IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
March 20, 2017 Session

JENNY CRAIG OPERATIONS, INC. v. LORI REEL

Appeal from the Chancery Court for Davidson County
No. 13-825-IV Russell T. Perkins, Chancellor

No. M2016-01775-SC-R3-WC – Mailed June 30, 2017
Filed August 4, 2017

Lori Reel ("Employee") was employed by Jenny Craig Operations, Inc. ("Employer") as a Jenny Craig consultant. On January 8, 2010, Employee fell while at work and struck her right knee on the floor. Suit was filed. Employee alleged that she sustained a work-related injury to her right knee that aggravated pre-existing arthritis in that knee and ultimately necessitated a total knee replacement. While conceding that Employee sustained a temporary injury to her knee from the fall, Employer denied liability for the total knee replacement and for any permanent impairment. The trial court found that Employee's work-related fall caused an acceleration, advancement, or progression of her osteoarthritis, such that she required a total knee replacement, that Employee's January 8, 2010 injury was compensable, and that Employee retained a permanent partial disability of 46.5% to her right lower extremity. Employer has appealed. 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) (2014) (applicable to injuries occurring prior to July 1, 2014) Appeal as of Right; Judgment of the Chancery Court Affirmed

JEFFREY S. BIVINS, C.J., delivered the opinion of the court, in which WILLIAM B. ACREE, and ROBERT E. LEE DAVIES, SR. JJ., joined.

W. Troy Hart and Charles E. Pierce, Knoxville, Tennessee, for the appellant, Jenny Craig Operations, Inc.

William J. Butler, Lafayette, Tennessee, for the appellee, Lori Reel.

OPINION

Factual and Procedural Background

Lori Reel ("Employee") was born on February 18, 1956. At the time of trial, she was fifty-eight years old. She completed high school and two years of college as a pre-dental student. She also attended trade school for training in skin care. She testified that her first full-time job after high school was with Walmart as an employee in the photo lab of a Walmart store in Georgia. She eventually moved to Arkansas after being promoted to corporate trainer. After she had worked at Walmart for approximately two or three years, she moved to Tennessee. She continued to work for Walmart but transitioned to a photo lab district manager position. After her employment at Walmart, she worked as a regional manager for Eckerd Drugs. She then served as operations manager for Haverty's, in which she oversaw the operations of eight Haverty's stores. She next worked for Sonic Drive-In. During her employment at Sonic, she served in various capacities, including marketing, operations, and car hopping. She then worked for a period of time as a Starbucks barista before obtaining a consultant position with Jenny Craig Operations, Inc. ("Employer").

While working for Employer on January 8, 2010, Employee sustained an injury to her right knee when she fell and struck her knee on the floor. Employee testified at trial that she had experienced a prior fall in 1999 in which she sustained an injury to both knees. However, she did not suffer from any permanent symptoms or limitations—including limping, swelling, weakness, or pain—following her recovery from that injury. Additionally, Employee also testified that, although she also has arthritis in her left knee, she has never had any problems with that knee.

Employee was initially treated for her fall on January 8, 2010, at a walk-in clinic. Employee was next treated by Dr. Barry Yarbrough, an internist, on January 12, 2010. Dr. Yarbrough testified that he took Employee's medical history, performed a physical examination, and obtained and reviewed an x-ray of Employee's right knee.[1] Dr. Yarbrough diagnosed Employee with pre-existing degenerative joint disease and a contusion of the right knee. Dr. Yarbrough next saw Employee on January 19, 2010. He again took a history and performed a physical examination. He noted joint line tenderness and "clicking over the medial knee when [he] palpated it with range of motion," and he "thought a small effusion was present." His diagnosis at that time was "internal derangement" of the knee. He ordered an MRI, which showed a "sprain of the medial collateral ligament [("MCL")] with no meniscus tear and severe tricompartmental degenerative joint disease with chondromalacia." When Dr. Yarbrough again saw Employee on February 9, 2010, he suspected that the MCL sprain was related to her

[1] All of the medical providers in this case testified by deposition.

January 8, 2010 fall. Dr. Yarbrough believed that the fall had exacerbated her pre-existing degenerative joint disease but that neither the sprain itself nor the exacerbation was permanent. Dr. Yarbrough injected Employee's knee with steroids on that visit and noted that her pain resolved temporarily. On February 16, 2010, Dr. Yarbrough saw Employee for the final time. Although Employee's condition had not improved as a result of the prior injection, Dr. Yarbrough's impression of Employee's condition remained unchanged.

Employee next was seen by Dr. Blake Garside, an orthopedic surgeon. Dr. Garside testified that, on February 24, 2010, Employee presented with complaints of right knee pain following a January 8, 2010 fall. Dr. Garside performed a physical examination and obtained x-rays. He diagnosed Employee with a right knee contusion and right knee osteoarthritis. Dr. Garside testified that Employee had an acute exacerbation of her right knee osteoarthritis, defining "exacerbation" as "a temporary increase in symptomatology with no anatomical change or difference." He recommended a trial of anti-inflammatories. Dr. Garside next saw Employee on March 24, 2010, at which time Employee reported some persistent swelling. Dr. Garside advised Employee to wear a brace and to restart her anti-inflammatories. He also advised that she avoid repetitive squatting, but said she otherwise could return to her regular duties and activities. Dr. Garside again saw Employee on May 5, 2010, at which time he refilled her anti-inflammatory medication and advised her to discontinue use of her knee brace and to advance to regular duties. Dr. Garside next saw Employee on June 16, 2010, at which time he was of the opinion that, on the basis of her symptomatology, the exacerbation of her pre-existing condition had resolved. He observed no anatomical changes in her right knee at that time.

Dr. Garside saw Employee for the final time on August 23, 2011, at which time he was asked by Employer to perform an independent medical evaluation. Dr. Garside reviewed Employee's medical history and records, performed a physical examination, and obtained x-rays of her left and right knees. Based on the foregoing, Dr. Garside diagnosed Employee with left and right knee osteoarthritis. Dr. Garside testified that his physical examination and diagnostic studies "did not reveal any anatomic change or intra-articular changes suggesting that [Employee's January 8, 2010] fall . . . [had] aggravated or directly caused [her] present right knee osteoarthritis." According to Dr. Garside, Employee had experienced "persistent pain in her right knee with a history and physical examination which is consistent with chronic pre-existing knee osteoarthritis, right greater than the left." Dr. Garside felt that Employee would benefit from knee replacement surgery; however, he stated that the "osteoarthritis that was present was bilateral and represented a chronic, pre-existing condition unrelated to her [January 8, 2010] fall." He also testified that Employee's medical records showed longstanding degenerative arthritis "which the natural history would suggest progression over time and subsequent need for total [knee replacement]."

On August 23, 2010, Employee met with Dr. Robert Warne Fitch, an orthopedist, for the first time. Dr. Fitch testified that Employee complained of right knee pain and reported that she had fallen at work in January 2010. Dr. Fitch performed a physical examination and obtained x-rays. Based on his examination and his review of the x-rays, Dr. Fitch diagnosed Employee with "patellofemoral degenerative joint disease, right medial degenerative joint disease with narrowing, probable degenerative meniscal tears, and trace joint effusion." Dr. Fitch did not observe any anatomical change in Employee's right knee to which he could attribute to her January 8, 2010 fall. Dr. Fitch noted that Employee had persistent arthritic pain subsequent to her fall and that she denied any such pain prior to that fall. He prescribed a topical anti-inflammatory, referred Employee to physical therapy, and gave her a corticosteroid injection in her knee. The injection afforded her some relief. Dr. Fitch next saw Employee on September 20, 2010. At that time, Employee still complained of right knee pain. Her physical examination was consistent with that of her first visit, with the exception that she no longer had swelling. Dr. Fitch's diagnosis of right knee arthritis remained unchanged. Employee expressed that she was not interested in surgery at that time, so Dr. Fitch fitted her with a brace and planned to seek approval for an injectable medication.

On November 12, 2010, Dr. Fitch wrote a letter in which he summarized Employee's treatment up to that point. In his letter, Dr. Fitch concluded that Employee had not had any significant improvement in her symptoms, and his interpretation of those symptoms was that Employee had "pre-existing osteoarthritis to both knees, which was long-standing and chronic but may have aggravated her symptoms at the time of the fall." Dr. Fitch could not state definitively whether or not the aggravation was permanent. He stated that "[a]rthritis never goes away" and that "in some unfortunate cases when you have arthritis and it flares up, . . . sometimes it remains an issue for [those] patients." However, Dr. Fitch then stated that the aggravation of Employee's arthritis was simply an increase in her pain symptoms.

Employee's next appointment with Dr. Fitch was on January 17, 2011. Her condition had not changed since her prior visit. Dr. Fitch injected her knee with a joint lubricant, continued her on a topical anti-inflammatory, and planned to see her again in four to six weeks. Dr. Fitch last saw Employee on February 21, 2011, at which time she reported continued pain. Dr. Fitch testified that he referred her for surgical consultation, as she had failed with conservative treatment. Dr. Fitch believed at that time that Employee would benefit from a right knee replacement. According to Dr. Fitch, although Employee's joint space narrowing was caused by her pre-existing osteoarthritis, Employee reported that she had no pain prior to her January 8, 2010 fall but that she suffered pain after that fall. Dr. Fitch agreed that pain can be disabling and that Employee reported that she did not have symptoms that were disabling until after her fall. Dr. Fitch further agreed that Employee's acute fall at work led to her increased

symptomatology and that this ultimately led to her right knee replacement surgery. Dr. Fitch further explained that "[t]he reason for the total knee replacement was continued pain from her arthritis, which [Employee] reported to [him] started after the fall."

On February 24, 2012, Employee was seen by Dr. Andrew Shinar, an orthopedic surgeon who specializes in hip and knee replacement surgery. Employee had been referred to Dr. Shinar by Dr. Fitch. Dr. Shinar testified that he took Employee's history, performed a physical examination, and ordered and reviewed x-rays, which showed severe arthritis in Employee's medial compartment and moderate arthritis under her kneecap. Dr. Shinar further testified that without x-rays from immediately before and after Employee's January 8, 2010 fall, it would be difficult to state whether Employee suffered any anatomical change in her right knee as a result of that fall. However, Dr. Shinar saw nothing in his examination that appeared to be a traumatic injury; rather, it looked like osteoarthritis, which was ultimately his diagnosis. His plan was to perform a right knee replacement, as "[Employee] had failed proceeding with injections previously and a brace." Dr. Shinar performed a total right knee replacement surgery on Employee on March 26, 2012. According to Dr. Shinar, the surgery proceeded without any complications.

Dr. Shinar next saw Employee on May 10, 2012. He performed a physical examination and testified that, at that time, Employee was doing well. However, as of June 21, 2012—the date of her next appointment with Dr. Shinar—she had been experiencing pain and swelling around her knee, and an ultrasound had revealed fluid collection over the front of her knee. Dr. Shinar next saw Employee on July 17, 2012. He testified that, after her knee replacement, Employee did "very well for a while and then started doing poorly." Dr. Shinar continued to see Employee post-operatively in July, September, and December of 2012. As of December 20, 2012, Dr. Shinar's plan was to have Employee's pain physician opine with regard to Employee's return to work. According to Dr. Shinar, at that time, Employee's pain was the only thing limiting her return to work.

Dr. Shinar saw Employee for the final time in December 2013. Employee did not have any new problems since her visit a year earlier, but she had persistent, mild to moderate pain. Dr. Shinar testified that Employee reached maximum medical improvement at some point between December 2012 and December 2013. Dr. Shinar did not rate Employee's permanent impairment at that time. Dr. Shinar agreed that Employee had arthritis prior to her January 8, 2010 fall but had reported no problems prior to that fall. Thus, Dr. Shinar stated, "it makes sense that [the] fall is what brought on the symptoms." Dr. Shinar further testified that Employee "had arthritis, and she fell, and then she developed pain in her knee." With respect to the cause for Employee's knee replacement surgery, Dr. Shinar testified that it is difficult to state whether Employee would have required knee replacement surgery absent her arthritis. However, Dr. Shinar

stated that no surgery would have been performed had Employee been asymptomatic.

Employee was first seen by Dr. Jeffrey Hazlewood, a physical medicine and rehabilitation specialist, on November 26, 2012. Employee sought treatment with Dr. Hazlewood for pain management following her knee replacement surgery. Prior to the appointment, Dr. Hazlewood reviewed medical records from other healthcare providers and gleaned that Employee had a pre-existing arthritic knee, had fallen and struck that knee, and had developed pain after the fall. At the appointment, Dr. Hazlewood took a history and performed a physical examination. When asked what his impression was based upon the history, records, and examination, Dr. Hazlewood stated, "Chronic knee pain. Apparent aggravation type injury of a previous severely arthritic knee that was asymptomatic. She had the knee replacement. Pain worsened with no objective explanation." Dr. Hazlewood did not observe in the records any indication of an anatomical change from the fall. He characterized Employee's post-fall condition as a subjective aggravation. Dr. Hazlewood felt that Employee's complaints of pain were sincere.

Dr. Hazlewood continued to see and treat Employee for her right knee pain in December 2012 and January 2013. Dr. Hazlewood determined that Employee had reached maximum medical improvement as of February 20, 2013. He calculated Employee's impairment rating to be 31% to the right lower extremity. Dr. Hazlewood did not impose any work restrictions on Employee. He, instead, left it up to Employee to limit her work based on her level of pain. With respect to Employee's knee replacement surgery, Dr. Hazlewood testified that had Employee not had the arthritis when she fell and struck her knee, she would not have required the knee replacement surgery. He agreed that the surgery was done for the severe degenerative arthritis but indicated that, absent symptoms such as pain, surgery would not have been performed. Dr. Hazlewood also testified that it was likely that at some point in time, Employee's pre-existing arthritis would have become symptomatic and required the surgery, even absent her fall. He could not state, however, at what point in time that would have occurred. Dr. Hazlewood last saw Employee on March 25, 2013. At that time, Employee had returned to work but reported miserable pain. Dr. Hazlewood's diagnosis remained the same, and he had no other treatment options for her. Employee's ability to work was up to her and her level of pain.

On May 28, 2014, Employee was evaluated by Dr. Robert Landsberg, an orthopedic surgeon, at the request of Employee's attorney. Dr. Landsberg reviewed Employee's medical records and the depositions of Employee and the medical providers in this case. Dr. Landsberg saw nothing in those records to indicate any permanent injury from Employee's prior 1999 fall. He took a history and performed a physical examination. Based on the history, the examination, and his review of the records, Dr. Landsberg diagnosed Employee with "posttraumatic progressive osteoarthritis of the

right knee following the January 2010 work injury, with subsequent total knee replacement with residual stiffness and discomfort." Dr. Landsberg explained that Employee had pre-existing osteoarthritis in her right knee, as in her left knee, but it was dormant and non-disabling prior to her fall. Dr. Landsberg testified that, prior to her fall, the pre-existing osteoarthritis was not bothering Employee or limiting her activities, and she had no pain or swelling. However, after the acute, traumatic injury from the fall, her arthritis progressed, leading to the total knee replacement. Dr. Landsberg further explained that, had it not been for her fall, Employee might still be doing fine. He believes that, when Employee fell, she twisted, her feet went out from under her, and she landed on her right knee, which all served to aggravate her pre-existing condition. Dr. Landsberg also testified that Employee's injury was permanent. Dr. Landsberg was unable to state whether Employee experienced any anatomical change following her January 8, 2010 fall because of the absence of x-rays or other diagnostic studies from the period immediately before the fall. He assigned Employee an anatomical impairment rating of 31% to the lower extremity. Dr. Landsberg recommended restrictions for Employee, including not sitting in one position for more than fifteen minutes; not standing for more than ten minutes; not walking for more than ten to fifteen minutes; not squatting or kneeling; not doing more than minimal, occasional climbing; and not lifting more than twenty pounds. According to Dr. Landsberg, these restrictions are intended to avoid not only pain, but also swelling and related progressive stiffness.

Prior to trial, the parties stipulated to the following:

> 1. While the cause and/or permanency of any leg injury is contested by the Employer, the parties stipulate that Employee sustained a leg injury on or about January 8, 2010, which injury is primarily if not entirely to her right knee.
>
> 2. The work-related permanent partial disability due to the subject injury, should the Court determine any exists, would be to the "leg" under the schedule of compensation found at Tenn. Code Ann. 50-6-207(3)(A)(ii)(o), which is worth a maximum of 200 weeks of benefits.
>
> 3. Dr. Jeffrey Hazlewood placed the Employee at maximum medical improvement on February 20, 2012, and assessed a permanent impairment rating of 31% to the right lower extremity pursuant to the proper edition of the *AMA Guides*.
>
> 4. Dr. Robert Landsberg performed an independent medical evaluation on the Employee, and assessed a permanent impairment rating of 31% to the right lower extremity pursuant to the proper edition of the *AMA Guides*.

5. The other treating physicians did not address or assess the extent, if any, permanent impairment to the Employee.

6. The Employee's average weekly wage for the relevant time period is $717.87, and her weekly compensation rate for permanent partial disability benefits is $478.58.

7. The 1.5 times multiplier cap found at Tenn. Code Ann. § 50-6-241 applies to this case, and therefore, any permanent partial disability award found by the Court is capped at 1.5 times the 31% permanent impairment rating, and thus the Court's award is capped at a maximum of 46.5% to the leg, or a maximum of 93 weeks.

At trial, Employee testified that, following her injury and knee replacement surgery, she continued to work for Employer for a period of time. Employee left Employer for reasons not related to her injury. She subsequently worked for It's Just Lunch, a matchmaking and dating service, which required her to sit for long periods of time. Employee ultimately ended her employment with It's Just Lunch because she "couldn't sit for hours and not get up." Employee was then unemployed for approximately five months before she began working as a driver for Uber, a transport company. Employee was working in this capacity at the time of trial. She testified that she was able to do this type of work because it permitted her to work "on [her] own time" and take breaks as needed. According to Employee, she worked approximately two to three days per week. She testified that she would work for approximately two or three hours on those days. In addition to her employment with Uber, she also sold gift baskets and floral arrangements.

Employee testified that since her fall, she has limitations on or difficulty with "[s]quatting, sitting, kneeling, laying down, playing with [her] grandchildren, getting up off the floor, [and] getting down on the floor." She was a swimmer but now has difficulty getting in and out of the pool. She also has difficulty getting in and out of her car, and she no longer feels secure enough to ride her motorcycle or to pilot a plane as she did before. She has difficulty walking on uneven ground or on a treadmill, and she can no longer run. She also has difficulty walking up and down stairs. She cannot wear the same type of shoes that she previously wore due to swelling. Travel also is now difficult because she has difficulty walking and her knee swells when she flies. According to Employee, she had none of these problems or limitations prior to her January 8, 2010 fall.

Employee's daughter, Nicole Reel, also testified at trial. She testified that, prior to Employee's January 8, 2010 fall, Employee was very active and "always on the go." She engaged in a number of activities, including water sports, dancing, riding motorcycles,

and flying planes. Ms. Reel testified that she never observed Employee having any difficulty engaging in those activities prior to her January 8, 2010 fall. Further, prior to that fall, she never observed Employee with a limp in her right leg or suffering from right knee pain, weakness, or swelling. Ms. Reel also testified that Employee now has difficulty playing with her grandchildren and performing certain household chores, such as mowing the yard, cleaning, and making the bed.

Finally, Deborah Hensley, a friend of Employee's, testified at trial. According to Ms. Hensley, she and Employee had been best friends for approximately six to seven years. She testified that, prior to Employee's January 8, 2010 fall, Employee had an "extremely high activity level from motorcycles, went flying, swimming. You name it; [Employee] did it." Ms. Hensley never observed Employee having any difficulty of any kind with her right knee prior to the 2010 fall. Specifically, she never observed Employee limping or having difficulty walking, and she did not see Employee suffering from any right knee weakness or swelling. However, since the January 8, 2010 fall, Ms. Hensley has observed Employee having difficulty with certain daily activities, including walking, getting in and out of the car, and walking up the stairs. She has observed Employee with swelling in her knee and has been asked to assist Employee with household chores.

Following the trial, the trial court entered its memorandum and order on June 24, 2016. After reviewing the lay and expert medical testimony, the trial court found that Employee "suffered a compensable, work-related injury on January 8, 2010." The trial court found that "[s]pecifically, [Employee's] work-related fall caused an acceleration, advancement or progression of her osteoarthritis, such that she required a total knee replacement." In this regard, the trial court found that "[t]here is ample proof in the record that [Employee's] right knee was asymptomatic until her fall on January 8, 2010, and there is ample proof in the record that her fall caused her osteoarthritis to become symptomatic and to progress to the point of needing surgery." The trial court concluded that Employee's January 8, 2010 injury was compensable and assigned her permanent partial disability of 46.5% to her right lower extremity. The trial court's judgment was entered on July 21, 2016. Employer has appealed, contending that the trial court erred in finding that Employee's January 8, 2010 work-related fall caused a permanent compensable injury and in finding that her total knee replacement surgery was a compensable procedure caused by her fall.

Standard of Review

This Court reviews issues of fact in a workers' compensation case *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) (2014) (applicable to injuries occurring prior to July 1, 2014). "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 issues of credibility and weight to be given testimony are involved, considerable deference is given to the trial court when the trial judge has had the opportunity to observe the witness' demeanor and to hear in-court testimony. Foreman v. Automatic Sys., Inc., 272 S.W.3d 560, 571 (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." Id. (citing Orrick v. Bestway Trucking, Inc., 184 S.W.3d 211, 216 (Tenn. 2006)). However, the medical testimony must be considered in conjunction with the lay testimony. Trosper v. Armstrong Wood Prods., Inc., 273 S.W.3d 598, 604 (Tenn. 2008) (citing Thomas v. Aetna Life & Cas. Co., 812 S.W.2d 278, 283 (Tenn. 1991)); see Thomas, 812 S.W.2d at 283 ("While causation and permanency of an injury must be proved by expert medical testimony, such testimony must be considered in conjunction with the lay testimony of the employee as to how the injury occurred and the employee's subsequent condition."). We review the 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); Cloyd v. Hartco Flooring Co., 274 S.W.3d 638, 642-43 (Tenn. 2008).

Analysis

It is undisputed that Employee had a pre-existing degenerative condition, osteoarthritis, in her right knee. It also is undisputed that, on January 8, 2010, Employee suffered a work-related fall and sustained an injury to her right knee. Employer contends that the trial court erred in determining that this fall resulted in a permanent work-related injury to Employee's right knee and that it necessitated knee replacement surgery. Specifically, Employer contends that Employee's work-related fall did not aggravate or advance the severity of her pre-existing osteoarthritis, other than by increasing her level of pain. According to Employer, the medical proof failed to demonstrate any permanent anatomical change in Employee's right knee, advancement of her condition, or the presence of disabling pain. The issue in this case, then, is that of causation.

Our Supreme Court has addressed in detail the proper analysis of causation generally, and, in the context of the aggravation of pre-existing conditions, specifically. With respect to causation generally, the Court has explained:

> Any employee seeking to recover workers' compensation benefits must prove that the injury both arose out of and occurred in the course of the employment. "The phrase 'arising out of' refers to the cause or origin

> of the injury and the phrase 'in the course of' refers to the time, place, and circumstances of the injury." An injury arises out of employment when there is a causal connection between the conditions under which the work is required to be performed and the resulting injury. Except in the most obvious cases, causation must be established by expert medical evidence. Although evidence of causation may not be speculative or conjectural, "absolute medical certainty is not required, and reasonable doubt must be resolved in favor of the employee." Accordingly, "benefits may be properly awarded to an employee who presents medical evidence showing that the employment could or might have been the cause of his or her injury when lay testimony reasonably suggests causation."
>
> Equally well-settled is the principle that an employer takes an employee "as is" and assumes the responsibility of having a pre-existing condition aggravated by a work-related injury which might not affect an otherwise healthy person. Thus, an employer is "liable for disability resulting from injuries sustained by an employee arising out of and in the course of his employment even though it aggravates a previous condition with resulting disability far greater than otherwise would have been the case." Tennessee law likewise recognizes that a worker may sustain a compensable gradual injury as the result of continual exposure to the conditions of employment. In other words, unlike in some other jurisdictions, there is no requirement that the injury be traceable to a definite moment in time or triggering event in order to be compensable.

Trosper, 273 S.W.3d at 604 (internal citations omitted).

With respect to causation in cases involving an alleged aggravation of a pre-existing condition, the Court further has explained:

> [An] employee does not suffer a compensable injury where the work activity aggravates the pre-existing condition merely by increasing the pain. However, if the work injury advances the severity of the pre-existing condition, or if, as a result of the pre-existing condition, the employee suffers a new, distinct injury other than increased pain, then the work injury is compensable.

Id. at 607; see Foreman, 272 S.W.3d at 573 (stating that an employee does not suffer a compensable injury "when there is only increased pain but no anatomical change"). Additionally, even absent evidence of an anatomical change, an injury is compensable "if employment causes an actual progression or aggravation of [a] prior disabling condition or disease which produces increased pain that is disabling." Trosper, 273 S.W.3d at 605

(quoting Hill v. Eagle Bend Mfg., 942 S.W.2d 483, 488 (Tenn. 1997)); see also Talley v. Va. Ins. Reciprocal, 775 S.W.2d 587, 592 (Tenn. 1989) ("There is no doubt that pain is considered a disabling injury, compensable when occurring as the result of a work-related injury.") (citing Boling v. Raytheon Co., 448 S.W.2d 405, 407 (1969)).

Employer contends that the evidence at trial was insufficient to establish the existence of disabling pain. Therefore, as a result, Employer contends that Employee must prove an aggravation or advancement of Employee's pre-existing osteoarthritis in her right knee, in the absence of an anatomical change. In this regard, Employer rejects the trial court's reliance on the Tennessee Supreme Court's decision in White v. Werthan Indus., 824 S.W.2d 158, 160-61 (Tenn.1992), which the Court in Trosper described as follows: "upholding award of compensation to employee with pre-existing back condition where a fall at work rendered him '*virtually immobilized by pain*,' even though the medical expert 'could not express a medical opinion as to increased anatomical injury.'" Trosper, 273 S.W.3d at 605 (emphasis added). According to Employer, Werthan is distinguishable because, in the present case, at least three physicians found no anatomical change in Employee's knee following her January 8, 2010 fall. Employer further contends that the evidence in this case does not establish disabling pain consistent with that which was found sufficient to evidence an aggravation or advancement of the pre-existing condition in Werthan. We disagree.

In Werthan, the employee had a long history of pre-existing back problems prior to his slip and fall at work. 824 S.W.2d at 158-60. He was already symptomatic and on pain medications prior to that fall. Id. Surgery was already being contemplated and discussed by his orthopedic surgeon prior to that fall. Id. It was in this specific context that the Supreme Court stated: "Although [the employee] was taking medication for pain before his fall, after the accident he was virtually immobilized by pain." Id. at 160. Considering the specific context of the case, we do not read Werthan as standing for the proposition that, in order for pain resulting from a work-related accident to be considered disabling and the work-related accident to be considered to have aggravated or advanced the pre-existing condition in the absence of proof of anatomical change, the pain must render the employee immobilized or completely disabled from performing all work and all functions of daily living.

Rather, in this case—in which Employee was asymptomatic, not on any type of pain medication, and not limited in any way in her work or in her daily living activities prior to her January 8, 2010 fall—we find that the evidence is more than sufficient to support the conclusion that the pain resulting from Employee's work-related fall was disabling. The evidence establishes that the pain experienced by Employee subsequent to her fall materially disabled her in her ability to work and to engage in activities of daily living. We conclude that this pain was sufficient to constitute disabling pain and to evidence an aggravation or advancement of her pre-existing condition under the facts and

circumstances of this case, even absent evidence of an anatomical change. See Cloyd, 274 S.W.3d at 646. Both the lay testimony and the medical testimony as recited in this opinion support this conclusion.

As noted previously, the medical deposition testimony must be considered in conjunction with the lay testimony. Trosper, 273 S.W.3d at 604. Although none of Employee's treating physicians found there to have been an anatomical change following her January 8, 2010 fall, this evidence was, in at least some instances, due to the absence of pre- and post-fall diagnostic studies for comparison and upon which to base such a determination. Moreover, none of the physicians disputed that Employee had been asymptomatic prior to the fall and that she had become symptomatic only after the fall. The lay testimony in this case makes clear that Employee indeed was completely asymptomatic prior to the January 8, 2010 fall. She was free of pain and was not disabled in any manner from performing the requirements of her work or her daily living activities. In contrast, following her fall, Employee was significantly, though not totally, disabled from work and daily living activities as a result of her pain. Additionally, the medical testimony does not establish that Employee would have required surgery on her right knee at some definite future point in time absent her fall. In this regard, the facts of this case are more compelling than those of Werthan, in which the employee was already on pain medication and contemplating surgery before his fall. See Werthan, 824 S.W.2d at 158-60.

Consequently, we conclude that the evidence does not preponderate against the trial court's award of benefits in this case.

Conclusion

The judgment is affirmed. Costs are taxed to Jenny Craig Operations, Inc. and its surety, for which execution may issue if necessary.

_____

JEFFREY S. BIVINS, CHIEF JUSTICE