IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
August 11, 2015

BARBARA EDWARDS v. ENGSTROM SERVICES ET AL.

Appeal from the Chancery Court for Hamilton County
No. 120692 W. Frank Brown III, Chancellor

No. E2014-01777-SC-R3-WC-MAILED-AUGUST 28, 2015
FILED-SEPTEMBER 28, 2015

An employee sustained various injuries in a motor vehicle accident. Her employer denied the claim for workers' compensation benefits, contending that because the employee was driving to her home from work, the injury was not compensable. The trial court awarded benefits, including permanent total disability, based upon its finding that at the time of the accident the employee was returning to her office after an employment-related client visit. The employer has appealed, raising several issues which primarily relate to whether the evidence presented was sufficient to support the trial court's findings. The 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 pursuant to Tennessee Supreme Court Rule 51. We affirm the judgment of the trial court.

Tenn. Code Ann. § 50-6-225(e) (2008 & Supp. 2013) Appeal as of Right; Judgment of the Trial Court Affirmed

GARY R. WADE, J., delivered the opinion of the Court, in which BEN H. CANTRELL and PAUL G. SUMMERS, SR. JJ., joined.

Richard R. Clark Jr., Nashville, Tennessee, for the appellants, Engstrom Services, Inc., and Companion Property & Casualty Insurance Group.

Ronald J. Berke and Charles A. Flynn, Chattanooga, Tennessee, for the appellee, Barbara A. Edwards.

OPINION
I. Facts and Procedural History

Barbara Edwards (the "Employee") was employed as an independent support coordinator by Engstrom Services, Inc., a/k/a Community Connections (the "Employer"), of Chattanooga, a company which provides assistance to persons with intellectual disabilities throughout Southeastern Tennessee.[1] Among other responsibilities, the Employee monitored and implemented "Individual Support Plans," which required her to drive to the residences of mentally handicapped clients to assess compliance with their individual plans. The Employee had the authority to control her own schedule when meeting with clients located in her service area.

On December 14, 2007, the Employee, who lived in Ringgold, Georgia, located just outside of Chattanooga, conducted two client observations in Dayton, Tennessee, the county seat for Rhea County. Shortly after 2:00 p.m., as the Employee was driving on an interstate highway after her last client meeting of the day, a vehicle struck the Employee's car in the right front panel and caused her to collide with a traffic sign. A nurse and emergency medical technician from passing vehicles stopped to render assistance. The Employee was transported by ambulance to a nearby emergency room, where she was treated and released with instructions to see a physician within three days.

The Employee's symptoms included pain on the right side of her neck, extending into her right arm, and pain in her lower back. She also experienced difficulty urinating. Although she returned to work for a short time after the accident, her pain persisted and, in April of 2008, she was referred to Dr. Craig Humphreys, an orthopedic surgeon. On June 27, 2008, Dr. Humphreys performed a cervical fusion. The Employee never returned to work, either for the Employer or elsewhere, after the surgery.

Dr. Humphreys referred the Employee to Dr. Gregory Ball, a pain management specialist, recommending treatment for her continuing cervical spine and lumbar spine issues. Dr. Ball first examined the Employee on February 2, 2009, and by August of 2013, the Employee had been prescribed the following medications:

> Oxycontin for sustained release pain control[;] oxycodone for break[-]through pain[;] Flector patches, [which is] an anti-inflammatory patch that you put on the skin[;] Buspar, which is an anti-anxiety medicine[;] Benadryl Elixir, which she takes due to side effects due to itching from some of her medicines[;] Vitamin D3, which is a supplement that's helpful in pain conditions[;] Naproxen, Ambien, Flexeril, and Voltaren Gel, a different anti-inflammatory.

[1] The Employer is listed as a qualified provider through the Tennessee Department of Intellectual & Developmental Disability.

During the course of his treatment, Dr. Ball referred the Employee to a urologist, Dr. John House, for treatment of her bladder. In March of 2011, an electrical device called an "InterStim," which increased the Employee's ability to manually control urination, was implanted by Dr. Roger Dmochowski at Vanderbilt University Medical Center.

A benefit review conference for workers' compensation did not lead to a settlement. On September 4, 2012, the Employee filed suit for benefits, alleging that she was injured in the course of her employment. The Employer contested the claim, maintaining that the Employee was driving home at the time of the accident and, therefore, her injuries were not work related. On September 26, 2013, one day before the trial was set to begin, the Employer filed a motion to continue in order to depose the Employee's vocational expert. The trial court granted the motion and scheduled a trial date for December 11, 2013. Apparently there was a dispute between the parties regarding the proof of vocational disability. On the day before the December trial date, the Employer again filed a motion to continue. The trial court continued the case until January 24, 2014, when the trial was finally held.

The Employee, who is married and has three grown children, was born on March 30, 1967. She received an Associate's degree from Chattanooga State Community College and, in 2002, a Bachelor's degree from the University of Tennessee at Chattanooga. Afterward she worked as a Client Program Coordinator for Orange Grove Care Center and later worked at Lookout Mountain Community Services in Fort Oglethorpe, Georgia, a position which required home visits and supportive counseling for children with mental illnesses. She was hired by the Employer in 2006. Her duties as an independent support coordinator included home visits and, therefore, required her to drive throughout her service area.

The Employee testified that the motor vehicle accident occurred while she was on her way back to the Employer's Chattanooga office when a vehicle ran a stop sign and struck the passenger side of her car. While acknowledging that she had used the term "going home" when providing the history of the injury to her medical provider, she explained that she had meant that she was returning from out of town to the Chattanooga area. She stated that at the time of the accident she was en route to her office in Chattanooga, which is located along the way from Rhea County to her residence in Ringgold, Georgia. She maintained that she suffered neck, back, shoulder, and bladder injuries as a result of the accident and offered the details of her treatment, her lingering symptoms, and her current limitations.

The Employee further testified that prior to the accident she had participated in

running, gem hunting, roller skating, and water skiing, among other activities. In this context, she described the nature of her neck and back pain and the limiting effect upon her physical activities and her ability to work. While acknowledging that the InterStim device has improved her bladder condition, she complained that the implant continued to cause discomfort. She maintained that as a result of the accident, she experienced panic attacks in places such as public parks and retail stores, and, at times, was required to use a wheelchair when shopping. She related that sitting for extended periods of time, such as in a movie theater, caused considerable pain, and expressed concern that she had gained fifty pounds as a result of her inactivity since her injury. The Employee stated that her medications caused her drowsiness, resulting in an inability to stay awake longer than four hours at a time, thereby preventing her from holding a job. Spending most of her day in bed or in a recliner, she described herself as forgetful, irritable, and argumentative as a result of her medical condition. The Employee's testimony was corroborated by the testimony of her two daughters, Lauren Edwards and Danielle Reneau; her father, Carroll Roberts; her brother, Randall Roberts; and her husband, Darrell Roberts. The record also reflects that the Employee dozed off during the course of the trial.

Dr. Ball, who testified by deposition, opined that according to the Fifth Edition of the AMA Guides, the Employee retained a 27% permanent partial impairment to the body as a whole from her cervical spine injury and surgery, an 11% permanent partial impairment due to lumbar radiculopathy, and a 17% permanent partial impairment due to bladder dysfunction. He stated that the Employee was not capable of staying awake more than three to four hours at a time due to the effects of her "necessary medications." Dr. Ball also submitted a C-32 medical report, which showed that he had not released the Employee to return to work at the time of maximum medical improvement on December 7, 2012.

During cross-examination, Dr. Ball agreed that the Employee did not have a herniated disc in her lower back and conceded that the Fifth Edition of the AMA Guides requires "significant signs of radiculopathy" in order to assign an 11% impairment for a lumbar spine condition. He described the Employee's radicular symptoms as intermittent, but considered them to be significant. Based on the urologist's notes and the timing of the onset of the Employee's bladder dysfunction, Dr. Ball opined that this condition was caused by the motor vehicle accident.

Dr. Allen Lee Solomon, a psychiatrist who began treatment of the Employee in April of 2010, submitted a C-32 medical report in lieu of his oral deposition. Dr. Solomon made a diagnosis of severe depression, panic disorder, and anxiety disorder. By November 19, 2012, the Employee was taking Wellbutrin, Xanax, Ambien, Buspirone, and Cymbalta per his instructions. He described her as experiencing excessive

sleepiness during the day and an inability to sleep at night without Ambien, and he determined that she had "significant problems with memory and focus," which may have been "partly due to sedation or depression." He opined that she had a Class 3 psychiatric impairment according to the Fifth Edition of the AMA Guides. Because the Fifth Edition does not provide percentage impairments for psychiatric conditions, he used the Second Edition in formulating his opinion that she had a 35% impairment to the body as a whole.

John McKinney, a certified vocational evaluator who holds Bachelor's and Master's degrees in rehabilitative services, testified on behalf of the Employee. He administered the Slosson Intelligence Test, which indicated that the Employee qualified in the average range. A Wide Range Achievement Test ("WRAT") indicated that the Employee was able to read at an eleventh-grade level, spell at a fifth-grade level, and perform arithmetic above a twelfth-grade level. Mr. McKinney noted that Dr. Ball considered the Employee to be incapable of sedentary work, largely because she was unable to stay awake as a result of her various medications. In assessing her level of vocational disability, Mr. McKinney took into account the restrictions Dr. Ball had presented, including limitations on climbing, balancing, and similar activities. Based on this information, he concluded that the Employee was totally disabled. During cross-examination, Mr. McKinney acknowledged that he did not perform a formal skills analysis in this case because he considered the Employee to be unemployable.

Michelle McBroom Weiss, also a vocational consultant with a Master's degree in rehabilitation counseling, testified on behalf of the Employer. She administered the same tests as Mr. McKinney, but her results differed significantly. On the WRAT, the Employee's reading and spelling scores were at the twelfth-grade level, and her math score was at the eighth-grade level. The Employee's score on the Slosson Intelligence Test was twelve points lower than her score for Mr. McKinney, placing her in the borderline to average range. Based on medical records provided by Dr. Humphreys, Ms. Weiss concluded that the Employee had a 74% to 81% vocational disability. Based on medical records provided by Dr. Ball, she determined that the Employee had a 100% vocational disability. Because she did not believe that Dr. Solomon's records contained enough specific information, she declined to assess any psychiatric disability.

Wanda Gay Brown, the Employer's business manager, testified that the work of an independent support coordinator, the job held by the Employee, is not physically demanding and that after the accident, the Employee was able to carry out her job duties until April of 2008. She further testified that the Employer sometimes hired individuals on a part-time basis. During cross-examination, she conceded that because of the driving requirement, the Employer would not employ anyone who took the same medications as

the Employee. She also acknowledged that it was normal for an independent support coordinator to return to the office during the afternoon in order to complete paperwork after being in the field during the day.

The trial court accredited the Employee's testimony that she was traveling from her field observation to the office of the Employer when the motor vehicle accident took place and, therefore, concluded that her injuries were compensable. After observing that the Employer had not presented evidence to contradict Dr. Ball's testimony and that both vocational experts had testified that the Employee was totally disabled based on the accuracy of Dr. Ball's medical reports, the trial court concluded that the Employee was permanently and totally disabled.

II. Standard of Review

A trial court's findings of fact in a workers' compensation case are reviewed de novo, accompanied by a presumption of correctness, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2008 & Supp. 2013); see also Tenn. R. App. P. 13(d). "'This standard of review requires us to examine, in depth, a trial court's factual findings and conclusions.'" Williamson v. Baptist Hosp. of Cocke Cnty., Inc., 361 S.W.3d 483, 487 (Tenn. 2012) (quoting Galloway v. Memphis Drum Serv., 822 S.W.2d 584, 586 (Tenn. 1991)). When the trial court has seen and heard the witnesses, considerable deference must be afforded to the trial court's findings of credibility and the weight that it assessed to those witnesses' testimony. Tryon v. Saturn Corp., 254 S.W.3d 321, 327 (Tenn. 2008) (citing 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 necessarily must 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) (citing Orrick v. Bestway Trucking, Inc., 184 S.W.3d 211, 216 (Tenn. 2006)). In this regard, we may make our own assessment of the evidence to determine where the preponderance of the evidence lies. Crew v. First Source Furniture Grp., 259 S.W.3d 656, 665 (Tenn. 2008); Wilhelm v. Krogers, 235 S.W.3d 122, 127 (Tenn. 2007). Further, on questions of law, our standard of review is de novo with no presumption of correctness. Wilhelm, 235 S.W.3d at 126 (citing Perrin v. Gaylord Entm't Co., 120 S.W.3d 823, 826 (Tenn. 2003)).

III. Analysis

The Employer has presented five issues in this appeal, contending that the trial court erred as follows: (1) by finding that the Employee's injuries occurred in the course

of her employment; (2) by improperly limiting its cross-examination of the Employee; (3) by excluding from evidence the C-32 medical report of Dr. Humphreys; (4) by finding that the Employee's bladder problems were related to her work injury; and (5) by finding that the Employee suffered a permanent total disability.

A. In the Course of Employment

Initially, in order to qualify for workers' compensation benefits, an injury must both "arise out of" and occur "in the course of" employment:

> The phrase "in the course of" refers to time, place, and circumstances, and "arising out of" refers to cause or origin. "[A]n injury by accident to an employee is in the course of employment if it occurred while he was performing a duty he was employed to do; and it is an injury arising out of employment if caused by a hazard incident to such employment." Generally, an injury arises out of and is in the course and scope of employment if it has a rational connection to the work and occurs while the employee is engaged in the duties of his employment.

Orman v. Williams Sonoma, Inc., 803 S.W.2d 672, 676 (Tenn. 1991) (alteration in original) (citations omitted). The Employer contends that the Employee's injuries are not compensable because the motor vehicle accident did not occur "in the course of" her employment. The Employer relies upon the "coming and going rule," which states "that an employee is not acting within the course of employment when the employee is going to or coming from work unless the injury occurs on the employer's premises." Howard v. Cornerstone Med. Assocs., P.C., 54 S.W.3d 238, 240 (Tenn. 2001). Our Supreme Court has described the reasoning behind this general rule as follows: "[T]ravel to and from work is not, ordinarily, a risk of employment. Rather, driving to work falls into the group of all those things a worker must do in preparation for the work day, . . . and driving from work is often a prerequisite to getting home." Id. at 241 (citations omitted).

Of course, the general coming-and-going rule is not without its exceptions, which include the following circumstances:

> Under the special errand exception, an employee can be compensated for injuries sustained while performing some special act, assignment, or mission at the direction of the employer. "The reason for this exception is that '**the employment imposes the duty upon the employee to go from place to place at the will of the employer in the performance of duty and the risks of travel are directly incident to the employment itself**.'" Injuries sustained by employees traveling in a company car while going to

> and from work are also compensable. . . . **"[W]e have allowed coverage where the journey itself 'is a substantial part of the services for which the workman was employed** and compensated.'" Another exception is the traveling employee, working away from the regular jobsite. This exception "is generally applied to employees who travel extensively to further the employer's business, such as traveling salesmen. **The travel is an integral part of the job and differs from an ordinary commuter's travel, thereby exposing the traveling employee to greater risks**."

Phillips v. A&H Constr. Co., 134 S.W.3d 145, 152-53 (Tenn. 2004) (second alteration in original) (emphasis added) (citations omitted). Whether an employee's injury is compensable under the coming-and-going rule or any of its exceptions will depend upon the particular facts of each case. See McCann v. Hatchett, 19 S.W.3d 218, 220-222 (Tenn. 2000).

The Employer asserts that the Employee's statements after the accident demonstrate that she was traveling from her work to her residence and, therefore, was not acting in the course of her employment. The Employee acknowledged making the statements but explained that she was in Rhea County at the time of the accident and by "going home" she meant that she was returning to the Chattanooga area, where her office was located: "I was coming home to my hometown. . . . It was early in the day. . . . I would have still had to go in [to the office], because we had a deadline on notes." The Employee further explained that it was particularly important for her to enter her notes in a timely fashion during December because that month had fewer workdays in view of the Christmas and New Year holidays and deadlines to meet. Ms. Brown, the Employer's business manager, provided support for the Employee's testimony by confirming that it was "normal" for independent support coordinators to return to the office later in the day to enter data, and that December was a particularly "hectic" month because of the holidays.

The trial court found that the Employee "was driving back to [the Employer's] Chattanooga office when a car pulled out in front of her." Implicit in this finding is that the trial court fully accredited the Employee's explanation that by using the term "going home," she meant to the Chattanooga office. Because the trial court, having seen and heard the witness, is in a better position to assess credibility, considerable deference is afforded upon appellate review. Moreover, the services for which the Employee was hired required frequent travel to and from her clients' residences, which was a substantial part of her job duties as an independent support coordinator. In fact, Ms. Brown conceded that the Employee could not be returned to work as an independent support coordinator because she could no longer drive to and from the various locations as

required by that job. In summary, because the Employee was engaged in the business of the Employer at the time of the motor vehicle accident, she was working in the course of her employment, and, therefore, her injuries are compensable. See Orman, 803 S.W.2d at 676. The evidence does not preponderate against the assessment of the trial court.

B. Limitations on Cross-examination

The Employer next contends that the trial court erred by limiting its cross-examination of the Employee. This argument is based on an exchange that occurred while counsel for the Employer was questioning the Employee about her statements after the accident to determine whether she was "going home" to her residence or going back to complete paperwork at her office. At one point during the cross-examination, the trial court interrupted and addressed counsel for the Employer as follows:

> THE COURT: Let me just ask you a question. It's my understanding the defendants have provided medical care to this lady?
>
> [EMPLOYER'S COUNSEL]: Yes, Your Honor.
>
> THE COURT: You provided PPD benefits to this lady?
>
> [EMPLOYER'S COUNSEL]: Yes, Your Honor.
>
> . . . .
>
> THE COURT: The answer said that she wasn't in the scope and course of her employment when she was injured. You have got a lot of things in there.
>
> My gut reaction is you've made your point. You've got an issue for appeal. I'm not buying it at this point, based on estoppel, waiver, whatever. You've provided all these services all these years, and I think once you do that you have to file a notice of contest or some sort of notice with the Department of Labor before you can take a different position. I may be wrong, and you're looking at me like you can't believe what I'm saying.
>
> [EMPLOYER'S COUNSEL]: I don't mean to be.
>
> THE COURT: I understand. That's my ruling. You've got your point,

whether she was going and coming. And then there's the street doctrine, the traveling employee doctrine. I mean, you've got all these things.

[EMPLOYER'S COUNSEL]: I understand. It's been a – just to explain my position, since the ruling was there on the record as far as making my point and us paying for treatment, at the onset of this investigation, the statement "I was on my way home" was never made to the insurance company. So, you know –

. . . .

THE COURT: I made my ruling. She said what she said when she said it. Many different times she's said it today too. So let's move on.

The Employer correctly points out that to the extent the limitation on further cross-examination was based on the filing or failure to file of a Notice of Controversy as required by Tennessee Code Annotated section 50-6-205(d)(1), the trial court erred. As indicated in the colloquy between counsel and the trial court, the Employer made all temporary disability payments required by law. In Stapleton v. Mahle, Inc., our Supreme Court observed:

> The whole purpose of that statutory requirement is to prevent an employer from suspending ongoing payments arbitrarily, without filing notice of the grounds for suspension. There is no language in [section] 50-6-205(d)(1) that can reasonably be read to preclude an employer who has made temporary disability payments in good faith from raising a defense to liability for permanent disability, if such a defense later becomes viable. This conclusion is made all the more obvious from the provision in [section] 50-6-205(d)(2) that "[i]n such cases the prior payment of compensation shall not be considered a binding determination of the obligations of the employer as to future compensation payments."

No. 03S01-9111-CH-108, 1992 WL 137462, at *2 (Tenn. June 22, 1992).

Nevertheless, the trial court in this instance provided other, valid grounds for urging counsel to conclude the cross-examination. Before the quoted exchange took place, the Employer had repeatedly asked about the Employee's usual practices as to returning to the office and the "going home" statements she had made—questioning that extended over twenty-two pages of the trial transcript. The Employee conceded that she had made such a statement to Dr. Solomon, adding: "I've told a million people that . . . I

was coming home. . . . I was in a town outside of where I live . . . ." The propriety, scope, manner, and control of the cross-examination of witnesses rest within the discretion of the trial court. State v. Dishman, 915 S.W.2d 458, 463 (Tenn. Crim. App. 1995); see also Tenn. R. Evid. 611(a). In this instance, the Employer had questioned the Employee at length on the subject before the trial court intervened. In our view, the trial court did not abuse its discretion by instructing counsel to "move on." Moreover, the record does not suggest that the limitation had any effect on the outcome of the trial. See Miller v. R.J. Wherry & Assocs., No. M2011-00723-SC-WCM-WC, 2012 WL 4101918, at *4 (Tenn. Workers' Comp. Panel Sept. 19, 2012).

C. Exclusion of C-32 Medical Report

The Employer next argues that the trial court erred by excluding from evidence a C-32 medical report prepared by Dr. Humphreys, the original orthopedic surgeon who treated the Employee's neck and back injuries. Dr. Humphreys performed a cervical fusion on the Employee in 2008 and relocated his practice to Alaska in July of 2011. The Employer requested the C-32, which was signed by Dr. Humphreys on December 19, 2013, in order to show the Employee's physical restrictions and resulting vocational disability.

The Employer's notice of intent to use Dr. Humphreys' medical report was properly filed on December 31, 2013, twenty-four days before the trial was set to occur on January 24, 2014. See Tenn. Code Ann. § 50-6-235(c)(2) (requiring notice be provided to opposing party "not less than twenty (20) days before the date of intended use"). The Employee responded with a motion to strike Dr. Humphreys' C-32, arguing that she would then need to depose Dr. Humphreys, which would inevitably require a third continuance due to his relocation to Alaska. See Carter v. Quality Outdoor Prods., Inc., 303 S.W.3d 265 (Tenn. 2010) ("[A] medical report may not be introduced into evidence unless the physician is available to be deposed by the objecting party."). After observing that the Employer had never listed Dr. Humphreys as a witness nor included his C-32 as an exhibit, the trial court excluded the evidence, explaining that another continuance to permit a deposition of Dr. Humphreys was simply unfair to the Employee given the need for a timely resolution of the claim.

Initially, we recognize that "[w]orkers' compensation cases must be expedited and given priority on the trial and appellate dockets." Bldg. Materials Corp. v. Britt, 211 S.W.3d 706, 714 (Tenn. 2007). Tennessee Code Annotated section 50-6-225(f) (2008 & Supp. 2013) provides that

> [t]he trial of all cases under [the Workers' Compensation Act] shall be expedited by: (1) Giving the cases priority over all cases on the trial and

> appellate dockets; and (2) Allowing any case on appeal in the supreme court to be on motion of either party transferred to the division where the supreme court is then or will next be in session.

In this regard, the trial court properly exercised its discretion to exclude the C-32 report in light of the need to expedite the Employee's claim. The Employer had already requested and received two continuances, effectively delaying the trial date nearly a year and a half after the Employee had filed suit.

The trial court also observed that the information contained in the C-32 had actually been addressed by the Employee's cross-examination of the Employer's vocational expert, that Dr. Humphreys' medical impairment rating was contained within Dr. Ball's deposition, and that the record includes ample references to the Employee's diagnosis, surgery, and treatment by Dr. Humphreys. Further, the trial court questioned the value of Dr. Humphreys' opinion regarding impairment and limitations in light of the amount of time that had passed since he had last examined the Employee in 2008. Finally, the C-32 was made a part of the record for identification purposes. In our view, the content would have had no effect upon the results of the case and, therefore, the trial court did not err by excluding Dr. Humphreys' C-32 medical report as substantive evidence.

D. Bladder Dysfunction

The Employer next argues that the trial court erred by finding that the Employee's bladder dysfunction was causally related to the December 2007 motor vehicle accident. "Except in the most obvious, simple and routine cases," a claimant must demonstrate by expert medical evidence a causal relationship between the claimed injury and the employment activity. Id. That relationship must be established by the preponderance of the expert medical testimony, as supplemented by the lay evidence. Trosper v. Armstrong Wood Prods., Inc., 273 S.W.3d 598, 604, 609 (Tenn. 2008). "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 . . . ." Clark v. Nashville Mach. Elevator Co., 129 S.W.3d 42, 47 (Tenn. 2004); see also Glisson v. Mohon Int'l, Inc./Campbell Ray, 185 S.W.3d 348, 354 (Tenn. 2006).

As support for its contention, the Employer points out that there was no medical documentation of urinary problems until 2010, and that neither Dr. House, the urologist to whom the Employee was referred, nor Dr. Dmochowski, the surgeon who implanted the "InterStim" device, offered supportive testimony. The Employer asserts that Dr. House's records, which were made a part of Dr. Ball's deposition, were objected to and that Dr. Ball was not qualified to render an opinion regarding this type of medical problem.

The Employee testified that she began have symptoms of bladder dysfunction while being treated in the emergency room immediately following the accident. After Dr. Ball became her authorized physician, he referred the Employee to Dr. House for evaluation of her bladder dysfunction. As a result of that referral, Dr. Dmochowski implanted the InterStim device. According to the Employee, the device improved her condition, although it also caused some unpleasant side effects. Dr. Ball opined that the Employee's bladder dysfunction was related to her motor vehicle accident. That opinion was based in part on the records of Dr. House. Our Supreme Court has held that, "the diagnosis and/or expert opinion of an attending physician is admissible, although based in part upon reports of other doctors or hospital technicians who are not called as witnesses, if said reports are used in the diagnosis or treatment of the patient." New Jersey Zinc Co. v. Cole, 532 S.W.2d 246, 250 (Tenn. 1975). Moreover, although analysis of urological problems may fall outside Dr. Ball's specialty, there is no proof that it falls outside his training and experience as a medical doctor. Finally, because the Employer offered no evidence in contradiction of Dr. Ball's opinion, the trial court did not err by relying on this evidence.

E. Permanent Total Disability

Finally, the Employer asserts that the evidence preponderates against the trial court's finding that the Employee is permanently and totally disabled. The Employee and her lay witnesses attested to her limited abilities, both physical and mental. She is unable to walk for a significant distance or to sit or stand for more than three hours at a time. She has difficulty concentrating and frequently dozes off. Indeed, she fell asleep in the courtroom during the course of the trial. Dr. Ball concluded that the Employee was incapable of work. Ms. Weiss, the vocational expert hired by the Employer, testified that the Employee suffered a 100% vocational disability based on Dr. Ball's records. Mr. McKinney likewise testified that the Employee was totally disabled as a vocational matter. Even Ms. Brown, the Employer's business manager, conceded that because of her prescribed medications the Employee could not return to her former job. In summary, the evidence does not preponderate against the finding of total disability.[2]

IV. Conclusion

The judgment of the trial court is affirmed. Costs are taxed to Engstrom Services, Inc., Companion Property & Casualty Insurance Group, and their surety, for which execution may issue if necessary.

[2] As a final matter, we note that subsequent to briefing, the Employee filed a motion asking that we deem the Employer's appeal frivolous and award sanctions. We decline to do so; the Employee's motion is denied.

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GARY R. WADE, JUSTICE

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE

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Chancery Court for Hamilton County
No. 120692

No. E2014-01777-SC-R3-WC-FILED-SEPTEMBER 28, 2015

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 on appeal are taxed to **Engstrom Services, Inc., Companion Property & Casualty Insurance Group, and their surety**, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM