IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
October 27, 2014 Session

ERIC BIKE v. JOHNSON & JOHNSON HEALTH CARE SYSTEMS, INC. ET AL.

Appeal from the Chancery Court for Shelby County
No. CH-12-0044-3 Kenny W. Armstrong, Chancellor

No. W2013-02728-SC-WCM-WC - Mailed January 5, 2015; Filed March 13, 2015

An employee injured his knee while stepping off of a pallet. The trial court found that the injury was idiopathic and denied the employee's claim for workers' compensation benefits. The employee appealed.[1] We reverse the trial court's judgment.

Tenn. Code Ann. § 50-6-225 Appeal as of Right; Judgment of the Chancery Court is Reversed and Remanded

TONY A. CHILDRESS, SP. J., delivered the opinion of the Court, in which HOLLY M. KIRBY, J., and DONALD E. PARISH, SP. J., joined.

Shannon L. Toon, Memphis, Tennessee, for the appellant, Eric Bike.

Sean Antone Hunt and Shaterra L. Reed, Memphis, Tennessee, for the appellees, Johnson & Johnson Health Care Systems, Inc. and Indemnity Insurance Company of North America.

OPINION

Factual and Procedural Background

On October 26, 2009, Eric Bike ("Employee") was working for Johnson & Johnson Health Care Systems, Inc. ("Employer") in its Memphis warehouse. His job consisted of

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[1] This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law under Tennessee Supreme Court Rule 51.

wrapping pallets, ensuring that packing lists were correct, packing boxes, and loading trailers. Packing lists were checked by comparing them to tags.[2] While performing that task on October 26, 2009, Employee was required to step onto a pallet to get a tag. Stepping onto pallets to retrieve tags was an activity Employee was required to do on a frequent basis. As he stepped back off of the pallet, his knee cap moved out of place and then back into place. Employee fell to the warehouse floor. The only injury Employee suffered was to his knee, and this injury was not caused by the fall. Instead, it was caused by his kneecap moving out of and then back into place. Employer denied Employee's claim for workers' compensation benefits, contending that the injury was idiopathic and, therefore, not compensable. The parties attended a Benefit Review Conference but were unable to resolve their differences. On January 10, 2012, Employee filed this civil action in the Chancery Court for Shelby County. The trial court held a hearing in this matter on October 2, 2013.

Employee testified that his injury occurred at about nine o'clock p.m. on October 26, 2009. Employee testified that as he was "turning and put his left foot on the floor[]" while he stepped off of the pallet, and he described the incident as follows:

> [O]ne of the pallets is that high. This high. And the other one was -- the packing list is usually in the middle. I reached that packing list high, looked at the number, and verified that the information on the license plate was matching what the packing list said. I then put the packing list back on the pallet and stepping this side; but once I did it, I stepped on the floor. And I just found myself on the floor holding my knee. I basically twisted -- I basically twisted my knee this way, and then my kneecap just [gave] out.

Employee explained that had immediate pain and swelling in the knee. Employee reported his injury to his supervisor and went to Employer's first aid department. There he received ice, pain medication, and a bandage. Employee completed his work shift and returned home. Employee was unable to sleep during the night because of the pain in his knee, so he went to a local emergency room. Emergency room personnel took x-rays of his knee, provided Employee with additional pain medication, and referred him to an orthopaedic surgeon for further evaluation. Employee did not work for a short period of time. The next morning, Employee called the plant nurse and reported the incident again. The nurse advised him that she was already aware of the incident and presented Employee with a list of physicians. Employee selected Dr. Robinson, a physician who came to Employer's premises from time to time and saw him later the same day.

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[2] Employee referred to these tags as a "license plate."

Dr. Robinson approved the medications that had been prescribed by the emergency room physician and released Employee to return to work at full duty. In the weeks that followed, Employee continued to work, but he testified that he frequently sought treatment from the plant nurse for the difficulties he continued to have with his knee. Eventually, he made a request to the plant nurse to see either Dr. Robinson or an orthopaedic surgeon. Dr. Robinson examined him again in December 2009. Dr. Robinson reviewed the x-rays taken in October and continued him on full duty. Employee's symptoms worsened, and he returned to the plant nurse to request a referral to an orthopaedic surgeon. The nurse declined to make the referral.

Employee then arranged on his own to see an orthopaedic surgeon. He selected Dr. Robert Bobo because his name appeared on a list of approved physicians on Employer's website. Employee saw Dr. Bobo for the first time on March 1, 2010.

During the hearing, Dr. Bobo's deposition was submitted as evidence. Dr. Bobo explained that he suspected that Employee had a subluxation of the patella, which is a condition in which the kneecap slides out of the groove in the thigh bone known as the trochlear groove and then back into that groove. He recounted that Employee underwent further x-rays and an magnetic resonance imaging scan ("MRI") of his knee. As Dr. Bobo had suspected, the x-ray and MRI confirmed his initial diagnosis that Employee's knee showed that he had patellar tilt, which he described as "a tendency toward lateral tracking of the kneecap, meaning that the kneecaps, instead of being completely centered and level, tend to tilt to the outside and overhang the [trochlear] groove." Dr. Bobo then offered Employee the option of either undergoing surgery or a conservative treatment, which consisted of bracing, physical therapy, and activity restrictions. Employee chose the latter.

Employee returned to Dr. Bobo in June 2010 when his condition did not improve. Since conservative treatment had not been successful, Dr. Bobo recommended Employee proceed with surgery. In December 2010, Employee decided to accept that recommendation, and on March 2, 2011, Dr. Bobo performed an arthroscopic surgery on Employee's left knee. The procedure, which was a patellar shaving and lateral release, consisted of "smoothing rough uneven articular cartilage on the kneecap and then releasing the capsule on the outside of the kneecap so as to change the balance of forces and make the kneecap track more in the center of the [trochlear] groove." Dr. Bobo continued to treat Employee until August 1, 2011.

Dr. Bobo stated that the October 26, 2009 injury happened because of the problems he diagnosed in Employee's left knee. Specifically, he opined that:

> [W]hat happens with the subluxation of the kneecap is the kneecap goes over the edge of that groove to the outside, and it can completely dislocate, but in this case it went out and came back in. And that's what subluxation means.

When asked what would cause Employee's knee cap to move out of place as it did on October 26, 2009, Dr. Bobo stated that:

> [F]irst of all, having the anatomical predisposition for it can cause it. And in his case, he does have a tendency toward lateral tracking of the kneecap, meaning that the kneecaps, instead of being completely centered and level, tend to tilt to the outside and overhang the groove. And so that's the underlying -- the anatomy that kind of sets you up for it.
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> And then the other factor is usually in an incident where the knee is flexed, rotation is going toward the inside with the foot positioning toward the outside, and all the forces on the kneecap tend to drive it to the outside.

When questioned regarding the mechanism of Employee's knee injury, Dr. Bobo testified that nothing particular about Employee's work environment caused his knee cap to move out of and then back into place. Dr. Bobo also testified that what happened to Employee's knee could have happened anywhere. However, Dr. Bobo agreed that the movement of Employee's body as he stepped off of the pallet with his knee "in the position" it was in "at that time" is what actually caused the knee cap to move out of place in this instance.

The trial court took the matter under advisement and entered a judgment, concluding that Employee's "knee injury was simply due to an idiopathic condition and no special hazard in his work environment contributed to his injury." Employee now appeals, contending that the evidence preponderates against the trial court's finding that he did not sustain a compensable injury.

Analysis

Currently, appellate review of workers' compensation cases is governed by Tennessee Code Annotated section 50-6-225(a)(2), which requires appellate courts to review a trial court's findings of fact "de novo upon the record of the workers' compensation court, accompanied by a presumption of the correctness of the finding[s], unless the preponderance of the evidence is otherwise." Tenn. Code Ann. § 50-6-225(a)(2)(Supp. 2014) (superceding Tenn. Code Ann. § 50-6-225(e)(2) (2008 & 2013 Supp.), as amended by 2013 Tenn. Pub.

Acts ch. 289, §§ 60, 106), effective July 1, 2014).[3]

As the Supreme Court has observed many times, reviewing courts must conduct an in-depth examination of the trial court's factual findings and conclusions. Wilhelm v. Krogers, 235 S.W.3d 122, 126 (Tenn. 2007). When the trial court has seen and heard the witnesses, considerable deference must be afforded to the trial court's factual findings. Tryon v. Saturn Corp., 254 S.W.3d 321, 327 (Tenn. 2008). However, similar deference need not be afforded the trial court's findings based upon documentary evidence such as depositions. Glisson v. Mohon Int'l, Inc./Campbell Ray, 185 S.W.3d 348, 353 (Tenn. 2006). Similarly, reviewing courts afford no presumption of correctness to a trial court's conclusions of law, "application of law to the facts, or to conclusions that are based on undisputed facts." Massey-Holt v. Holt, 255 S.W.3d 603, 607 (Tenn. Ct. App. 2007) (citing Taylor v. Fezell, 158 S.W.3d 352, 357 (Tenn. 2005); State v. Thacker, 164 S.W.3d 208, 248 (Tenn. 2005)); see also Seiber v. Reeves Logging, 284 S.W.3d 294, 298 (Tenn. 2009).

As defined in Tennessee Code Annotated section 50-6-102(12), in order for an injury to be compensable under the Tennessee Workers' Compensation Act, the injury must "aris[e] out of and in the course of employment."[4] Tenn. Code Ann. §§ 50-6-102 (12) (2008 &

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[3] Generally speaking, a statute in effect at the date of the worker's injury governs the rights of the parties under workers' compensation law absent an indication of the legislature's contrary intent. Nutt v. Champion Int'l Corp., 980 S.W.2d 365, 368 (Tenn. 1998). However, an exception to this prospective-only application exists when the applied statute is remedial or procedural in nature, meaning the statute does not affect the vested rights or liabilities of the parties, and instead, affects "the mode or proceeding by which a legal right is enforced" or the "means or method whereby causes of action may be effectuated, wrongs redressed and relief obtained." Nutt, 980 S.W.2d at 368 (citing Shell v. State, 893 S.W.2d 416, 419-20 (Tenn.1995); Presley v. Bennett, 860 S.W.2d 857, 860 n. 2 (Tenn.1993); Saylors v. Riggsbee, 544 S.W.2d 609, 610 (Tenn.1976)). Though substantively, the standard to be applied has not changed, we cite to the current verison of the statute given that an appellate court's review of the trial court's findings is a method used to redress wrongs and obtain relief.

[4] At the time relevant to this appeal, Section 50-6-102(12) defined 'Injury' and 'personal injury' as "an injury by accident arising out of and in the course of the employment that causes either disablement or death of the employee[.]" See Tenn. Code Ann. § 50-6-102(12) (2008 and Supp. 2010). We note that since this injury occurred, the definition of "injury" was amended to include only injuries "arising primarily out of . . . employment." However, this amendment is applicable only to injuries arising after July 1, 2014. Tenn.

(continued...)

Supp. 2010), 50-6-103(a) (Supp. 2012); Wait v. Travelers Indem. Co. of Illinois, 240 S.W.3d 220, 225 (Tenn. 2007). There is no dispute in this case that Employee was acting in the course of his employment when the injury to his knee occurred. Instead, the issue in this case is whether the injury to the knee arose out of his employment. Phillips v. A&H Constr. Co., 134 S.W.3d 145, 150 (Tenn. 2004).

"An injury arises out of employment when 'there is a causal connection between the condition under which the work is required to be performed and the resulting injury.'" Hubble v. Dyer Nursing Home, 188 S.W.3d 525, 534 (Tenn. 2006)(quoting Blankenship v. Am. Ordnance Sys., LLS., 164 S.W.3d 350, 354 (Tenn. 2005). "The mere presence of an employee at her place of employment at the time of the injury does not mean that the injury is deemed to have arisen out of the employment." Vandall v. Aurora Healthcare, LLC, 401 S.W.3d 28, 32 (Tenn. 2013) (citations omitted). An employee in a case of this type "has the burden of proving every element of the case by a preponderance of the evidence." Id. (citing Tindall v. Waring Park Ass'n, 725 S.W.2d 935, 937 (Tenn. 1987). A preponderance of evidence requires that the party bearing the burden of proof on a particular issue must convince the trier of fact that "the truth of the facts asserted is more probable than not." Teter v. Republic Parking Sys., Inc., 181 S.W.3d 330, 341 (Tenn. 2005); Austin v. City of Memphis, 684 S.W.2d 624, 634 (Tenn. Ct. App. 1984). Evidence on an issue that is equally balanced does not rise to the preponderance of the evidence level. Austin, 684 S.W.3d at 634. In workers' compensation cases, however, reasonable doubt as to whether an injury arose out of employment is to be resolved in the employee's favor. Vandall, 401 S.W.3d at 32.

On appeal, Employee rightly contends his employment with Employer required him to step onto and off of pallets on a regular basis, and this is a special hazard of his employment and what caused him to injure his knee. Conversely, Employer contends that the evidence does not preponderate against the trial court's conclusion that the "knee injury was simply due to an idiopathic condition and [that] no special hazard in his work environment contributed to his injury."

"[A]n injury which occurs due to an idiopathic condition is compensable if an employment hazard causes or exacerbates the injury." Phillips, 134 S.W.3d at 150. For example, "if the work environment contains an additional risk element, for example, dangerous machinery or heights, that enhances the injury that would have otherwise occurred, the resulting injury will be compensable." Dickerson v. Invista Sarl, No. E2006-

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[4](...continued)
Code Ann. § 50-6-102(13) (2014) (as amended by 2013 Tennessee Laws Pub. ch. 289, § 5 (S.B. 200)).

02144-WC-R3-WC, 2007 WL 4973735, at *2 (Tenn. Workers Comp. Panel Oct. 18, 2007) (citing Phillips, 134 S.W.3d at 150).

At the outset, we must reiterate that it was not the fall that caused the injury to Employee's knee. Instead, the knee cap moving out of and then back into place is what caused the injury at issue. Therefore, we must determine if the evidence in this case preponderates against the trial court's determination that the injury to Employee's knee was caused by an idiopthic condition and not by some special hazard associated with his work environment.

In Wilhelm v. Krogers, 235 S.W.3d 122 (Tenn. 2007), our Supreme Court reviewed the law pertaining to idiopathic injuries. In that case the Supreme Court stated:

> There are a number of cases helpful to the determination of whether the injury qualifies as idiopathic and, if so, whether the injury is compensable. For example, in *Greeson v. American Lava Corp.*, 216 Tenn. 461, 392 S.W.2d 931 (1965), an employee fell at work as a result of a pre-existing spinal cord condition. Although the condition caused atrophy, numbness, and tingling in his right leg, this Court denied workers' compensation benefits. Because "the [employee] fell because his leg failed to respond [,][and] the evidence fully supports the finding that the petitioner's fall was caused by an idiopathic attack," there was no entitlement to recovery. The Court described "Tennessee [as] among those states denying recovery for the effects of an idiopathic fall to the level ground or bare floor."
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> In *McClain v. Allied–Bendix, Inc*., 1994 WL 901486 (Tenn. Workers' Comp. Panel Apr. 5, 1994), the employee's knee "went out" at work while he was walking after the completion of his daily duties. He had injured his knee some six years earlier and his physician testified that the employee's "preexisting condition predisposed him to . . . the torn meniscus injury." The Special Workers' Compensation Appeals Panel held that the employee's fall at work was "caused by an idiopathic condition of the [employee]; there was no condition of the employment that presented a peculiar or additional hazard to the [employee]; and this was not a totally unexplained fall." Similarly, in *Reynolds v. Wal–Mart Stores, Inc*., 1996 WL 677109, at *1 (Tenn. Workers' Comp. Panel Nov. 25, 1996), the employee fell and was injured while walking out of a dressing room. Prior to the fall, she had suffered from Leriche's syndrome, which caused pain or numbness in the legs.

> Because there was no work hazard, the Panel denied benefits because "the record preponderates in favor of the finding that the [employee's] fall was occasioned by a pre-existing idiopathic condition."
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> In *Greeson* and its progeny, the employees had pre-existing conditions which affected their ability to walk. No work hazard was present when the employees experienced the subsequent injury. Under these circumstances, this Court and its Panels have consistently ruled that the new injury is not compensable. That is, the injuries would have occurred whether the employee happened to be at work or at another location.
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> In workers' compensation cases, "benefits have generally not been allowed where the cause of [an injury] has been found to be due to some diseased or other idiopthic condition personal to the employee, absent some 'special hazard' of the employment."

Wilhelm ,235 S.W.3d at 127-28 (citations omitted).

In order to determine if the evidence preponderates against the trial court's determination that the injury to Employee's knee was caused by an idiopathic condition and not by some special hazard associated with his work environment, we must review the evidence presented concerning the cause of Employee's fall. As mentioned, Dr. Bobo's deposition referenced at least two potential causes as to why Employee's knee cap moved. One was the preexisting "tilt" in Employee's knee. The other was the stepping off of the pallet.

Dr. Bobo explained that Employee was "anatomically predisposed" to have his knee cap move out of place and that this predisposition put him at risk for the movement of the knee cap that did in fact occur. When questioned regarding the mechanism of Employee's knee injury, Dr. Bobo did testify that nothing particular about Employee's work environment caused his knee cap to move out of and then back into place and what happened to Employee's knee could have happened anywhere.

However, it is undisputed that Employee was stepping off of a pallet when his knee cap moved. Employee testified that he was "turning and put his left knee on the floor[]" as he was stepping off of the pallet, and Dr. Bobo agreed that the movement of Employee's body as he stepped off of the pallet with his knee "in the position" it was in "at that time" is what caused the knee cap to move out of place. Stepping on and off pallets was work that Employee was required to do constantly and repeatedly during a workday. In this specific

instance, the stepping off the pallet was essentially what caused the injury to occur when and how it did.

Taken as a whole, the evidence in this case establishes that Employee had a condition that made him predisposed to have his knee cap move out of place when his knee was flexed and rotation of the body on the knee was occurring. While what happened to Employee's knee could have happened anywhere, according to Dr. Bobo, the stepping off of the pallet placed Employee's knee in just the right position needed to trigger what Employee was predisposed to have occur to in fact occur. The evidence established that Employee's work duties required him to step on and off pallets many times in the course of the workday. As this movement, done repeatedly during the workday, caused Employee's knee to be in a position that made it particularly vulnerable to slipping out of place, we hold that this work duty constituted a "'special hazard' incident to employment" and contributed to causing the injury. Wilhelm , 235 S.W.3d at 128. We conclude that, when resolving all reasonable doubt in favor of the employee, the evidence demonstrates that the knee cap rotation "more probably than not" was caused by the activity of stepping off of the pallet and that, under the circumstances, this injury was caused by a hazard special to Employee's work environment. Vandall, 401 S.W.3d at 32.

This being the case, we conclude that the evidence preponderates against the trial court's judgment that Employee's knee injury was not caused by a hazard special to his work environment. Because "[a]n injury that occurs due to an idiopathic condition is compensable if an employment hazard causes or exacerbates the injury," we conclude that Employee's injury in compensable and that Employee is entitled to workers' compensation benefits. Phillips, 134 S.W.3d at 150.

Conclusion

For the foregoing reasons, the trial court's judgment is reversed. The trial court did not make alternative findings. Thus, this matter is remanded to the trial court for further proceedings that are consistent with this Opinion. Costs are taxed to Johnson & Johnson Health Care Systems, Inc. and Indemnity Insurance of North America and their sureties, for which execution may issue if necessary.

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Tony A. Childress

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

ERIC BIKE v. JOHNSON & JOHNSON HEALTH CARE SYSTEMS, INC., ET AL

Chancery Court for Shelby County
No. CH1200443

No. W2013-02728-SC-WCM-WC - Filed March 13, 2015

Judgment Order

This case is before the Court upon the motion for review filed by Johnson & Johnson Health Care Systems, Inc. and Indemnity Insurance of North America, pursuant to Tennessee Code Annotated section 50-6-225(e)(5)(A)(ii), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law.

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

Costs are assessed to Johnson & Johnson Health Care Systems, Inc. and Indemnity Insurance of North America and their sureties, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

HOLLY KIRBY, J., NOT PARTICIPATING