appropriate to continue that regimen. He acknowledged the dangers of high-dose opioid treatment and that combining benzodiazepines increased the risk to Employee. Dr. Ball also agreed mixing sedatives with benzodiazepines was potentially dangerous. Employee, however, exhibited no ill effects from his drug regimen, other than nausea and constipation. For that reason, he did not believe Employee faced serious problems. Dr. Ball was actually more concerned about the possibility of severe side effects if Employee abruptly discontinued his medication. Dr. Ball agreed there were no studies demonstrating the efficacy of long-term narcotic treatment. He stated: "I know we're in an age of evidence-based medicine, but I'll tell you truthfully what I think of the age of evidence-based medicine. Evidence-based medicine is a euphemism for excuses not to pay for things."

Dr. Ball testified he attempted to reduce the amount of opioids prescribed to Employee to see if he would improve, and he did not. Dr. Ball also proposed several alternative treatments—pain pump, spinal stimulator, and additional epidural injections—but he testified that those treatments were denied. Dr. Ball did not intend to increase Employee's current narcotic dosage. He believed Employee could be safely weaned from his present medications in an inpatient program. Dr. Ball stated such a program might not succeed in weaning Employee from all of his medications, but could possibly reduce the dosages required to relieve his pain.

The trial court took the case under advisement and issued its findings from the bench on May 18, 2015. The trial court denied Insurer's request to remove Dr. Ball as Employee's treating physician and, again, found the treatment and prescription regimen of Dr. Ball to be reasonable and necessary. The trial court found epidural steroid injections, a spinal cord stimulator, and an intrathecal pain pump to be appropriate

treatment options. The trial court directed detoxification and cognitive behavioral therapy, if accepted by Employee, were to be managed by Dr. Ball. The trial court noted Employee had no serious side effects during the eighteen years under Dr. Ball's care and found Employee to be "clear and articulate" in his testimony. The trial court further noted Dr. Hazlewood and Mr. Higgins "didn't say Dr. Ball's treatment is absolutely wrong. They just say it has greater risk." The trial court found "Dr. Ball's treatment to be appropriate and well-managed." The trial court awarded attorney fees to Employee based on Tennessee Code Annotated 50-6-204(b)(2) and entered judgment consistent with its findings. Insurer appealed.

Analysis

The standard of review of issues of fact in a workers' compensation case is de novo upon the record of the trial court accompanied by a presumption of correctness of the findings, unless the preponderance of evidence is otherwise. Tenn. Code Ann. § 50-6-225(a)(2) (2014). When credibility and weight to be given testimony are involved, appellate courts give considerable deference to the trial court when the trial judge observed the witnesses' demeanor and heard in-court testimony. *Madden v. Holland Group of Tenn.*, 277 S.W.3d 896, 900 (Tenn. 2009). A trial court's conclusions of law are reviewed de novo upon the record with no presumption of correctness. *Seiber v. Reeves Logging*, 284 S.W.3d 294, 298 (Tenn. 2009).

Insurer raises four arguments in support of this appeal. First, Insurer contends the court "abdicat[ed] its role by [considering] [Employee's] subjective wishes regarding future medical treatment." Second, Insurer asserts that the trial court erred by finding Dr. Ball's treatment to be reasonable and necessary and by rejecting the opinions of Insurer's experts. Third, Insurer asserts that the trial court erred by failing to remove Dr. Ball as Employee's authorized physician. Finally, Insurer asserts the award of attorney fees is in error. We are not persuaded.

In its oral findings, the trial court stated, in part:

> It seems to me then, when it comes to medical treatment, a sui juris, competent, reasonably educated patient like Mr. Campbell should have the right to choose his course of treatment. If this choice is rationally based and reasonably successful, he should have the right to make that choice.

Insurer submits inclusion of that statement demonstrates that the trial court placed "too much weight" on Employee's desire to continue being treated by Dr. Ball. We disagree. The trial court's findings include a lengthy recitation of the facts and opinions of Drs. Hazlewood, Del Gardo, and Ball, and of Mr. Higgins. The trial court acknowledged the change in attitude in the medical profession about pain management,

away from high-dose narcotics and toward less dangerous methods, during the eighteen years Dr. Ball has treated Employee. The trial court considered the testimony of Drs. Hazlewood, Del Gardo, and Ball, and of Mr. Higgins regarding the efficacy of various methods of detoxification. Viewed in context of the entirety of the trial court's findings, we find the trial court did not err by considering Employee's preferences as a factor. Insurer cited no authority such testimony is inadmissible or entitled to no weight. An employee's opinion concerning the extent of his disability is appropriate evidence for a trial court to consider. *Uptain Constr. Co. v. McClain*, 526 S.W.2d 458, 459 (Tenn. 1975). We see no reason to apply a different standard regarding medical care issues.

Insurer also contends the trial court erred by finding Dr. Ball's treatment as reasonable and necessary and in failing to remove him as Employee's treating physician. Insurer contends the expert medical testimony of Dr. Hazlewood, Dr. Del Gardo, and Mr. Higgins carried more weight than the testimony of Dr. Ball. The trial court's findings of fact are presumed correct, and we can reverse them only upon a finding that the evidence preponderates against them. Tenn. Code Ann. § 50-6-225(a)(2). We are unable to reach that conclusion.

Insurer's witnesses presented testimony that the treatment of chronic pain with high-dose opioids has fallen out of favor within the medical profession. Insurer's witnesses testified that high-dose opioids present a substantial risk of adverse outcomes and the risk increases when opioids are used alongside muscle relaxers, anti-anxiety medications, or sedatives. This testimony was not disputed. Insurer's witnesses testified, however, that changing from high-dose opioid therapy to alternative pain relief methods did not always work. Dr. Ball offered alternative treatment plans such as epidural injections, an intrathecal pain pump, or a spinal cord stimulator. Any of these treatments could permit Employee's opioid intake to be reduced. However, Insurer, or the utilization review board, declined to approve those treatments.

Employee was under Dr. Ball's care since his workplace injury and suffered only minor side effects from the high-dose drug regimen. Employee appeared to be compliant with his treatment plan which has, for the most part, successfully managed his pain for eighteen years.

Since the trial court's award of benefits in 1998, Insurer has challenged the medical treatment of Employee's treating physician, Dr. Ball, on three separate occasions. On each occasion, the same trial court rejected the testimony of Insurer's expert witnesses and found Dr. Ball's treatment to be reasonable and necessary. Insurer contends the reason for continuing to question the treatment of Dr. Ball is not to reduce its payment for medical expenses but because it is concerned Employee is at risk from the use of a high level of narcotics. Simply put, this position is not credible.

Insurer contends its justification for raising the issue of Dr. Ball's treatment for a third time is a change in state law. The 2012 amendment to Tennessee Code Annotated section 50-6-102 does not, however, require the trial court's findings of factual issues and legal conclusions be reconsidered or reversed. The amendment does not expand the authority or scope of the utilization review program or remove the jurisdiction of the trial court to determine whether medical treatment is necessary and reasonable. Insurer presented no basis in fact or law to justify or substantiate litigating this issue for a third time.

After a review of all the evidence, we conclude that the evidence does not preponderate against the trial court's findings of fact and its decision to allow Dr. Ball to remain as Employee's treating physician.

Insurer also contends the trial court erred awarding attorney fees to Employee relying on Tennessee Code Annotated section 50-6-204(b)(2), which states:

> In addition to any attorney fees provided for pursuant to § 50-6-226, a court may award attorney fees and reasonable costs to include reasonable and necessary court reporter expenses and expert witness fees for depositions and trials incurred when the employer fails to furnish appropriate medical[] ... care, medicine[] ... pursuant to a settlement or judgment under this chapter.

Tenn. Code Ann. § 50-6-204(b)(2) (2014) (applicable to injuries occurring prior to July 1, 2014).

Insurer contends this provision applies only when an employer failed to furnish appropriate medical treatment. Insurer further contends it continued to pay Dr. Ball and provide Employee's medication throughout the case, citing *Kephart v. Hughes Hardwood Int'l, Inc.*, No. M2011-01568-WC-R3-WC, 2012 WL 3329705, at *6 (Tenn. Workers' Comp. Panel Aug. 15, 2012), which states that "[b]y its explicit terms, this section applies to cases in which an employer denies medical treatment, and the employee is forced to resort to judicial proceedings to obtain that care."

Employee argues Insurer's denials of Dr. Ball's recommendations for additional steroid injections equate to denial of treatment. We agree. This appeal is merely the most recent chapter in a long-standing dispute between the parties over Dr. Ball's course of treatment. Employee previously sought, and received, relief from the trial court concerning the very same subject. Employee had to obtain legal counsel; otherwise, he would have lost his medical benefits. We conclude the award of benefits pursuant to Tenn. Code Ann. § 50-6-204(b)(2) is appropriate.

Conclusion

The judgment of the trial court is affirmed. This case is remanded to the trial court for a determination of the attorney fees to be awarded to Employee at trial and on appeal. Costs are taxed to American Mining Insurance Company and its surety, for which execution may issue of necessary.

WILLIAM B. ACREE, JR., SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE
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No. 6306

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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 are assessed to American Mining Insurance Company and its surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM