

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

August 27, 2012 Session

**ANTHONY N. JORDAN v.
WHIRLPOOL/JACKSON DISHWASHING PRODUCTS**

**Appeal from the Chancery Court for Madison County
No. 67391 James F. Butler, Chancellor**

No. W2011-02689-SC-WCM-WC - Mailed October 31, 2012; Filed January 10, 2013

An employee alleged an injury to his shoulder caused by repetitive work activity. His employer denied the employee's workers' compensation claim because the initial report of the injury and early medical records described only injuries to the employee's hand and wrist. The trial court found that the shoulder injury was compensable and awarded workers' compensation benefits. The employer appealed, arguing that the evidence preponderates against the trial court's findings on the issues of causation and notice. After reviewing the record and considering the employer's arguments, we affirm the judgment of the trial court.

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

DONALD E. PARISH, SP. J, delivered the opinion of the Court, in which JANICE M. HOLDER, J. and TONY A. CHILDRESS, SP. J., joined.

P. Allen Phillips, Jackson, Tennessee, for the appellant, Whirlpool/Jackson Dishwashing Products.

Floyd S. Flippin and Terri Crider, Humboldt, Tennessee, for the appellee, Anthony Jordan.

MEMORANDUM OPINION

Factual and Procedural Background

Anthony Jordan was an assembly line worker for Whirlpool/Jackson Dishwashing Products (“Whirlpool”) from 2004 until the closure of the facility in August 2009. Mr. Jordan worked primarily in the “sunrise” area, where his job consisted of physically moving dishwasher tubs and attaching parts to the tubs with torque guns and air guns. His job required frequent overhead reaching, and in early 2008, he developed pain in his hands and wrists. These symptoms did not arise on a specific date and were not associated with a particular incident. Mr. Jordan reported his condition to the human resources department, which provided him with a panel of physicians. He selected Dr. Michael Cobb, an orthopaedic surgeon.

Mr. Jordan first saw Dr. Cobb on June 18, 2008. At that time, he told Dr. Cobb that he had pain and tingling in both hands, the left worse than the right, as well as pain in his wrists. Dr. Cobb’s clinical examination of Mr. Jordan was normal. Dr. Cobb ordered a nerve conduction study to rule out carpal tunnel syndrome. The result of the test was normal. Mr. Jordan received no treatment and was permitted to return to work with no restrictions. Mr. Jordan had no shoulder symptoms in 2008 and therefore did not report any symptoms to Dr. Cobb.

Mr. Jordan returned to work for Whirlpool at his pre-injury position. He continued to have problems with his hands and wrists and his symptoms worsened over time. In addition to the pain in his hands and wrists, Mr. Jordan began to have pain in his left shoulder. In June 2009, Mr. Jordan informed James Smith, Whirlpool’s health and safety manager, that he was experiencing pain in his shoulder. Mr. Jordan asked if he could choose another doctor on the panel. Mr. Smith told him that he would have to return to Dr. Cobb.

Mr. Jordan returned to Dr. Cobb on June 22, 2009, and told Dr. Cobb that his symptoms had spread to his left shoulder. According to Dr. Cobb, however, Mr. Jordan never mentioned any shoulder problems during his examination. Dr. Cobb’s notes concerning the June 22, 2009 visit do not include any reference to Mr. Jordan’s shoulder. Dr. Cobb ordered a second nerve conduction study, and the result of that test was normal. Dr. Cobb released Mr. Jordan to work with no treatment.

Mr. Jordan remained employed by Whirlpool until the facility closed in August 2009. Mr. Jordan continued to have symptoms in his arms and shoulder and eventually sought treatment from his primary care physician. He was referred to additional physicians for testing and ultimately came under the care of Dr. Keith Nord, an orthopaedic surgeon.

Dr. Nord examined Mr. Jordan on November 2, 2009. At that time, Mr. Jordan complained of pain in his shoulder that radiated into his neck. Mr. Jordan told Dr. Nord that he began experiencing pain in his hands and wrists while he was working for Whirlpool and that the pain gradually spread to his shoulder. Mr. Jordan experienced

pain in his shoulder for several months before he saw Dr. Nord. After examining Mr. Jordan and reviewing other medical records, including an MRI scan of his left shoulder, Dr. Nord determined that Mr. Jordan had impingement syndrome and a torn labrum in his left shoulder. Conservative treatment did not alleviate Mr. Jordan's symptoms, and Dr. Nord performed a surgical procedure to decompress the impinged area and repair the labrum on February 13, 2010. Mr. Jordan did well after surgery. Dr. Nord released Mr. Jordan on August 16, 2010, and assigned 2% permanent anatomical impairment to the body as a whole. Dr. Nord further stated that labral tears sometimes cause pain to radiate down the arm and that symptoms similar to those of carpal tunnel syndrome are sometimes caused by shoulder or neck injuries. Based on Mr. Jordan's history, Dr. Nord opined that Mr. Jordan's shoulder injuries were caused by his work for Whirlpool.

After his surgery, Mr. Jordan sought workers' compensation benefits from Whirlpool, and the parties engaged in a benefit review conference. The parties reached an impasse, and Mr. Jordan filed a complaint for workers' compensation benefits in the Chancery Court for Madison County.

Dr. Samuel Chung, a physiatrist, examined Mr. Jordan on July 20, 2010, and testified by deposition at trial. Dr. Chung observed that Mr. Jordan had a slightly diminished range of motion. He opined that Mr. Jordan's shoulder injuries were caused by his work for Whirlpool. Dr. Chung assigned 4% anatomical impairment to the body as a whole and recommended that Mr. Jordan avoid working with his arms in an overhead or in an outstretched position and that he avoid work involving repetitive flexion, extension, or rotation of his left shoulder. Like Dr. Nord, Dr. Chung testified that labral tears could sometimes cause symptoms in the hands and wrists. During cross-examination, Dr. Chung agreed that his opinion concerning causation would be different if Mr. Jordan's symptoms began after he stopped working for Whirlpool.

Mr. Jordan was thirty-nine years old at the time of trial. He was a high school graduate but had no additional education or specialized training. Prior to being hired by Whirlpool in 2004, Mr. Jordan worked primarily in manufacturing as an inspector, repairman, packer, and assembler. After being laid off by Whirlpool, he obtained employment as an inspector for Carlisle Wheel and Tire, a manufacturer of small tires for agricultural equipment. Mr. Jordan considered this job to be less demanding than his work for Whirlpool. Mr. Jordan testified that he is occasionally awakened by left shoulder pain and that he avoids activities that require extensive use of his shoulder.

The trial court took the case under advisement and issued its decision in the form

of a letter to counsel. The trial court found that Mr. Jordan had given appropriate notice of the injury to Whirlpool, as required by Tennessee Code Annotated section 50-6-201 (2008). Based on the testimony of Dr. Nord and Dr. Chung, the trial court found that Mr. Jordan had sustained a compensable injury to his shoulder and adopted Dr. Chung's impairment rating of 4% to the body as a whole. The trial court entered a judgment awarding Mr. Jordan 16% permanent partial disability benefits. Whirlpool has appealed, contending that the evidence preponderates against the trial court's findings on the issues of causation and notice. This appeal has been referred to a Special Workers' Compensation Panel for a hearing and a report of findings of fact and conclusions of law. See Tenn. Sup. Ct. R. 51, § 1.

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 finding, unless the preponderance of evidence is otherwise." Tenn. Code Ann. § 50-6-225(e)(2) (2008). When credibility and weight to be given testimony are involved, considerable deference is given the trial court when the trial judge had the opportunity to observe the witness's demeanor and to hear in-court testimony. Madden v. Holland Grp. 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 on the record with no presumption of correctness. Seiber v. Reeves Logging, 284 S.W.3d 294, 298 (Tenn. 2009).

Analysis

Causation

Whirlpool's first contention is that the trial court erred by finding that Mr. Jordan suffered a compensable injury to his left shoulder. Whirlpool points to Mr. Jordan's testimony that he did not have left shoulder symptoms when he first reported his injury to Whirlpool's human resources department on May 29, 2008. It notes that Dr. Cobb's June 29, 2009 note contains no reference to any shoulder complaints and that Mr. Smith, Whirlpool's safety director, testified that he would have filed a new injury claim if Mr. Jordan had reported shoulder symptoms in 2009. Further, Whirlpool asserts that Mr.

Jordan's description of his job duties was quite general and was therefore of limited value as a basis for medical opinions concerning causation.

The proof of the causal connection in a workers' compensation case may not be speculative, conjectural, or uncertain. Clark v. Nashville Mach. Elevator Co., Inc., 129 S.W. 3d 42, 47 (Tenn. 2004); Simpson v. H.D. Lee Co., 793 S.W.2d 929, 931 (Tenn. 1990); Tindall v. Waring Park Ass'n, 725 S.W.2d 935, 937 (Tenn. 1987). Absolute certainty with respect to causation is not required, and the courts recognize that, in many cases, expert opinions in this area contain an element of uncertainty and speculation. Fritts v. Safety Nat'l Cas. Corp., 163 S.W.3d 673, 678 (Tenn. 2005). Any reasonable doubt as to whether an injury arose out of employment should be resolved in favor of the employee. Phillips v. A & H Constr. Co., 134 S.W.3d 145, 150 (Tenn. 2004).

In this case, two doctors testified that the injuries ultimately diagnosed by Dr. Nord were consistent with use of the arms in an overhead or outstretched position. Mr. Jordan testified that his job included frequent overhead reaching. There is no evidence in this record that contradicts Mr. Jordan's description of his job or the opinions of Dr. Nord and Dr. Chung as to the causation of Mr. Jordan's left shoulder injury. Absolute certainty as to causation is not required, and Mr. Jordan presented two experts who testified that his shoulder injury was caused by his employment. We cannot conclude that the evidence preponderates against the trial court's finding that Mr. Jordan's injury was caused by his employment.

Notice

Whirlpool also argues that the trial court erred by finding that Mr. Jordan gave timely notice of his injury as required by Tennessee Code Annotated section 50-6-201. Whirlpool asserts that Mr. Jordan did not advise Mr. Smith that his symptoms had spread to his left shoulder by June 2009. This assertion is based upon Mr. Smith's testimony that he would have initiated a new claim if Mr. Jordan had informed him of symptoms in his shoulder and the absence of any reference to shoulder symptoms in Dr. Cobb's June 22, 2009 note. Mr. Jordan, however, testified that he told both Mr. Smith and Dr. Cobb about his symptoms in his left shoulder, and the trial court found him to be a credible witness in that regard.

We find it noteworthy that a correct diagnosis was not made until November 2009, three months after Whirlpool's plant was closed. At this time, Mr. Jordan had already been released by Dr. Cobb without recommendation for further treatment. Our Supreme

Court addressed a similar situation in Quaker Oats Co. v. Smith, 574 S.W.2d 45 (Tenn. 1978) and concluded that there is no requirement that an employee give notice of each of several injuries received in an on-the-job accident. An employee is in compliance with the statutory notice requirement if he notifies his employer that an accident occurred and that he has suffered an injury. Quaker Oats Co., 574 S.W.2d at 48. The nature and extent of the employee's injuries, along with the issue of medical causation, usually come to light in the course of treating those injuries. Quaker Oats Co., 574 S.W.2d at 48. In our view, the same reasoning applies in this case. The trial court correctly found that the notice provided by Mr. Jordan in May 2008 and June 2009 satisfied the statutory requirement.

Conclusion

The judgment of the trial court is affirmed. Costs are assessed against Whirlpool/Jackson Dishwashing Products and its surety, for which execution may issue if necessary.

DONALD E. PARISH, JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

**ANTHONY M. JORDAN v. WHIRLPOOL/JACKSON DISHWASHING
PRODUCTS**

**Chancery Court for Madison County
No. 67391**

No. W2011-02689-SC-WCM-WC - Filed January 10, 2013

JUDGMENT ORDER

This case is before the Court upon the motion for review filed by Whirlpool/Jackson Dishwashing Products pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(A)(ii), 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.

It appears to the Court that the motion for review is not well-taken and is therefore denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to Whirlpool/Jackson Dishwashing Products and its surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

JANICE M. HOLDER, J., NOT PARTICIPATING