IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
May 29, 2012 Session

CAROLYN COLLIER v. LIFE CARE CENTERS OF COLLEGEDALE, ET AL.

Appeal from the Chancery Court for Hamilton County
No. 03-0652 Jeffrey M. Atherton, Chancellor

No. E2011-01683-WC-R3-WC-MAILED-SEPT. 7, 2012 / FILED-OCT. 8, 2012

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. Employee injured her ankle in the course and scope of her employment. She received treatment from an authorized physician for a period of time, but did not improve and did not return to work. After the initial injury and treatment of her ankle, she began receiving treatment for problems with her right knee. Employer denied that Employee had sustained a permanent injury to her ankle and also denied that Employee had suffered a compensable injury to her knee. The trial court found that Employee sustained compensable injuries to both the knee and ankle and awarded permanent partial and temporary total disability benefits. We find that the combined benefits exceeded that statutory maximum then in effect and modify the award accordingly. Otherwise, we affirm the remainder of the judgment.

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

JERRI S. BRYANT, SP. J., delivered the opinion of the Court, in which GARY R. WADE, J., and E. RILEY ANDERSON, SP. J., joined.

Lisa L. Conner, Chattanooga, Tennessee, for the appellants, Life Care Centers of Collegedale and Life Care Centers of America.

Ronald J. Berke and Megan C. England, Chattanooga, Tennessee, for the appellee, Carolyn Collier.

MEMORANDUM OPINION

Factual and Procedural Background

Carolyn Collier ("Employee") worked for Life Care Centers of Collegedale ("Employer") as a Certified Nursing Assistant ("CNA"). She alleged she sustained injuries to her right ankle and right knee on March 29, 2003, when her ankle "popped" while lifting a patient. She reported the incident to her supervisor, "Brooksie," who told her to "take an extra strength Tylenol and it will be better." Employee's symptoms did not improve over the weekend, so she saw her primary care physician, Dr. Winters. She testified she saw him on three or four occasions. Employer made an appointment for Employee with Dr. John Chrostowski, an orthopedic surgeon who first examined Employee on April 3, 2003. His initial diagnosis was a right ankle sprain, and he placed restrictions on her activities and put her right ankle in a cast boot. Employee returned to Dr. Chrostowski on several occasions. In May, she complained of pain "going up into her leg." In addition, a physical therapist's note of May 29, 2003, reported Employee had stated that movement of her ankle caused hip and knee pain. On June 25, 2003, Employee had an MRI that indicated fluid, swelling, irritation and arthritis. Dr. Chrostowski took her off work and referred her to a rheumatologist for further evaluation. Dr. Chrostowski placed her at maximum medical improvement ("MMI") on August 12, 2003, and again returned her to work. He did not see her again until April 13, 2005. At that time, Employee had swelling, discoloration of the skin around her ankle and hypersensitivity. He assigned 0% impairment based upon a diagnosis of arthritis of the ankle. Dr. Chrostowski did not see or examine Employee after April 2005.

Employee was treated by Dr. Raymond Ezenauer, a rheumatologist, from September 2003 until May 2006. Dr. Ezenauer did not testify, but his records were placed into evidence as Exhibit 6 to the deposition of Dr. Little. He ordered an MRI of Employee's right ankle. In his opinion, it revealed the presence of osteochondral defects indicative of a condition known as osteochondritis dessicans ("OCD"). Dr. Ezenauer adopted this as his diagnosis and treated her with injections and anti-inflammatory medication. In October of 2005, Employee complained to Dr. Ezenauer of right knee pain. X-rays ordered by Dr. Ezenauer showed mild degenerative changes. In May 2006, she reported problems with her left knee. Additional x-rays taken at that time were unremarkable.

Employee began seeing Dr. Carl Dyer, an orthopaedic surgeon, in June 2007. She was referred to Dr. Dyer by her sister. He opined that she had "degenerative" arthritis of the small bones of the foot and ankle. He also thought it was possible that she had rheumatoid arthritis. He prescribed anti-inflammatory medication and recommended she obtain a pair of high quality running shoes. He also reviewed an MRI scan of the ankle from October

2003 and opined she did not have OCD. In October 2007, Employee advised Dr. Dyer that she was having problems with her right knee. Dr. Dyer ordered an MRI of the knee, which showed chondromalacia, or thinning of the cartilage. At his recommendation, arthroscopic surgery was carried out on November 5, 2007. During that procedure, Dr. Dyer "performed an arthroscopy of the right knee, partial excision, medial meniscus, lateral meniscus, microfracture arthroplasty of the patella, and microfracture arthroplasty of the medial femoral condyle." X-rays of Employee's right ankle taken after the knee surgery showed "minimal arthritic changes." Dr. Dyer testified that Employee had either OCD or early degenerative changes in her ankle. Concerning the cause of those problems, he testified:

> As best I can tell, there seems to be a chain all the way from the earliest medical records . . . that she had a problem for which she was seen . . . and it was related to the accident, best I can tell. So I think that what she has had in her ankle had its genesis at the time of one of the two accidents.[1]

Later, Dr. Dyer testified that "within a reasonable degree of medical certainty . . . there was at least an aggravation of a pre-existing problem" with Employee's right ankle. He also stated, "There does not appear to have been an osteochondral defect of any significance in the ankle joint related to trauma. . . . [In October 2008] I thought her problems were related to rheumatoid disease." He also opined that Employee's ankle had permanent impairment, but he had not assigned an impairment rating based upon the American Medical Association's Guides to the Evaluation of Permanent Impairment ("AMA Guides"). Concerning Employee's right knee and whether or not it was related to her work injury, Dr. Dyer testified:

> Well, . . . that's open for discussion. I think that . . . she had these problems. There was a complaint on one of the original—by one of the original examiners in the history that she had pain in the knee, too. So, as to whether the pain was in the knee—the pain in the knee was evidently there from the very beginning. And all I can say is that this is just one of those things where the most important thing . . . got the attention first. And then, as we went on, we started paying attention to other things.

Dr. Walter King, an orthopaedic surgeon, performed an independent medical evaluation at the request of Employee's attorney on October 25, 2010. Employee submitted those opinions to the trial court by means of a C-32 medical report. Employer exercised its right to take a deposition on cross-examination of Dr. King pursuant to Tennessee Code Annotated section 50-6-235(c)(1). In his report, Dr. King opined that Employee had

[1] Employee had previously suffered a work-related injury to her right ankle in 2001. Dr. Chrostowski was her treating physician for that injury, which was diagnosed as a sprain.

sustained injuries to her right ankle and right knee as a result of the March 29, 2003 incident. He further opined she had sustained a permanent impairment of 20% to the right lower extremity pursuant to the Fifth Edition of the AMA Guides, or 26% to the right lower extremity pursuant to the Sixth Edition. Dr. King also found that Employee reached MMI on the date of his examination. He recommended that Employee lift or carry no more than ten pounds occasionally or five pounds frequently; that she limit sitting and standing to no more than three hours at a time; and that she avoid climbing, balancing, stooping, kneeling and crawling altogether.

Dr. King agreed that he had selected the MMI date because that was the date of his examination. His diagnosis was degenerative arthritis of the ankle and chronic instability. He did not think Employee had rheumatoid arthritis. Concerning causation, he testified that the "original cause" of Employee's ankle and knee complaints was "the fracture, the original injury that she sustained in 2003. That's the only injury she reported to me, and it's consistent with posttraumatic degenerative arthritis." He also testified he had not apportioned the impairment rating he had assigned in his report between the ankle and knee injuries. When asked to do so, he stated that the impairment due to the ankle injury was 7% to the body as a whole, and the impairment due to the knee injury was 3% to the body as a whole.[2] Later in his deposition, he revised these figures to 8% to the body as a whole for the ankle injury and 4% to the body as a whole for the knee injury.[3]

Dr. James Little performed an independent medical examination on April 1, 2011 at the request of Employer's attorney. He opined that Employee had sustained a first degree sprain of the right ankle, and that she retained no permanent impairment as a result of the injury. He also found she had severe degenerative arthritis of the right knee. His opinion concerning the existence of a causal relationship between that condition and the March 29, 2003 incident was the subject of considerable questioning on both direct and cross-examination. In summary, he characterized the knee condition as unrelated to the work injury in his report. He testified that the absence of any medical examination or treatment from the date of injury until 2007 supported his opinion. However, he also testified that the ankle injury was to be the focus of his examination and report and that a causal connection could exist between an ankle injury and later arthritic problems in the knee of the same leg.

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[2]According to Table 17-3, located at page 527 of the Fifth Edition of the AMA Guides, 7% to the body as a whole is equivalent to 17% or 18% to the lower extremity, and 3% to the body as a whole is equivalent to 7% or 8% of the lower extremity. Applying the combined values chart located at page 604 of the AMA Guides, these impairments result in an impairment of 23% to 25% to the lower extremity.

[3]According to the same tables referenced in footnote 2, an 8% impairment to the body as a whole is equivalent to 19% or 20% to the lower extremity, and 4% to the body as a whole is equivalent to 9% or 10% to the lower extremity. The combined impairments range from 26% to 28% to the lower extremity.

Employee testified that she was fifty-nine years old. She was a high school graduate and had also received a general business degree from a junior college. Prior to being hired by Employer, she had been a CNA at another facility. She had also worked as a cashier at a convenience store and as a sales clerk at Sears and K-Mart stores. After her initial injury, she had excruciating pain in her right ankle radiating up to her knee and hip. She recalled she had previously injured the same ankle in 2001. She believed that injury was a fracture. She had fully recovered from that injury and did not have any further problems with it until the March 2003 incident.

Employee believed that she was unable to work because she "wasn't able to stand up on [her] leg for a period of time." She used a cane regularly and testified that she was unable to walk without it. She was limited in her ability to cook and perform housework. Her daughter and two friends testified that she had frequently cooked and baked for church functions prior to her injury but had not done so since that event.

During cross-examination, Employee testified she told Dr. Ezenauer of her right knee symptoms. She agreed that Dr. Dyer had performed surgery on both her right and left knees. She stated that Dr. Alvarez (another rheumatologist) had sent her to physical therapy for her right ankle, and then testified that Dr. Dyer, rather than Dr. Alvarez, had prescribed that therapy. She agreed that she had not applied for any jobs since leaving Employer.

Maria Gopiao worked for Employer at the time of Employee's injury. In 2003, her responsibilities included oversight of workers' compensation claims. Ms. Gopiao testified that, prior to 2003, Employee had reported on-the-job injuries to her right ankle in March 2001 and her lower back in November 2001. She further testified that Employee did not report her March 2003 injury until August 2003. Further, Ms. Gopiao stated that Employee told her at that time that she had hurt her leg while moving furniture with her sister. However, on cross-examination, she agreed that she was responsible for arranging medical appointments for employees with work injuries and, in that role, made Employee's appointment with Dr. Chrostowski on April 3, 2003. She could not explain how this happened before she received notice of the injury.

The trial court took the case under advisement and issued its ruling in the form of a written Memorandum Opinion. The court found Employee had provided timely notice of her injury; found she had sustained compensable injuries to her right ankle and right knee; and that she had reached MMI from those injuries on October 28, 2008, the date Dr. Dyer first indicated that permanent impairment was assessed. It adopted Dr. King's "body as a whole" impairment rating for those injuries, and using tables from the Fifth Edition of the AMA Guides, found the appropriate impairment to be 26% to the leg. The court awarded

permanent partial disability benefits of 65% to the leg. Judgment was entered in accordance with those findings, and Employer has appealed.

Standard of Review

The standard of review of issues of fact 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(e)(2) (2008). When credibility and weight to be given testimony are involved, considerable deference is given the trial court when the trial judge had the opportunity to observe the witness' demeanor and to hear in-court testimony. *Humphrey v. David Witherspoon, Inc.*, 734 S.W.2d 315, 315 (Tenn. 1987). A reviewing court, however, may draw its own conclusions about the weight and credibility to be given to expert testimony when all of the medical proof is by deposition. *Krick v. City of Lawrenceburg*, 945 S.W.2d 709, 712 (Tenn. 1997); *Landers v. Fireman's Fund Ins. Co.*, 775 S.W.2d 355, 356 (Tenn. 1989). A trial court's conclusions of law are reviewed de novo upon the record with no presumption of correctness. *Ridings v. Ralph M. Parsons Co.*, 914 S.W.2d 79, 80 (Tenn. 1996).

Analysis

The Record on Appeal

As a threshold matter, Employee contends that the trial transcript, the exhibits, or both, should be stricken from the record. She asserts that the transcript was not certified by counsel or the trial court, but by the court reporter only, and that the reporter did not certify the trial exhibits. She also alleges that counsel did not receive notice of the filing of the transcript in the trial court.

Tennessee Rule of Appellate Procedure 24(e) provides, in pertinent part:

> If any matter properly includable is omitted from the record, is improperly included, or is misstated therein, the record may be corrected or modified to conform to the truth. *Any differences regarding whether the record accurately discloses what occurred in the trial court shall be submitted to and settled by the trial court* regardless of whether the record has been transmitted to the appellate court.

(Emphasis added). The trial court was the proper forum to hear and determine this issue. There is nothing in the record to suggest that Employee raised the issue in that court. Therefore, the issue is not properly before this Panel.

We further note that Tennessee Rule of Appellate Procedure 24(a), which states that "the original of any exhibits filed in the trial court" shall be included in the record, does not

refer to certification by the reporter or any other person and that Rule 24(f) provides that if the trial judge does not approve and authenticate the transcript and exhibits within the time period set out in the rule, the transcript and exhibits are "deemed to have been approved[.]" In addition, the records of the Appellate Court Clerk reflect that a notice of the filing of the transcript was sent to counsel on November 18, 2011.

Based on these considerations, we conclude that Employee's objections to the record are without merit.

Notice of Right Knee Injury

Employer's first contention is that the trial court erred by finding that Employee provided timely notice of her right knee injury. In support of this contention, Employer notes that the Complaint filed on June 6, 2003 alleges that Employee "was injured" and does not refer to any specific part or parts of her body. Employer also asserts that the first physician's note to mention Employee's right knee is Dr. Dyer's note of October 23, 2007, more than four years after the injury.[4]

It is undisputed that Employee saw Dr. Chrostowski on April 3, 2003, less than a week after her injury. Employer does not dispute that Dr. Chrostowski was an authorized physician. Employee also testified that she advised her supervisor, Brooksie, of the accident on the day it occurred, and Employer did not present any evidence to the contrary. We conclude that the trial court correctly ruled that Employer was aware of the March 29, 2003 incident within the thirty days provided by Tennessee Code Annotated section 50-6-201. As the Tennessee Supreme Court stated in *Quaker Oats Co. v. Smith*, 574 S.W.2d 45, 48 (Tenn. 1978):

> [W]e know of no requirement that an employee give notice of each of several injuries he received in an on-the-job accident. He is in compliance with the statutory requirement of notice if he notifies his employer of the accident and the fact that he has suffered an injury. The nature and extent of the employee's injuries, and the issue of medical causation, usually come to light in the course of treatment of the employee's injuries.

See also Blankenship v. Ace Trucking, Inc., No. M2010-00597-WC-R3-WC, 2011 WL 1433776, at *5 (Tenn. Workers' Comp. Panel Apr. 14, 2011). Employee satisfied the notice requirement when she informed her supervisor of her accident on March 29, 2003.

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[4]The records of Dr. Chrostowski contain a note from a physical therapist, dated May 29, 2003, which reports that Employee "stated [movements] @ ankle made her hip and knee hurt." Our resolution of this issue does not require a determination of whether this document satisfied the notice requirement contained in Tennessee Code Annotated section 50-6-201.

Causation

Employer next contends the evidence preponderates against the trial court's findings that Employee sustained compensable injuries to her right knee and ankle. As outlined above, the medical opinions concerning Employee's injuries were varied. Dr. Chrostowski opined that she had an ankle sprain superimposed upon preexisting degenerative arthritis and that she did not retain any permanent impairment for this injury. He did not examine or treat her knee. Dr. Dyer testified the work injury had aggravated pre-existing rheumatoid arthritis in her ankle. He opined she had permanent impairment as a result, although he did not provide an impairment rating. His testimony concerning her knee was vague but could be understood to support the existence of a causal nexus between the March 2003 event and her subsequent right knee problems. Dr. King opined that Employee did not have rheumatoid arthritis. He found she had sustained permanent impairment in both the knee and ankle as a result of the March 2003 event. However, his opinion was based upon the incorrect assumption that she had fractured her ankle at that time. Dr. Little found Employee had degenerative arthritis in her ankle, but concluded she had no permanent impairment from her work injury. He agreed that changes in a person's walking pattern, as might result from a painful ankle, could cause additional problems in the knee. He did not opine that this had happened to Employee. His testimony further suggested he understood his examination was to be focused on impairment of the ankle rather than other anatomical problems.

The Tennessee Supreme Court has recently reviewed the standard to be applied in evaluating evidence concerning the issue of causation in workers' compensation cases:

> Generally speaking, a workers' compensation claimant must establish by expert medical evidence the causal relationship between the alleged injury and the claimant's employment activity, "[e]xcept in the most obvious, simple and routine cases." The claimant must establish causation by the preponderance of the expert medical testimony, as supplemented by the evidence of lay witnesses. As we observed in *Cloyd*, the claimant is granted the benefit of all reasonable doubts regarding causation of his or her injury:
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> > "Although causation in a workers' compensation case cannot be based upon speculative or conjectural proof, absolute certainty is not required because medical proof can rarely be certain . . . ." All reasonable doubts as to the causation of an injury and whether the injury arose out of the employment should be resolved in favor of the employee.

> The trial court may properly award benefits based upon medical testimony that the employment "could or might have been the cause" of the employee's injury when there is also lay testimony supporting a reasonable inference of causation.

Excel Polymers, LLC v. Broyles, 302 S.W.3d 268, 274-75 (Tenn. 2009) (citations omitted) (quoting *Cloyd v. Hartco Flooring Co.*, 274 S.W.3d 638, 643 (Tenn. 2008)).

The trial court was presented with conflicting medical opinions. Trial courts generally have the discretion to choose which expert to accredit when such a conflict occurs. *Johnson v. Midwesco, Inc.*, 801 S.W.2d 804, 806 (Tenn. 1990); *Kellerman v. Food Lion, Inc.*, 929 S.W.2d 333, 335 (Tenn. Workers' Comp. Panel 1996). Each of the expert medical opinions presented to the trial court had questionable aspects, including internal inconsistencies, incorrect assumptions, and incomplete information. Nevertheless, it is clear that an incident occurred on March 29, 2003. Prior to that incident, Employee's right ankle was functional and pain-free. After the incident, she had immediate pain. Medical records for the subsequent months and years consistently document pain and swelling, and frequently document discoloration, hypersensitivity and instability. We have no difficulty concluding that the evidence does not preponderate against the trial court's finding causation of the ankle injury. The knee injury presents a closer case. However, given the agreement of several doctors to the proposition that gait changes caused by a painful ankle can injure the knee, and the consistent documentation of Employee's ongoing ankle problems, we conclude that the evidence does not preponderate against the trial court's finding causation of the knee injury.

Impairment

Employer next asserts that the trial court incorrectly found that Employee had sustained a 26% impairment to the right leg as a result of her work injury. The court based its finding on the testimony of Dr. King. Employer argues that Dr. King's testimony was unreliable, and the trial court should have disregarded it. We agree that Dr. King's testimony on the subject of impairment was inconsistent and at times unclear. In his initial report, Dr. King stated that Employee retained a 26% impairment to the lower extremity (10% to the body as a whole) according to the Fifth Edition of the AMA Guides. During his deposition, he testified that impairment had actually been calculated using the Sixth Edition and that Employee's impairment according to the Fifth Edition, the edition applicable to her injury, was 14% to the body as whole. He later apportioned that impairment as 7% to the body as a whole for the ankle and 3% for the knee, then changed those figures to 8% and 4%, respectively.

Dr. Chrostowski agreed that Employee had an abnormal ankle, but assigned 0% impairment because he did not consider the condition to be work-related. He did not treat

or examine Employee's knee and did not see her after 2005. Dr. Dyer testified that Employee had a permanent impairment regarding her ankle, but that he had not attempted to rate it in accordance with the AMA Guides. He performed surgery on the right knee, but did not address the issue of impairment. Dr. Little assigned 0% impairment for the ankle and viewed the knee issue as beyond the scope of his evaluation.

As with the testimony concerning causation, the trial court was presented with conflicting testimony concerning impairment, all of which was flawed to a greater or lesser degree. It had before it lay evidence that Employee injured her ankle on March 29, 2003, that her ankle was painful and swollen after that event, that she often used a cane to walk, and that her level of activity was permanently diminished after that event. It accredited that testimony. Based on that evidence and the conflicting and equivocal medical evidence presented, the trial court reasonably found Employee retained permanent impairment and disability as a result of her injury. Having made that finding, it had to use the evidence before it to determine the extent of that impairment and disability. Dr. King's testimony, though flawed in many respects, was the only evidence before the trial court that quantified the anatomical impairment pursuant to the AMA Guides, as required by Tennessee Code Annotated section 50-6-204(d)(3)(B), at a level other than 0%. Under these circumstances, we are unable to conclude that the evidence preponderates against the trial court's finding on this issue.

Date of Maximum Medical Improvement

The trial court found that Employee reached maximum medical improvement from her injury on October 28, 2008. It explained that finding as follows:

> As no temporary total disability benefits have been paid in this case, determining the date of maximum medical improvement is of particular importance. From the medical proof, it appears that at the time of the Plaintiff's release from Dr. Chrostowski, she continued with treatment through Dr. Ezenauer. In addition, according to Dr. Alvarez's report, Plaintiff was not at MMI with regard to her ankle as of December 11, 2003. Because of Plaintiff's continuing difficulties with her ankle and ultimately her right knee, the Court is of the opinion that the Plaintiff had not reached maximum medical improvement within the time period suggested by Dr. Chrostowski. In addition, based upon the correspondence from Dr. Ezenauer as of January 11, 2006, it appears Plaintiff continued to be receiving treatment and had not reached maximum medical improvement with regard to her ankle and knee conditions as of that date, nor as of the date of her (apparently) last visit on May 15, 2006. In addition, the (first) surgery conducted by Dr. Dyer of the Plaintiff's right knee took place on November 5, 2007. By October 28, 2008,

> Dr. Dyer indicated the existence of permanency to a degree required for the determination of MMI and suggested subsequent care to be focused on rheumatoid versus degenerative arthritis and/or osteochondritis dessicans in the Plaintiff's ankle. Therefore, the Court is of the opinion that the date Plaintiff reached maximum medical improvement with regard to the injuries received in the March 29, 2003 accident was October 28, 2008. The Court does not feel that the date of maximum medical improvement as opined by Dr. King to be persuasive as that date was, essentially, arbitrarily chosen by Dr. King merely because that was the date on which his assessment was conducted.
>
> Therefore, the Court holds that Plaintiff is entitled to receive temporary total disability benefits from the date of her accident on March 29, 2003 through the date of maximum medical improvement October 28, 2008.

Having found that Employee sustained a compensable injury to her right knee, it follows that she reached maximum medical improvement at a point in time after Dr. Dyer performed surgery in November 2007. Dr. Dyer did not directly address the issue in his testimony. However, as the trial court noted, he testified that although he did not issue a rating, her permanent impairment could be determined as of that date. Given the imperfect evidence available to it, the trial court's reliance on this testimony was reasonable. We are unable to conclude that the evidence preponderates against it.

Temporary Total Disability Award

Employer's final contention is that the trial court erred by awarding benefits in excess of the statutory maximum, set out in Tennessee Code Annotated section 50-6-102(13)(C). The award of temporary disability benefits amounted to 291 weeks. This amount, when combined with the award of 65% permanent partial disability to the leg, resulted in a total award of 421 weeks of benefits. Section 102(13)(C) provides, "For injuries occurring on or after July 1, 1992, the maximum total benefit shall be four hundred (400) weeks times the maximum weekly benefit except in instances of permanent total disability[.]" In *Wausau Ins. Co. v. Dorsett*, 172 S.W.3d 538, 544 (Tenn. 2005), our supreme court held that the maximum total benefit applied to temporary total, as well as permanent partial, disability benefits. Therefore, "unless an employee is adjudged to be entitled to permanent total disability benefits, the disability benefits that an employee may receive for a single injury may not exceed the 'maximum total benefit.'" *Id.* at 543.

Employee points to Tennessee Code Annotated section 50-6-102(13)(D), which provides:

> For injuries occurring on or after July 1, 2009, the maximum total benefit shall be four hundred (400) times one hundred percent (100%) of the state's average weekly wage, as determined pursuant to subdivision (14)(B), except in instances of permanent total disability. Temporary total disability benefits paid to the injured worker shall not be included in calculating the maximum total benefit[.]

This section was added to the workers' compensation statute by Chapter 299 of the 2009 Public Acts. Its plain purpose was to alleviate potential hardship caused by *Dorsett*, as the supreme court invited the General Assembly to do. 172 S.W.3d at 544. The legislature explicitly chose to make this change to the law prospective only by limiting its application to injuries occurring on or after July 1, 2009. This injury occurred prior to that date, and thus is governed by *Dorsett*. *See Day v. Zurich Am. Ins.*, No. W2009-01349-WC-R3-WC, 2010 WL 1241779, at *3 (Tenn. Workers' Comp. Panel Mar. 31, 2010). In accordance with *Dorsett*, Employee's recovery of permanent and temporary disability benefits was subject to the four-hundred-week maximum. The award must therefore be modified to conform with that limitation.

Conclusion

The judgment is modified to award four hundred weeks of benefits for permanent partial and temporary total disability. It is affirmed in all other respects. Costs are taxed one-half to Carolyn Collier and one-half to Life Care Centers of Collegedale, Life Care Centers of America and their surety, for which execution may issue if necessary.

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JERRI S. BRYANT, SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
May 29, 2012 SESSION

CAROLYN COLLIER V. LIFE CARE CENTERS OF COLLEGEDALE, ET AL.

Chancery Court for Hamilton County
No. 03-0652

No. E2011-01683-WC-R3-WC

JUDGMENT

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 appeals 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 of this appeal are taxed one-half to Carolyn Collier and one-half to Life Care Centers of Collegedale, Life Care Center of America and their surety, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM