IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
November 28, 2011 Session

TIMOTHY BYROM v. RANDSTAD NORTH AMERICA, L.P.

Appeal from the Chancery Court for Coffee County
No. 08-53 Vanessa A. Jackson, Chancellor

No. M2011-00357-WC-R3-WC - Mailed: January 10, 2012
March 8, 2012

The employee fell at work. He was then diagnosed to have a brain hemorrhage. The evidence showed that the fall occurred in an open area, that it was unlikely that the employee either slipped or tripped, and that he struck his head on the floor but not upon any objects. Employee had no recollection of the fall. The employer denied the employee's workers' compensation claim, asserting that the fall did not arise from his employment. The trial court found that the employee did not sustain his burden of proof as to causation. Employee has appealed, arguing that the evidence preponderates against the trial court's finding. We affirm the judgment of the trial court.[1]

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 CORNELIA A. CLARK, C.J., and D.J. ALISSANDRATOS, SP. J., joined.

Robert S. Peters, Winchester, Tennessee, for the appellant, Timothy Byrom.

Gregory H. Fuller and Julie Cochran Fuller, Knoxville, Tennessee, for the appellee, Randstad North America, L.P.

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[1] Pursuant to Tennessee Supreme Court Rule 51, 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.

MEMORANDUM OPINION

Factual and Procedural Background

Timothy Byrom ("Employee") was employed by Randstand North America, L.P. ("Employer") as a factory worker at Barfield Manufacturing in Manchester. Barfield manufactures "pole line equipment for electric companies." Employee's job was to assemble platforms upon which transformers would eventually be placed. Employee's injury occurred on September 28, 2006. It is undisputed that he fell to the floor and struck his head on that date. He was subsequently diagnosed with a subarachnoid hemorrhage, which he alleged was caused by the blow to his head from the fall at work. Employer denied his claim. It conceded that his injury occurred in the course of his employment, but denied that it arose from it.

Employee testified that he had no personal recollection of falling. His last memory before the incident was of eating breakfast, and his first memory after the incident was of lying on a stretcher. He testified that he had never previously fainted or passed out while working at Barfield, and he had never before experienced a seizure. He testified that on the day of the accident he had taken the prescription medication hydrocodone. He had been taking that medication for pain from a shoulder injury for a number of years. He also regularly took a prescription medication for hypertension and the anti-anxiety medication Xanax. He testified that he did not use the latter medication while at work and had not taken it on the day of his accident.

Roberta Tate was a former Barfield employee who was Employee's supervisor when his injury occurred. She testified that immediately before Employee fell she had been at his work area for about five minutes talking to him about his work. While walking away, she heard a commotion and saw Employee lying on the floor with broken glasses and a cut to the head. She had not observed anything irregular about his behavior; his speech was not slurred; and he did not appear to be incapacitated in any way. She stated that there were "platform beams" in his work area which he could have potentially tripped over, but she did not see any slippery substances on the floor in the area.

On cross-examination, Ms. Tate confirmed that she did not see Employee fall and did not see any "slick spots" nearby after the fall. She said that he was on his back when she turned to see him. She also testified that she had lost her job with Barfield sometime after Employee's injury and had pursued some type of litigation over the termination.

Amanda Anderson was Barfield's office manager and a licensed emergency medical technician who was summoned to assist Employee after he fell and stayed with him until

ambulance personnel arrived. She testified that Employee was lying on his back with his hands drawn in when she first saw him. She "could tell he was trying to breathe because there was saliva obviously trying to come out of his mouth because his tongue was blocking his airway," and he was bleeding near his eyes. Ms. Anderson did not observe any "greasy patches" or "slick spots" in the area, and she stated that there were no I-beams or other objects in the immediate area over which Employee might have tripped.

Earl Austell was a maintenance manager for Barfield. He was approximately forty feet from Employee's work area but did not see Employee fall. When he heard another employee yell, he turned to observe Employee lying on his back on the floor and went to his aid, directing another employee to get Ms. Anderson. He observed that Employee was on his back, "rocking a little bit," that saliva was coming out of Employee's mouth, and that he was having a seizure. Mr. Austell testified that he examined the area to determine potential causes for the fall. He testified that there were no objects within four or five feet of Employee, and the area was a level concrete floor. He saw no greasy or slippery spots in the area, and he "even looked at the bottom of [Employee's] shoes and there was nothing."

On cross-examination, Mr. Austell conceded that it was possible that Employee could have tripped over an object and fallen forward several feet. He did not recall seeing Employee's safety glasses in the area.

Employee was initially treated at the emergency room of United Regional Medical Center in Manchester. He was subsequently transported to Vanderbilt University Medical Center where he came under the treatment of Dr. Robert Mericle, a neurosurgeon, who testified by deposition. His diagnosis was that Employee had a subarachnoid hemorrhage, a condition of bleeding in a space between two specific parts of the brain. Dr. Mericle testified that the most common cause of this condition is trauma to the head; however, other potential causes are aneurism, arteriovenous malformation, and brain tumors. Tests carried out while Employee was hospitalized at Vanderbilt from September 28, 2006, to October 6, 2006, eliminated those potential causes. Dr. Mericle therefore opined that the most likely cause of Employee's subarachnoid hemorrhage was a blow to the head. He stated that such a hemorrhage could cause seizure disorders, cognitive impairment, and other problems. He had not examined or treated Employee since his release from the hospital and was therefore unable to testify concerning the specific consequences of his injury.

On cross-examination, Dr. Mericle said that, in the absence of a history of seizures, it was unlikely the Employee's fall on September 28, 2006, was caused by a seizure. He agreed that records from United Regional Medical Center stated that Employee had suffered a seizure at work; however, he was skeptical of that assertion. He agreed that neither Employee nor Employee's wife stated that he had fallen on a slippery spot. He also agreed

that withdrawal from Xanax can cause seizures and also that the symptoms of a subarachnoid hemorrhage caused by trauma could resemble a seizure. He stated that Employee "could have fallen and hit his head and that cause[d] a seizure, or he could have had a subarachnoid hemorrhage which caused him to fall and hit his head, or he could not have had a seizure at all."

On redirect examination, Dr. Mericle stated that it was "most probable . . . that [Employee] somehow fell and suffered a traumatic injury to the head which caused a subarachnoid hemorrhage and may or may not have caused a seizure."

Dr. David Florence had been Employee's primary care physician since approximately 1990. He testified that Employee had chronic headaches prior to his injury, and he had treated Employee for hypertension for "a couple of years prior to 2005." Employee had received hydrocodone for right shoulder pain and headaches since approximately 1993, and Dr. Florence characterized Employee as dependent upon but not addicted to that medication. He testified that Employee had chronic anxiety, and he prescribed Xanax to treat the anxiety. The first time he saw Employee after the injury was on October 11, 2006, when Employee told him that he had "fainted at work" on September 28. At a later time, Employee stated that he had slipped on some grease.

Dr. Florence considered it likely that Employee had a seizure as a result of head trauma caused by his fall; however, he conceded that "most seizures are not trauma related." Employee continued to have seizures after September 2006. Dr. Florence treated those with medication. He thought that it was "medically probable" that the seizures were caused by his fall.

The case came to trial on December 14, 2010. At that time, the court announced, "And in speaking with counsel before we opened court, we are going to take up the issue of whether or not the fall that is at issue in this case arose from and out of the course of [Employee's] employment. After that issue has been determined, then we'll make a decision whether or not we proceed on the remaining issues[.]" After the presentation of the evidence summarized above, the court issued its findings from the bench. It determined that Employee had failed to carry his burden of proof to establish that the fall arose from his employment, stating:

> [A]s the Court sits here, I can't tell you what caused the fall. There's a lot of theories out there, but there's no evidence from anyone about what caused this fall. He might have tripped over something. That's a possible explanation. He might have just gotten dizzy. I mean, nobody really knows and enough evidence wasn't presented for this Court to say more likely than not what caused the fall.

At the request of counsel for Employee, the trial court stated that it would defer entering judgment on its findings and give the parties ten days to file briefs concerning the applicable legal standards. After those briefs were filed, the court entered an order consistent with its ruling from the bench and dismissed Employee's complaint. In the order of January 20, 2011, the trial court found:

> 1. Although the fall which resulted in Plaintiff's subarachnoid hemorrhage occurred while he was at work, Plaintiff did not present credible evidence to establish that the fall arose from his employment.
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> 2. Plaintiff's proof did not establish that the fall was caused by a condition incident to his work or a work-related hazard.
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> 3. A preponderance of the evidence indicates that the Plaintiff, for some unexplained reason, fainted or passed out while walking at work and fell, striking his head on the floor.
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> 4. The Plaintiff has previously offered inconsistent theories about the cause of his fall. At trial, the Plaintiff presented testimony from Roberta Tate to support his theory that he tripped over a steel beam. However, Ms. Tate had walked away from the Plaintiff, and did not see him fall. Ms. Tate admitted that she did not know what caused the [Plaintiff] to fall. The Court finds that her testimony as to the cause of the Plaintiff's fall is speculation.
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> 5. The Defendant offered testimony of two credible witnesses, Amanda Anderson and Earl Austell. Their testimony refutes the Plaintiff's theory that he may have tripped over a steel beam.
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> 6. The cause of Plaintiff's fall which resulted in the subarachnoid hemorrhage remains unclear, and the Plaintiff has not carried the burden of proof to establish that his injury arose out of his employment.

Employee has appealed, contending that the evidence preponderates against the trial court's finding that his injury did not arise from his employment.

Standard of Review

The standard of review for factual issues is de novo upon the record of the trial court accompanied by a presumption of correctness of the findings, unless the evidence preponderates otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2008). When the trial court has heard in-court testimony, considerable deference must be afforded to the trial court's findings of credibility and assessment of the weight to be given to in-court testimony. *Whirlpool Corp. v. Nakhoneinh*, 69 S.W.3d 164, 167 (Tenn. 2002). When the issues involve expert medical testimony that is contained in the record by deposition, determination of the weight and credibility of the evidence should be drawn from the contents of the depositions, and the reviewing court may draw its own conclusions with regard to those issues. *Foreman v. Automatic Sys., Inc.*, 272 S.W.3d 560, 571 (Tenn. 2008). We review a trial court's conclusions of law de novo upon the record with no presumption of correctness. *Seiber v. Reeves Logging*, 284 S.W.3d 294, 298 (Tenn. 2009).

Analysis

Tennessee Code Annotated section 50-6-103(a) (2011 Supp.) provides that injuries "arising out of and in the course of employment without regard to fault as a cause of the injury" are compensable under the workers' compensation law. "Arising out of" refers to the origin of the incident in terms of causation, while "in the course of" relates to time, place, and circumstance. *Phillips v. A&H Const. Co.,* 134 S.W.3d 145, 150 (Tenn. 2004). In this case, it is undisputed that Employee was in the course of his employment at the time the injury occurred. He was on Employer's premises, at his work station, during normal working hours.

However, it is not clear that his injury arose from his work. "The mere presence of an employee at the place of his employment will not alone result in the injury being considered as arising out of the employment." *Rogers v. Kroger Co.*, 832 S.W.2d 538, 541 (Tenn. 1992). The phrase "arising out of" requires that a causal connection exist between the employment conditions and the resulting injury. *Wait v. Travelers Indem. Co. of Ill.*, 240 S.W.3d 220, 227 (Tenn. 2007). Injuries caused by falls on the job sometimes require detailed and careful analysis to determine whether or not they are causally related to the employment. In *Dickerson v. Invista Sarl*, No. E2006-02144-WC-R3-WC, 2007 WL 4973735 (Tenn. Workers' Comp. Panel Oct. 18, 2007), a previous Workers' Compensation Appeals Panel explained:

> An "idiopathic fall" is said to occur when the fall is caused by a condition of unknown origin. The cases in which this issue arises generally involve either an unexplained seizure or fainting episode, *e.g.*,

> *Sudduth v. Williams*, 517 S.W.2d 520 (Tenn. 1974), or a knee giving way without explanation, *e.g.*, *Greeson v. Am. Lava Corp.*, 216 Tenn. 461, 392 S.W.2d 931 (Tenn.1965). An injury caused by such a fall does not arise from the employment. So, an unexplained fall onto a bare floor is not compensable. *Sudduth*, 517 S.W.2d at 523. However, 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. See *Phillips v. A & H Const. Co., Inc.*, 134 S.W.3d 145, 150 (Tenn. 2004).

2007 WL 4973735, at *2.

Even more recently, another Panel, speaking through Justice Wade, stated:

> An idiopathic injury is one that has an unexplained origin or cause, and generally does not arise out of the employment unless "some condition of the employment presents a peculiar or additional hazard." *Shearon v. Seaman*, 198 S.W.3d 209, 214 (Tenn. Ct. App. 2006). Examples of injuries deemed idiopathic by our Supreme Court have included an unexplained seizure or fainting episode, *see, e.g., Sudduth v. Williams*, 517 S.W.2d 520, 523 (Tenn. 1974) and a knee "giving way" resulting in a fall, *see, e.g., Greeson v. Am. Lava Corp.*, 216 Tenn. 461, 392 S.W.2d 931, 934-35 (Tenn. 1965). An injury caused by purely personal conditions, as opposed to an employment condition, qualifies as idiopathic. *See* Thomas A. Reynolds, 20 Tennessee Practice *Tennessee Workers' Compensation Practice and Procedure with Forms,* § 10:7 (2005). An injury may arise out of employment, however, if causally related to the activity required by the employer, even if that activity bears no relationship to the normal work duties of the employee. *Young v. Taylor-White, LLC*, 181 S.W.3d 324 (Tenn. 2005).

Veler v. Wackenhut, No. E2010-00965-WC-R3-WC, 2011 WL 336465, at *3 (Tenn. Workers' Comp. Panel Jan. 28, 2011).

The Supreme Court has further observed that "Tennessee courts have consistently held that an employee may not recover for an injury occurring while walking unless there is an employment hazard, such as a puddle of water or a step, in addition to the injured employee's ambulation." *Wilhelm v. Krogers,* 235 S.W.3d 122, 128-29 (Tenn. 2007).

As the trial court in this case observed, Employee presented several theories concerning the reason for his fall. Although there was some mention of a greasy or slippery area nearby, the testimony of Ms. Tate, Ms. Anderson and Mr. Austell refuted that theory. Ms. Tate testified that there were objects nearby over which Employee could have tripped; however, Ms. Anderson and Mr. Austell testified to the contrary. Also, the evidence tends to show that when he fell, Employee's head struck the floor rather than a work bench or other object related to his job. Employee gave a statement to Dr. Florence that he may have fainted; however, there is no evidence that he had ever fainted at work or elsewhere prior to September 28, 2006. And while both Dr. Mericle and Dr. Florence agreed that withdrawal from Xanax could cause a seizure of some sort, there is no evidence that Employee was in a state of withdrawal at the time his injury occurred.

As the trial court observed in its ruling, the burden of proof in a workers' compensation case is upon the employee to establish each and every element of his case by a preponderance of the evidence. *Elmore v. Travelers Ins. Co.*, 824 S.W.2d 541, 543 (Tenn. 1992). "[P]roof that the injury was caused in the course of the employee's work must not be speculative or so uncertain regarding the cause of the injury that attributing it to the plaintiff's employment would be an arbitrary determination or a mere possibility." *Tindall v. Waring Park Ass'n,* 725 S.W.2d 935, 937 (Tenn. 1987). Similarly, our Supreme Court has held:

> [T]he mere presence of an employee at the place of injury because of his employment will not alone result in the injury being considered as arising out of the employment. If the injury . . . resulted from an exposure which is no more or different from that of any other member of the public similarly situated in place and time, it is not compensable.

Sudduth, 517 S.W.2d at 523.

The ruling of the trial court here is consistent with the holding in *Dickerson v. Trousdale Manufacturing Co.*, 569 S.W.2d 803 (Tenn. 1978). In *Dickerson*, the employee inexplicably fell in the bathroom but speculated that she must have slipped on water. The trial court found it was more likely that she had just suffered a blackout spell and that the fall was "idiopathic." *Id.* at 804-05. No credible proof showed that the fall was causally related to some hazard incident to the conditions of the employment, and the *Dickerson* employee, like Employee in this case, failed to prove the causal connection between the fall and work conditions. *Id.*

The evidence presented in this case merely shows that there were several potential causes for Employee's fall. Some causes were related to his work; some causes were not related to his work. The evidence did not support a conclusion that any one of those potential causes was more likely than not the actual cause of the fall and therefore the cause of Employee's injury. Our examination of the record leads us to the same conclusion reached by the trial court that a finding of causation would be speculative. We are therefore unable to conclude that the evidence preponderates against the trial court's decision.

Conclusion

The judgment is affirmed. Costs are taxed to Timothy Byrom and his surety for which execution may issue if necessary.

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WALTER C. KURTZ, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE
November 28, 2011 Session

TIMOTHY BYROM v. RANDSTAD OF NORTH AMERICA, L.P.

Chancery Court for Coffee County
No. 0853

No. M2011-00357-SC-WCM-WC - Filed March 8, 2012

JUDGMENT

This case is before the Court upon the motion for review filed by Timothy Byrom pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B) and 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 Timothy Byrom, for which execution may issue if necessary.

CLARK, C.J., NOT PARTICIPATING