IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
May 20, 2019 Session

ROGER JOINER V. UNITED PARCEL SERVICE, INC., ET AL.

Appeal from the Workers' Compensation Appeals Board
Court of Workers' Compensation Claims
No. 2017-06-0343 Joshua Davis Baker, Judge

No. M2018-01876-SC-R3-WC – Mailed August 29, 2019
Filed December 6, 2019

Roger Joiner ("Employee") sustained an injury to his neck while lifting a mailbag in the course of his employment with United Parcel Service, Inc. ("Employer") on February 26, 2016. Employer provided medical benefits, but subsequently limited those benefits to treatment of the injury at the C6-7 level of Employee's cervical spine. Employer refused to authorize treatment and denied benefits for injury at the C5-6 level of Employee's cervical spine based on the opinion of his treating physician. After a compensation hearing, the Court of Workers' Compensation Claims (the "trial court") concluded that the causation opinion of Employee's medical evaluator overcame the statutory presumption afforded the causation opinion of his treating physician. The trial court determined that Employee was entitled to medical benefits for treatment of his injures at the C5-6 and C6-7 levels and to permanent partial disability benefits based on medical impairment attributable to both levels. Employer appealed to the Workers' Compensation Appeals Board, which reversed the trial court's decision, with one judge concurring in part and dissenting in part. Employee has appealed that ruling. 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 reverse the decision of the Workers' Compensation Appeals Board.

Tenn. Code Ann. § 50-6-217(a)(2)(B) (2018 Supp.) Appeal as of Right;
Decision of the Workers' Compensation Appeals Board Reversed

AMY V. HOLLARS, SP. J., delivered the opinion of the court, in which CORNELIA A. CLARK, J. and WILLIAM B. ACREE, SR. J., joined.

Brett L. Rozell and Jason G. Denton, Lebanon, Tennessee, for the appellant, Roger Joiner.

David T. Hooper, Brentwood, Tennessee, for the appellees, United Parcel Service, Inc. and Liberty Mutual Insurance Company.

OPINION

Factual and Procedural Background

Roger Joiner ("Employee") testified live at trial. Employee was fifty years of age at the time of trial. He completed the seventh grade, after which he began working. He did not obtain a high school diploma or a GED. Employee worked as a driver/dockworker for approximately twenty years, the last fourteen of which were for United Parcel Service, Inc. ("Employer"). Employee's job duties at Employer included loading his truck, driving, making deliveries, making pickups, and unloading and processing freight. In addition, at the time of his injury in February 2016, he also did mail work for Employer, which involved sorting mail and lifting mail bags weighing 25-30 pounds.

On Friday, February 26, 2016, Employee was lifting a mail bag during the course and scope of his employment with Employer when he felt and heard a pop in what he thought was his shoulder area. Employee did not experience immediate pain, but did experience tingling/numbness in both hands. Employee continued working, but by the end of his shift he was experiencing pain across his left side in what he believed was his shoulder area. Employee testified that as this pain increased on the left, it became his focus. Employee reported his injury to his supervisor at the end of his shift at approximately 9:30 p.m. on February 26, informing his supervisor that he had experienced a pop, his hands went numb, and then he began to experience bad pain. Prior to this injury on February 26, 2016, Employee had experienced no neck injuries, no problems in his neck or resulting from his neck, had received no diagnoses or treatment related to his neck, had undergone no diagnostic studies for his neck, and had missed no work at Employer due to his neck.

Employee's pain worsened over the weekend and became unbearable on Sunday February 28, 2016, at which time he went to the emergency room at Tennova Hospital in Lebanon, Tennessee. Employee underwent x-rays and was provided pain medication and instructed to schedule an MRI. According to Employee, as his left side became more painful, his right side[1] did not bother him as much. Employee testified that his right side

[1] Employee's references to his right side generally were to his right upper extremity and his right hand.

was not a problem when he visited the emergency room. Employee did not tell the emergency room physician about any condition on his right side.

On March 1, 2016, Employee went to a location of the Middle Tennessee Occupational and Environmental Medicine Clinic, where he was seen by Dr. Alexander Chernowitz. According to Employee, he remembers specifically telling Dr. Chernowitz about his right side. Employee testified that he told Dr. Chernowitz that at the time of the February 26, 2016 injury, both hands went numb but that as the pain grew on the left side, the numbness in the right hand went away. Employee admittedly did not at that time complain about tingling on the right but only about pain on the left. Employee explained, however, that this was because his focus was on his left. On March 3, 2016, Employee visited another location of the clinic and saw Dr. Roy Johnson. Employee testified that he told Dr. Johnson the same thing he had told Dr. Chernowitz regarding his injury; namely that initially he experienced tingling and numbness in both hands. According to Employee, he did not complain about his right side, but he did tell Dr. Johnson about it.

Employee was subsequently provided a panel of physicians by Employer from which he selected Dr. Malcolm Baxter, an orthopedic surgeon. Employee first saw Dr. Baxter on March 9, 2016. Employee's intake form reflects his chief complaint as upper shoulder, back, and left arm and his symptoms as pain and numbness in his left arm, shoulder, and back. Employee made no reference to his right arm or side. Dr. Baxter's note from Employee's March 9, 2016 visit indicated a chief complaint regarding his left shoulder, but also that Employee reported initially having pain and numbness in both arms from the neck. Employee testified that he told Dr. Baxter about the initial tingling and numbness in his right hand, but that he did not complain about it to Dr. Baxter at that time or on any subsequent visit. Employee next saw Dr. Baxter on March 17, 2016, at which time Dr. Baxter noted that Employee reported most of his pain on the left with numbness and pain down the left arm consistent with neck problems. He noted no pain on the right.

Dr. Baxter ordered an MRI of Employee's left shoulder, which was performed on March 15 and was essentially normal. Dr. Baxter also ordered physical therapy, which Employee completed between March 25 and April 13, 2016. Employee's initial physical therapy note from March 25, 2016, reflects that Employee was suffering pain in both upper extremities, left greater than right.

Dr. Baxter's note from Employee's next visit on April 14, 2016, indicated a complaint of left shoulder pain, left sided neck and periscapular pain, and numbness down to the hand. There was no notation regarding Employee's right side. Dr. Baxter last saw Employee on May 2, 2016. Employee testified that Dr. Baxter determined the problem was not Employee's shoulder, but rather his neck. As a result, Dr. Baxter, who handled knees and shoulders, could not further treat Employee. Dr. Baxter, therefore,

released Employee from further treatment for his shoulder with no specific diagnosis and instructions to follow up with a neck specialist.

Employee next selected from an Employer provided panel orthopedic surgeon Dr. Christopher P. Kauffman. Dr. Kauffman is a board certified spinal surgeon licensed in Tennessee since 2004. The majority of Dr. Kauffman's practice is treatment of the spine. Dr. Kauffman was a partner of Dr. Baxter.

Dr. Kauffman testified by deposition. Dr. Kauffman first saw Employee on May 24, 2016, with a chief complaint of neck pain, left arm pain, numbness and weakness. According to Dr. Kauffman, Employee complained of nothing regarding his right arm. Employee reported that his condition began with his injury on February 26, 2016, and that he continued to experience numbness and weakness in the left arm. Employee, while acknowledging that there is nothing in Dr. Kauffman's note regarding Employee's right side, testified that he gave Dr. Kauffman the same history he had given his prior treating physicians regarding bilateral tingling in his hands immediately following the injury on February 26, 2016. Dr. Kauffman reviewed Employee's MRI which indicated mild disc degeneration at C5-6 without neurologic impingement; and, a large left sided disc herniation at C6-7, which migrated inferior to the C6 vertebral body displacing the existing C6-7 nerve root. Dr. Kauffman testified that at that time he did not believe that Employee's condition at C5-6 was work-related; Employee's work-related condition was the C6-7 disc herniation with left upper extremity radiculopathy. Dr. Kauffman next saw Employee on June 3, 2016, and his condition was unchanged.

Dr. Kauffman again saw Employee on June 17, 2016. Dr. Kauffman testified that Employee presented with bilateral arm pain and continued left arm numbness and weakness. According to Dr. Kauffman, this was the first time Employee had complained to him about pain on the right. Dr. Kauffman's note from that visit reflects that Employee reported that he had started having radiating right upper extremity pain for the past week, that there had been no antecedent event, and that he had not been working. His note further indicates that Employee denied radiating right upper extremity pain prior to one week ago and that Employee agreed that his right upper extremity pain had not developed until approximately three months following his February 26, 2016 injury. At that time, Dr. Kauffman felt that Employee exhibited what he variously described as a small right-sided disc osteophyte or a disc osteophyte complex at C5-6 which was likely causing radiating right upper extremity pain. Dr. Kauffman further felt that this was not work-related. He still thought that the C6-7 disc herniation was causing the left arm pain. Dr. Kauffman testified that he discussed this with Employee and explained that he would not include in any impairment rating the condition at C5-6. Employee testified, however, that there were inaccuracies in Dr. Kauffman's note from this visit. Specifically, Employee disputed those portions of Dr. Kauffman's note in which Dr. Kauffman stated that Employee denied radiating right upper extremity pain until one week prior to that visit and that Employee agreed his right upper extremity pain had not developed until

three months after the February 26, 2016 injury. Dr. Kauffman again saw Employee on August 29, 2016, at which time his condition was unchanged.

On September 1, 2016, Dr. Kauffman performed surgery on Employee, specifically anterior discectomies and disc arthroplasties at C5-6 and C6-7. At that time, he found a soft disc herniation at C6-7 and more spondylosis or arthritis at C5-6. Dr. Kauffman described spondylosis as a product of aging, a long-standing problem. Employee gradually improved over the next few months following surgery. Employee testified that post-operatively his pain was less and his tingling and numbness were less, but still present. On November 22, 2016, Employee had neck pain and tingling in both hands but was improved and doing well. Dr. Kauffman returned Employee to work without restrictions. On December 19, 2016, Employee reported that he had returned to work and that he experienced neck pain by the end of the day and tingling in both hands at night. Dr. Kauffman felt that Employee was doing well and had reached maximum medical improvement ("MMI"). Dr. Kauffman assigned Employee an impairment rating of 5% to the whole body based on a single level disc herniation at C6-7 with no more verifiable radicular complaints-neurologically intact. Dr. Kauffman opined that Employee's condition at C6-7 was work-related, but that his condition at C5-6 was a result of the normal aging process and had no relation to his work. While Dr. Kauffman acknowledged that trauma can serve to aggravate a nerve root and that he was not aware of any prior complaints by Employee regarding C5-6, Dr. Kauffman explained that Employee had arthritic changes at C5-6 and that the MRI indicated that the condition at C5-6 was more arthritic and not acute.

Employee saw Dr. Stephen M. Neely in July 2017 for an independent medical evaluation. Dr. Neely testified live at trial. He is an orthopedic surgeon licensed to practice in Tennessee since 1980 and board certified since 1982. Dr. Neely is a generalist within the specialty of orthopedic surgery and treats patients with cervical spine injuries. He stopped performing cervical spine surgeries in 1996, but still performed discectomies and fusions until 2015, at which time he ceased performing all surgeries. Dr. Neely is a partner of Dr. Kauffman's, and they had performed surgeries together.

Dr. Neely saw Employee on a single occasion, July 28, 2017, for approximately one hour on referral from Employee's attorney for the independent medical evaluation. This was after Employee had been back at work for approximately nine months. According to Dr. Neely, his practice was to review the patient's records before he saw the patient and then to review those records with the patient to address any inconsistencies or discrepancies between the patient's history and the records. He followed this practice with Employee. Dr. Neely also performed a general physical examination, as well as an examination of Employee's cervical and lumbar spine. According to Employee, the visit with Dr. Neely lasted approximately one hour or a bit longer.

Dr. Neely testified that Employee had no prior history of problems with his neck or of tingling/numbness in either upper extremity. Dr. Neely acknowledged that there were some discrepancies between the records he reviewed and the oral history Employee provided him, particularly with respect to what Employee had told his prior treating physicians regarding any condition on his right side following the February 26, 2016 injury. The focus of Dr. Neely's questioning regarding these discrepancies was on whether and to what extent Employee had disclosed anything with respect to his right side to any treating physicians prior to Dr. Kauffman on June 17, 2016. Employee testified that he told Dr. Neely the same thing regarding his injury as he had told his prior treating physicians; namely, that at the time of the injury, he initially experienced numbness in both hands. Employee further told Dr. Neely that he was able post-operatively to do all of the activities that he could do prior to the injury, but that he was slower. Dr. Neely acknowledged that the notes from various prior treating physicians did not contain any mention of any symptoms, problems, or complaints regarding Employee's right side, so those notes were inconsistent with the history Employee provided him in July 2017. However, Dr. Neely also noted that there were records which indicated that Employee had experienced some tingling and numbness initially at the time of the injury on February 26, 2016. Dr. Neely resolved any apparent inconsistency between the medical records and the oral history given him by Employee by first drawing a distinction between the history of Employee's injury and what he experienced on the date of injury, on the one hand, and what his subsequent complaints may have been at the time of his visits to treating physicians, on the other hand. He further resolved any inconsistency by next concluding that Employee initially had on the date of injury tingling and numbness and pain in both the left and right hands, but that the condition on the right either resolved or became overshadowed by the condition on the left until shortly before the June 17, 2016 visit to Dr. Kauffman. Dr. Neely relied on the accuracy of Employee's history in arriving at his conclusions with respect to causation and particularly causation of the condition at C5-6. Dr. Neely conceded that inaccuracies in Employee's oral history, particularly with respect to the onset and continuation of symptoms on Employee's right side would undermine his causation conclusions and potentially alter those conclusions with respect to C5-6.

Dr. Neely diagnosed Employee as having had a large rupture with extruded fragment at C6-7 with a left radiculopathy; and, a large central and right-sided disc rupture and an arthritic level of a spondylitic level of his spine at C5-6. In his report from which he read at trial, Dr. Neely stated that both of Employee's conditions at C5-6 and C6-7 "stem from the workplace injury." He further stated that he was "not sure how one would be able to clearly separate which injuries were from the time span when the history placed them both as having been secondary to the injury as he had sustained it." Dr. Neely testified that he had a difficult time differentiating between Employee's preexisting asymptomatic C5-6 that then became symptomatic and his C6-7 where he had the

ruptured disc because Employee had symptoms referable to both levels. He further testified that he was "unable to tell whether one level was injured or two levels were injured in a person that [sic] had never had any symptoms in their [sic] neck prior to the injury." With respect to C5-6 in particular, Dr. Neely testified that Employee had a significantly spondylitic level at C5-6 which he had before the February 26, 2016 injury, but which had been subclinical and then became clinical after the injury. Dr. Neely conceded that Employee's condition at C5-6 can exist without an acute trauma from aging or wear and tear, but opined that both the C5-6 and the C6-7 conditions were "related to the injury" of February 26, 2016.

Dr. Neely agreed with Dr. Kauffman that Employee reached MMI in December 2016. Dr. Neely testified that both the C5-6 and C6-7 injuries were permanent and assigned Employee an impairment rating of 19% to the whole body on the basis of the condition at both levels. Dr. Neely testified that he could not state whether or not Employee would require future medical treatment, but that any such treatment should be provided for both levels, C5-6 and C6-7.

For purposes of the March 21, 2018 trial, the parties stipulated the following:

1. Employee sustained an injury by accident arising out of and in the course and scope of the employment with the Employer.

2. Employee's date of injury is 02/26/2016.

3. Employee gave notice of the injury to the Employer on 02/26/2016.

4. Employee is 50 years of age and a resident of [Smith] County.

5. Employee has completed the 7th grade and has not obtained a high school diploma or GED.

6. Employee received authorized medical treatment for the injury with the following medical providers: Dr. Malcom E. Baxter and Dr. Christopher P. Kauffman. All authorized medical expenses were paid by the Employer or its workers' compensation insurance carrier.

7. Employee reached the maximum level of medical improvement that the nature of the injury permits on 12/19/2016.

8. Employee received temporary disability benefits. Temporary total disability benefits were paid from March 1, 2016 through November 21, 2016 at the weekly compensation rate of $851.40.

> 9. Employee has returned to work for the Employer, earning the same or greater wages as the Employee was earning prior to the injury.
>
> 10. Employee's average weekly wage is $1,277.10, which entitles Employee to a weekly compensation rate of $851.40.

The parties further stipulated that Employee was entitled to permanent partial disability benefits based on an anatomical impairment rating of at least 5% to the body as a whole. The parties disputed whether Employee had suffered a compensable aggravation of his pre-existing condition at the C5-6 level, in addition to the compensable injury to his C6-7 level.

The trial court found that Employee had in fact reported and complained to at least some of his prior treating physicians regarding his right side prior to his June 17, 2016 visit to Dr. Kauffman. The trial court concluded that Employee had overcome the presumption of correctness afforded Dr. Kauffman's opinion as the treating physician based on Employee's medical records from his initial providers, Dr. Neely's testimony, and Employee's testimony. The trial court held that Employee had suffered a work-related aggravation of his condition at C5-6, in addition to the injury at C6-7; assigned Employee an impairment rating of 19% to the whole body; and, awarded Employee permanent partial disability benefits in the amount of $72,794.70, which equates to 85.5 weeks at the agreed upon compensation rate of $851.40. The trial court further held that Employer was obligated to provide Employee future medical benefits for his work-related injuries to C5-6 and C6-7, with Dr. Kauffman as his authorized treating physician.

Employer appealed to the Board of Workers' Compensation Appeals ("Board"). The majority of the Board affirmed in part, reversed in part, and modified in part. The Board affirmed the trial court's decision regarding the compensability of Employee's injury at the C6-7 level. The majority of the Board concluded, however, that the medical proof was insufficient to overcome the presumption of correctness afforded to Dr. Kauffman's causation opinion as the treating physician and so was insufficient to establish a compensable aggravation of Employee's pre-existing condition at C5-6. The majority of the Board, therefore, reversed the trial court's award to the extent based on an aggravation of the condition at C5-6, modified the award to exclude medical treatment related to that condition, and reduced the award of permanent partial disability benefits to 22.5 weeks based on a medical impairment of 5% to the whole body. The dissent, in contrast, concluded that the preponderance of the evidence supported the trial court's determination with respect to the causation of the condition at C5-6.

Analysis

Standard of Review

Appellate review is governed by Tennessee Code Annotated section 50-6-225(a)(1)-(2) (2018 Supp.), which provides that appellate courts "[r]eview . . . the workers' compensation court's findings of fact . . . de novo upon the record of the worker's compensation court, accompanied by a presumption of the correctness of the finding[s], unless the preponderance of the evidence is otherwise." As the Supreme Court has observed many times, reviewing courts must conduct an in-depth examination of the trial court's factual findings and conclusions. Wilhelm v. Krogers, 235 S.W.3d 122, 126 (Tenn. 2007). When the trial court has seen and heard the witnesses, considerable deference must be afforded the trial court's factual findings. Tryon v. Saturn Corp., 254 S.W.3d 321, 327 (Tenn. 2008). No similar deference need be afforded the trial court's findings based upon documentary evidence such as depositions. Glisson v. Mohon Intern., Inc./Campbell Ray, 185 S.W.3d 348, 353 (Tenn. 2006). Similarly, reviewing courts afford no presumption of correctness to a trial court's conclusions of law. Seiber v. Reeves Logging, 284 S.W.3d 294, 298 (Tenn. 2009). The workers' compensation statutes are to be construed "fairly, impartially, and in accordance with basic principles of statutory construction" and in a way that does not favor either the employee or the employer. Tenn. Code Ann. § 50-6-116 (2014) (applicable to injuries occurring on and after July 1, 2014).

Causation

The sole issue raised by Employee on this appeal is: "Whether the preponderance of the evidence supports upholding the trial court's ruling which awarded workers' compensation benefits to Employee at both the C5-6 and C6-7 levels of his neck due to his work-related injury of February 26, 2016?" (Emphasis in original). Pursuant to the Workers' Compensation Law, Tenn. Code Ann. § 50-6-239(c)(6) (2018 Supp.), "[u]nless the statute provides for a different standard of proof, at a hearing the employee shall bear the burden of proving each and every element of the claim by a preponderance of the evidence." The applicable statutory definition of "injury" under the Workers' Compensation Law provides:

> (14) "Injury" and "personal injury" mean an injury by accident, a mental injury, occupational disease including diseases of the heart, lung and hypertension, or cumulative trauma conditions including hearing loss, carpal tunnel syndrome or any other repetitive motion conditions, arising primarily out of and in the course and scope of employment, that causes

> death, disablement or the need for medical treatment of the employee; provided, that:
>
> > (A) An injury is "accidental" only if the injury is caused by a specific incident, or set of incidents, arising primarily out of and in the course and scope of employment, and is identifiable by time and place of occurrence, and shall not include the aggravation of a preexisting disease, condition or ailment unless it can be shown to a reasonable degree of medical certainty that the aggravation arose primarily out of and in the course and scope of employment;
> >
> > (B) An injury "arises primarily out of and in the course and scope of employment" only if it has been shown by a preponderance of the evidence that the employment contributed more than fifty percent (50%) in causing the injury, considering all causes;
> >
> > (C) An injury causes death, disablement or the need for medical treatment only if it has been shown to a reasonable degree of medical certainty that it contributed more than fifty percent (50%) in causing the death, disablement or need for medical treatment, considering all causes;
> >
> > (D) "Shown to a reasonable degree of medical certainty" means that, in the opinion of the physician, it is more likely than not considering all causes, as opposed to speculation or possibility;
> >
> > (E) The opinion of the treating physician, selected by the employee from the employer's designated panel of physicians pursuant to § 50-6-204(a)(3), shall be presumed correct on the issue of causation but this presumption shall be rebuttable by a preponderance of the evidence.

Tenn. Code Ann. § 50-6-102(14) (2018 Supp.). Consequently, Employee was required to prove by a preponderance of the evidence that the aggravation of the pre-existing condition at the C5-6 level of his cervical spine, and the related medical treatment and permanent impairment, arose primarily out of and in the course of his employment with Employer. In other words, he was required to prove by a preponderance of the evidence that his employment with Employer contributed more than fifty percent (50%) in causing the aggravation of the condition at the C5-6 level. Meeting this burden required Employee to overcome the statutory presumption afforded the causation opinion of his treating physician, Dr. Kauffman. Consequently, the trial court was required to weigh the testimony of Dr. Kauffman against that of Dr. Neely, as well as to consider the lay testimony of Employee and the other evidence before the court.

When, as here, there is conflicting expert medical testimony, the trial judge must choose which testimony to accredit. Cloyd v. Hartco Flooring Co., 274 S.W.3d 638, 644 (Tenn. 2008). Among the factors for the court to consider in making such a determination are "the qualifications of the experts, the circumstances of their examination, the information available to them, and the evaluation of the importance of that information by other experts." Orman v. Williams Sonoma, Inc., 803 S.W.2d 672, 676 (Tenn. 1991). In this case, the trial court applied these factors and, considering the totality of the testimony and evidence presented, found that Dr. Neely's causation opinion was more persuasive and that it was sufficient to rebut the presumption afforded the causation opinion of Dr. Kauffman.

Contrary to the majority of the Board, we agree with the trial court and conclude that the evidence does not preponderate against the trial court's determination, giving due deference to the trial court's evaluation of the live testimony of Employee and of Dr. Neely. In this regard, we find the assessment of the testimony and evidence by the Board's dissenting judge persuasive. As the dissent explained in pertinent part:

> First, there was no evidence suggesting that Employee had any prior injuries to his neck. Moreover, there was no proof Employee had experienced any prior symptoms related to his neck or right upper extremity or that he had sought medical treatment for his neck or right upper extremity prior to the work accident.
>
> Second, it was undisputed that Employee suffered a compensable injury to his cervical spine when he was lifting mail bags at work. Employer accepted the compensability of the left-sided herniated disc at C6-7.
>
> Third, Employee offered unrefuted testimony that the numbness and tingling he experienced in his right hand occurred immediately following the work accident, but was overshadowed by the symptoms around his left shoulder.
>
> Fourth, medical records introduced during trial corroborated Employee's testimony. In Dr. Malcolm Baxter's March 9, 2016 report, he noted Employee "initially had pain and numbness in both arms from the neck." In a note from Middle Tennessee Occupational and Environmental Medicine dated March 25, 2016, the provider noted Employee suffered from pain in both arms, left greater than right.

> Fifth, Dr. Neely testified that Employee's explanation of the development of his symptoms, and his initial complaints of numbness and tingling in both upper extremities, supported Dr. Neely's opinion that "both of these injuries at C5-6 and C6-7 stem from the workplace injury." With respect to the employee's degenerative condition at the C5-6 level, Dr. Neely explained, "he had neck trouble but it was subclinical and it did not produce pain and did not produce any limitation." After the work accident, it "became clinical." Dr. Neely further testified that he "had a hard time separating the two [conditions] from a patient [who] had no symptoms to a patient [who] had bilateral symptoms after this injury." Finally, Dr. Neely concluded Employee suffered a "large central and right-sided disc rupture and . . . a spondylitic level [at C5-6] of his spine." He then concluded, "I think they're related to the injury."

Joiner v. United Parcel Service, Inc., et al., No. 2017-06-0343, 2018 WL 4495457 at *10 (Tenn. Workers' Comp. App. Bd. Sept. 14, 2018) (Conner, J., concurring in part and dissenting in part). We further find persuasive and adopt the analysis of the dissent:

> We have previously concluded that "a physician may render an opinion that meets the legal standard espoused in section 50-6-102(14) without couching the opinion in a rigid recitation of the statutory definition." Panzarella v. Amazon.com, Inc., No. 2015-01-0383, 2017 TN Wrk. Comp. App. Bd. LEXIS 30, at *14 (Tenn. Workers' Comp. App. Bd. May 15, 2017). "What is necessary," we continued, "is sufficient proof from which the trial court can conclude that the statutory requirements of an injury as defined in section 50-6-102(14) are satisfied." *Id.*
>
> In the present case, Dr. Neely's arguably strongest statement was that both conditions "stem from" the workplace injury. Merriam Webster defines "stem from" as "to be caused by." Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/stem from (last visited September 11, 2018). In the absence of any evidence of another cause of the symptoms Employee experienced in his right upper extremity immediately following the accident, we conclude that a fair reading of Dr. Neely's statements, when considered in the context of his testimony as a whole, was that the C5-6 symptoms and resulting disability arose primarily from the workplace accident.
>
> Moreover, although we acknowledge that any of the factors noted above, standing alone, likely would not meet the legal standard espoused in Tennessee Code Annotated section 50-6-102(14), we conclude [that] the totality of the evidence presented to the trial court was sufficient to support

> the trial court's determination, and the preponderance of the evidence does not overcome the presumption of correctness to which the trial court's decision was entitled.

Joiner, 2018 WL 449547, at *10-11 (Conner, J., concurring in part and dissenting in part).

Conclusion

Based on the foregoing analysis, we reverse the decision of the Workers' Compensation Appeals Board and reinstate the judgment of the Court of Workers' Compensation Claims. Costs are taxed to United Parcel Service, Inc. and Liberty Mutual Insurance Company, for which execution may issue if necessary.

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AMY V. HOLLARS, SPECIAL JUDGE