IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
August 15, 2016 Session

**TONY K. GRIBBLE v. ALCOA, INC.**

**Appeal from the Circuit Court for Blount County**
**No. L18532 David Reed Duggan, Judge**

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**No. E2015-02113-SC-R3-WC-MAILED-OCTOBER 20, 2016**
**FILED-NOVEMBER 21, 2016**

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In this workers' compensation case, the trial court found that the employee failed to carry his burden of proving that his knee injury arose out of his employment. On appeal, the employee asserts that the trial court erred in finding that his knee injury did not arise out of his employment. 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 trial court's judgment.

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

SHARON G. LEE, J., delivered the opinion of the court, in which THOMAS R. FRIERSON, II, J., and KRISTI M. DAVIS, J., joined.

John P. Dreiser, Knoxville, Tennessee, for the appellant, Tony K. Gribble.

Debra L. Fulton and James E. Wagner, Knoxville, Tennessee, for the appellee, Alcoa, Inc.

## OPINION

### Factual and Procedural Background

Tony K. Gribble alleged that he sustained an injury to his left knee on February 18, 2013, arising out of and in the course and scope of his employment with Alcoa, Inc. ("Alcoa"). Mr. Gribble filed suit against Alcoa for workers' compensation benefits after a

benefit review conference did not result in a settlement.

This case was tried on June 3, 2015, in the Circuit Court for Blount County. Mr. Gribble was thirty-seven years old at the time of trial. He graduated from high school in 1995 and worked at a cotton mill for six years. Mr. Gribble, after passing a physical examination, began working for Alcoa in June 2006.

Mr. Gribble worked in Alcoa's south plant until 2008 when he took off time from work to have surgery on his left knee. That surgery was for treatment of a longstanding and non-work-related knee problem—an osteochondritis dissecans[1] ("OCD") lesion—which was first diagnosed in 2002 by Gregory M. Mathien, M.D., a board-certified orthopedic surgeon. In September 2008, Dr. Mathien performed surgery on Mr. Gribble's knee. Dr. Mathien removed torn and loose cartilage fragments, performed a partial lateral meniscectomy, performed a patellar chondroplasty to smooth some rough spots on the kneecap, and performed a microfracture arthroplasty of the lateral femoral condyle. Following the 2008 surgery, Dr. Mathien placed no restrictions on Mr. Gribble.

Mr. Gribble, after passing a physical examination by Alcoa's medical department, returned to work for Alcoa in January 2009. Mr. Gribble continued working in the south plant pot rooms through March 2009 when the pot rooms were closed and Mr. Gribble was laid off. After three months, he was called back to work at the north plant finishing department. Mr. Gribble's return to work required another physical examination, which he passed.

Mr. Gribble worked in the north plant finishing department for approximately eight months and was laid off. During this layoff, Mr. Gribble worked for a friend's landscaping and lawn care business. In January 2011, he was hired by Green Mountain Coffee. Green Mountain Coffee required a physical examination, which Mr. Gribble passed without any restrictions.

In November 2012, Mr. Gribble was called back to work by Alcoa and once again passed a required physical examination without any restrictions. Mr. Gribble returned to the north plant finishing department where he used a pole truck, which he described as a stand-up vehicle with several attached steps required for mounting and a long pole on front. The pole truck was used to move finished coils from the slitter to the pack line where the coils are prepared for shipment.

[1] Dr. Mathien testified that "[o]steochondritis dissecans is a condition where a portion of the bone and overlying cartilage loses its blood supply and basically dies in fragments over the course of time."

From November 2012 to January 2013, Mr. Gribble had no problems with his left knee. As of February 2013, he had played recreational-league basketball and softball for ten to fifteen years.

On February 18, 20l3, Mr. Gribble began his normal shift at 10:00 p.m. He testified that during his shift, he "went up the steps . . . to get onto the pole truck," and when he planted his foot, he said he "felt a horrible pop in my knee and just barely caught myself as I got on the pole truck." He explained that there are three steps going up and then one step to get onto the pole truck. According to Mr. Gribble, his left knee "popped" on the last step. Immediately after he felt the "pop," Mr. Gribble could move his left leg but could not straighten it.

Soon after his injury occurred, Mr. Gribble was taken to the plant's medical department where he completed an injury report. Mr. Gribble testified that at the medical department, he reported, "I was getting on a pole truck to take a coil to the pack line. As I was walking up the steps to get on the truck my knee popped."

Mr. Gribble first saw Dr. David Tutor, a physician at Alcoa. Mr. Gribble testified that for about ten days after his injury, he reported to work but sat in the manager's office rather than performing his regular duties. Upon Mr. Gribble's request to see a physician, Alcoa provided him with a choice of three physicians, from which he chose Dr. Mathien, his former treating surgeon.

Mr. Gribble saw Dr. Mathien on February 27, 2013. An MRI scan revealed a torn lateral meniscus with displacement and an absent anterior horn. Dr. Mathien's diagnosis was internal derangement of the left knee with locked knee, possible displaced meniscal tear, and/or additional loose body. On March 4, 2013, Dr. Mathien performed an arthroscopy consisting of a partial lateral meniscectomy, removal of loose body, chondroplasty, and debridement. In May 2013, Dr. Mathien allowed Mr. Gribble to return to regular duties without restrictions. Dr. Mathien last saw Mr. Gribble on June 28, 2013, and noted that his knee was feeling better and that he was working his normal duties on a full-time, regular basis. Dr. Mathien assigned a seven percent impairment to the lower extremity based on the 2013 operative findings.

At Alcoa's request, Mr. Gribble underwent a medical examination on April 24, 2013, by Dr. William Hovis, a board-certified orthopedic surgeon. According to Dr. Hovis, Mr. Gribble stated a history of onset of left knee pain on February 18, 2013, when going up a flight of stairs while at work, he felt his left knee pop with immediate swelling and inability to straighten his leg. In his deposition testimony, Dr. Hovis recounted the same history of Mr. Gribble's knee problems, treatment, and recovery as described by Mr. Gribble and Dr. Mathien. Dr. Hovis diagnosed Mr. Gribble with left knee pain;

significant degenerative arthritis of the knee, greatest lateral compartment and patellofemoral joint or kneecap part of the knee; bilateral lateral subluxation patellas; status post arthroscopies of the left knee; and that Mr. Gribble was severely overweight. Dr. Hovis did not perform a medical impairment evaluation based on Mr. Gribble's 2002 and 2008 knee problems and surgery.

The evidence introduced at trial consisted of Mr. Gribble's testimony, the deposition testimony of Drs. Mathien and Hovis, and several documents introduced as exhibits. At the conclusion of the trial, the trial court's findings and conclusions were orally announced. Discussing Dr. Mathien's testimony—which Mr. Gribble relied upon to establish causation—the trial court found Dr. Mathien's "testimony is inconsistent at best, and at one point he even agrees with the defendant that what happened at work did not cause this. And so I think at a minimum it's speculative. It's conjectural." Based on that finding, the trial court further stated: "I just don't think plaintiff has carried his burden of proof with respect to his medical testimony. And accordingly, it's going to be my finding that it's not a compensable injury." The trial court subsequently filed a written judgment dismissing Mr. Gribble's workers' compensation claim, with prejudice, and taxing the costs to Mr. Gribble. Mr. Gribble thereafter filed a notice of appeal.

## 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) (2012).[2] When credibility and weight to be given testimony are involved, considerable deference is given the trial court, as the trial court had the opportunity to observe witness demeanor and to hear in-court testimony. *Richards v. Liberty Mut. Ins. Co.*, 70 S.W.3d 729, 733 (Tenn. 2002); *see also Madden v. Holland Group of Tenn.*, 277 S.W.3d 896, 900 (Tenn. 2009). 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). A trial court's conclusions of law are reviewed de novo upon the record with no presumption of correctness. *Seiber v. Reeves Logging*, 284 S.W.3d 294, 298 (Tenn. 2009).

## Analysis

[2] Because the date of Mr. Gribble's alleged injury was February 18, 2013, the statutory citations in this opinion refer to the versions of the statutes applicable to injuries occurring prior to July 1, 2014 (the effective date of the Workers' Compensation Reform Act of 2013).

The issue we address is whether the trial court erred in finding that Mr. Gribble's knee injury did not arise out of his employment. Mr. Gribble asserts that his pre-existing left knee condition was asymptomatic and required no treatment in the four years before his alleged work-related injury on February 18, 2013. Mr. Gribble contends Dr. Mathien testified that the work accident aggravated and advanced his pre-existing knee condition and precipitated symptoms requiring surgical treatment. He also asserts that Dr. Hovis's testimony supported a finding of causation.

Tennessee Code Annotated section 50-6-103(a) 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 the time, place, and circumstance. *Phillips v. A&H Const. Co.*, 134 S.W.3d 145, 150 (Tenn. 2004). It is undisputed that Mr. Gribble was acting in the course of his employment at the time of his alleged injury. The dispute in this case, however, is whether Mr. Gribble's injury arose out of his employment.

The mere presence of an employee at his place of employment at the time of an injury does not alone mean that the injury is deemed to have arisen out of the employment. *Rogers v. Kroger Co.*, 832 S.W.2d 538, 541 (Tenn. 1992). Instead, 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). Any reasonable doubt as to whether an injury arose out of employment is to be resolved in favor of the employee. *Phillips*, 134 S.W.3d at 150. However, the plaintiff in a workers' compensation suit has the burden of proving every element of the case by a preponderance of the evidence. *Tindall v. Waring Park Ass'n*, 725 S.W.2d 935, 937 (Tenn. 1987).

Mr. Gribble asserts that the trial court erred in finding that his injury was due to an idiopathic[3] condition, instead of finding that his injury arose out of his employment. In workers' compensation cases, benefits are generally not awarded when the injury is due to an idiopathic condition personal to the employee, absent some "special hazard" of the employment. *Wilhelm v. Krogers*, 235 S.W.3d 122, 128 (Tenn. 2007) (quoting *Sudduth v. Williams*, 517 S.W.2d 520, 523 (Tenn. 1974)). To be compensable, an injury due to an idiopathic condition must be caused or exacerbated by an employment hazard. *Id.* (quoting *Phillips*, 134 S.W.3d at 148). There must be a causal connection between the workplace conditions and the resulting injury. *Id.* There must be "some hazard . . .

[3] "Idiopathic" means: "1: arising spontaneously or from an obscure or unknown cause: PRIMARY <*idiopathic* epilepsy> 2: peculiar to the individual." *Definition of Idiopathic*, MERRIAM-WEBSTER.COM, http://www.merriam-webster.com/dictionary/idiopathic (last visited Oct. 13, 2016).

incident to his or her employment." *Id.* Based on the foregoing principles, Mr. Gribble asserts that using the pole truck was part of his job and therefore was a hazard incident to employment. Thus, he contends that the knee injury he sustained climbing onto the pole truck arose out of his employment.

The trial court did not expressly find that the cause of Mr. Gribble's knee injury was idiopathic. During the parties' closing arguments, the trial court mentioned idiopathic injuries, but it was in the context of discussing *Bike v. Johnson & Johnson Health Care Systems, Inc.*, No. W2013-02728-SC-WCM-WC, 2015 WL 1203482 (Tenn. Workers' Comp. Panel Mar. 13, 2015), one of the primary cases relied upon by Mr. Gribble. The trial court's dispositive finding was that Mr. Gribble failed to carry his burden of proving causation because Dr. Mathien's testimony on that issue—when considered in its totality—was "conjectural" and "at a minimum . . . speculative."

As noted by the trial court, Dr. Mathien testified at two different points in his deposition that he believed Mr. Gribble's knee injury on February 18, 2013, resulted in an anatomical change from his post-surgical status in 2009. Dr. Mathien was asked on direct examination if Mr. Gribble's description of how he was injured—climbing up on a pole truck with three steps when he felt a pop in his knee and immediately felt symptoms—was consistent with the injury he sustained, and Dr. Mathien first replied, "It certainly could be, yes, sir." When Mr. Gribble's counsel essentially repeated the same question again, Dr. Mathien replied, "Could very well be, yes, sir." On cross-examination by Alcoa's counsel, however, Dr. Mathien seemed to contradict his earlier direct-examination testimony on causation:

> Q. And [the loose body in Mr. Gribble's knee in February 2013] is an expected complication of OCD and microfracture repairs?
>
> A. It is a potential consequence of them, yes, ma'am.
>
> Q. There's nothing about stepping up onto a step that caused this, it just happened to be what he was doing at the time?
>
> A. *More likely than not*, yes, ma'am.
>
> Q. Okay. You would agree with my statement?
>
> A. I believe so.
> Q. Okay. And the pathology of this loose body is developed over time?
>
> A. I suspect so.

After Dr. Mathien's cross-examination, the following exchange occurred on redirect examination by Mr. Gribble's counsel:

> Q. Doctor, lastly, I think you, on cross-examination, said that the OCD was not caused by the work event of 2013. Correct?
>
> A. Yes, sir.
>
> Q. On direct examination, though, and I just want to make sure that we don't have to -- that this will be clear somewhere down the road. My question earlier was, did the acute symptoms and the work-related accident of 2013 -- and the reported work accident of 2013, did that permanently aggravate that underlying OCD condition?
>
> A. Yes, sir, I believe so.

Based on our review of Dr. Mathien's testimony, we conclude that the evidence does not preponderate against the trial court's finding that Mr. Gribble failed to carry his burden of proving causation through Dr. Mathien's testimony.[4] As stated in the trial court's oral ruling at the conclusion of the trial,

> the problem is with Dr. Mathien we've got him saying there was an anatomical change, there was an aggravation. We've got him sort of in the middle saying, well, it could have been. It could have caused this. And then we have him saying it did not cause it. He agreed with the statement saying it did not cause it. So his testimony is inconsistent at best, and at one point he even agrees with the defendant that what happened at work did not cause this. And so I think at a minimum it's speculative. It's conjectural. And again, the problem is it's plaintiff's burden of proof. And while I understand that lay testimony can bolster what the doctor says, if I look at the totality, if I look at all of the doctor's testimony, if it's not even detrimental to the plaintiff's case and burden of proof, it is at a minimum speculative. And I just don't think plaintiff has carried his burden of proof with respect to his medical testimony.

[4] The trial court did not discuss Dr. Hovis's deposition testimony regarding causation, but we note that Dr. Hovis testified as follows: "There is nothing objectively in [Mr. Gribble's] x-rays or MRI studies which would enable me to state with any reasonable certainty that he sustained an injury with secondary anatomic change or anatomic structural changes as a result of his described injury or event going up the stairs."

Based on our careful review, we hold that the evidence does not preponderate against the trial court's finding.

## Conclusion

Mr. Gribble had the burden of proving the causal relationship between the alleged injury and his employment activity. *Cloyd v. Hartco Flooring Co.*, 274 S.W.3d 638, 643 (Tenn. 2008) (quoting *Orman v. Williams Sonoma, Inc.*, 803 S.W.2d 672, 676 (Tenn. 1991)). The trial court found that Mr. Gribble failed to establish causation by a preponderance of the expert medical testimony. Based on our de novo review of the evidence, we hold that the evidence does not preponderate against the trial court's finding. Accordingly, we affirm the judgment of the trial court.

Costs are assessed to Tony K. Gribble, and his surety, for which execution may issue if necessary.

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SHARON G. LEE, JUSTICE

IN THE SUPREME COURT OF TENNESSEE
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**JUDGMENT ORDER**

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs are assessed to Tony K. Gribble, and his surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM