IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
JANUARY 27, 2015 Session

SUZANNE KING v. GREENE COUNTY SCHOOL SYSTEM

Appeal from the Greene County Circuit Court
No. 11CV580TJW Thomas Wright, Judge

No. E2014-00484-SC-R3-WC-MAILED-MARCH 13, 2015
FILED-APRIL 14, 2015

An employee injured her back in a fall while working for her employer. The trial court assessed an 8% impairment to the body as a whole and awarded permanent partial disability benefits. The employer appealed,[1] arguing that the employee failed to prove causation and that the trial court erred in obligating the employer to pay unauthorized medical expenses. After our review of the record, we affirm the trial court's judgment.

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

D. KELLY THOMAS, JR., J., delivered the opinion of the Court, in which GARY R. WADE, J., joined. THOMAS R. FRIERSON, II, J., not participating.

Roger A. Woolsey, Greeneville, Tennessee, for the appellant, Greene County School System.

Ben W. Hooper, III, Newport, Tennessee, for the appellee, Suzanne King.

OPINION

[1]Pursuant to Tennessee Supreme Court Rule 51, this workers' compensation 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.

Factual and Procedural Background

Suzanne King was employed by the Greene County School System as a teacher at the Chuckey-Doak Middle School. On September 2, 2008, Ms. King suffered an injury when she tripped over school books placed in the aisle beside a student's desk and fell onto the concrete floor. Ms. King immediately felt pain in her right knee and hip and a burning sensation in her back. When the pain did not immediately subside, Ms. King reported her injury to the school secretary. Ms. King's husband transported her to Greeneville Urgent Care ("GUC").

Ms. King was initially treated at GUC by Dr. Donald Aspley. The x-rays of Ms. King's knee and hip revealed no fracture or dislocation. Ms. King returned to work two days after her fall but she continued to experience pain. Approximately one month later, she returned to GUC complaining of low back pain. Dr. Berry of GUC noted residual pain across her lower back radiating into the right hip area, and he continued conservative treatment including physical activity and over-the-counter medication. Ms. King's pain, however, continued into 2009 when she reported to Dr. Berry the resumption of sharp, intense low back pain radiating into her right hip and slightly down her leg and anterior thigh just above the knee. Dr. Berry ordered an MRI that was performed on March 10, 2009, and referred Ms. King to Dr. Paul Jett, a physical medicine and rehabilitation specialist.

Ms. King saw Dr. Jett on April 27, 2009, with complaints of aching, sharp and dull pain in her right lower back. Based on his examination and review of the March 10 MRI, Dr. Jett's assessment was "work related back injury and right knee contusion with residual right sacroiliac (SI) dysfunction." Dr. Jett recommended an SI injection and additional therapy. Due to her dissatisfaction with Dr. Jett's office, however, Ms. King declined the injection and returned to Dr. Berry.

Dr. Berry next referred Ms. King to Dr. Richard Duncan, an orthopedic surgeon. On July 15, 2009, Dr. Duncan obtained Ms. King's history and performed a physical examination. Other than the March 10 MRI, Dr. Duncan did not review prior treatment records. Dr. Duncan's findings from his physical examination were described as normal. He noted degenerative changes in Ms. King's lumbar spine but concluded that she was not a candidate for surgery. Dr. Duncan recommended that Ms. King stay active. Ms. King saw Dr. Duncan a second and final time on September 8, 2009. According to Dr. Duncan, Ms. King reported right buttock pain but no radicular leg pain. Dr. Duncan found 0% impairment and released Ms. King to work without restrictions. Recognizing that right buttock pain could originate in the SI joint, Dr. Duncan referred Ms. King to his partner Dr. Mark McQuain for an SI joint injection.

On October 12, 2009, Dr. McQuain performed the right SI injection and subsequently saw Ms. King on November 17, 2009. Dr. McQuain noted that the injection provided temporary relief but that Ms. King's pain never left completely. Dr. McQuain also noted that Ms. King reported "discomfort along the right SI joint that seems to radiate around to the groin." Dr. McQuain referred Ms. King to Kim Countryman at Blue Ridge Physical Therapy for a program focused on the SI joint. Ms. Countryman's note to Dr. McQuain documented Ms. King's complaint of "intense pain in her right low back/gluteal region that started when she fell at work in September 2008." She also recorded objective findings of moderate muscle spasms.

Ms. King returned to Dr. Berry, who next referred her to Dr. Frederick W. Terry, a physiatrist. At the time of her first visit on March 23, 2010, Dr. Terry noted Ms. King's complaints of burning-type pain in her right gluteal area and lateral hip. A pain questionnaire completed by Ms. King indicated that she was experiencing severe aching and burning pain in her low back, hip, and right thigh. Dr. Terry reviewed the March 2009 MRI and observed degenerative disc disease but he saw no indication of a disc protrusion. Dr. Terry administered a facet block injection which provided only temporary relief. At the April 20, 2010 follow-up visit, Ms. King continued to report buttock pain, however, Dr. Terry was unable to identify the source of the pain. He found her history consistent with SI joint pain and dysfunction. Dr. Terry determined that he did not have anything to offer Ms. King and released her by letter dated May 4, 2010. Dr. Terry indicated that Ms. King was at maximum medical improvement and sustained no permanent partial impairment as a result of the September 2008 work-related fall.

Ms. King subsequently asked her case manager to provide the name of a chiropractor. She was told, however, that Greene County is not required to include chiropractors in the panel. Believing she was left without a treating physician, Ms. King sought alternative treatment from Dr. William Frost, a chiropractor, and contacted the Department of Labor. Dr. Frost referred Ms. King for another MRI in July 2010 which confirmed a disc bulge at L4-L5 with no evidence of nerve root compression. Ms. King's counsel provided the results of the new MRI to the workers' compensation insurance adjuster and requested a physician panel for further treatment. The request, however, was denied. Dr. Frost referred Ms. King to Dr. David Wiles, a neurosurgeon with East Tennessee Brain and Spine.

At East Tennessee Brain and Spine, Ms. King discussed her pain history, her treatment with Dr. Duncan, the 2009 MRI, and the injections. She explained that her pain traveled into her right buttocks and hamstring but did not typically go below her knee. Dr. Wiles characterized the pain as "radicular type." Dr. Wiles reviewed the July 2010 MRI and found age-related degenerative changes in Ms. King's lumbar spine. An electromyography (EMG) performed on October 5, 2010, confirmed an L-5 radiculopathy

and an objective finding of nerve root irritation. Dr. Wiles connected Ms. King's radiculopathy to her fall at work. On November 4, 2010, Dr. Wiles performed surgery and removed a disc herniation at the L4-5 level which was consistent with Ms. King's symptoms. Subsequently, Ms. King reported to Dr. Wiles that she was experiencing sharp "electric shock" type pains. When an MRI revealed a recurrent disc herniation, Dr. Wiles performed a second surgery on January 6, 2011, to remove the fragments. Dr. Wiles opined that Ms. King reached maximum medical improvement on July 18, 2011. He recommended permanent restrictions against repetitive bending and twisting and placed a twenty-pound weight/lifting restriction. Dr. Wiles assigned Ms. King an 8% impairment to the body as a whole.

After an unsuccessful Benefit Review Conference on October 27, 2011, Ms. King filed her worker's compensation complaint. The trial was held on February 5, 2013, at which the trial court heard the live testimony of Ms. King and Jackie Brewer Turner, the adjuster. The court also reviewed the deposition testimony of Drs. David Wiles, Frederick Wayne Terry, and Richard W. Duncan.

Ms. King testified that she was fifty-one-years old at the time of trial. She received her bachelor's degree from Tusculum College, a master's degree from East Tennessee State University, and an educational specialist degree from Lincoln Memorial University. Ms. King began teaching in the Greene County school system in 1984 and had worked at the Chuckey-Doak Middle School for the past twenty years. Prior to teaching, Ms. King worked briefly at Hurd Lock and was also a car salesperson and hairdresser.

When asked about her fall in the classroom, Ms. King explained that a student had placed his school books in the aisle because the basket beneath his desk was broken. Ms. King said she was walking toward the front of the class when she tripped over the books and went "sailing forward" onto the concrete floor. Her right knee and hip took the brunt of the fall, but Ms. King also felt "terribl[e]" burning in her back. After class was dismissed, Ms. King sat for ten to fifteen minutes until she tried to get up to go upstairs to speak with the school secretary. Because she could not move without pain, Ms. King used her cell phone to report the incident to the secretary. According to Ms. King, the secretary offered to call an ambulance to transport her to GUC, but Ms. King chose to ride with her husband.

At GUC, Ms. King saw Dr. Aspley and Dr. Bruce Berry. She returned to school a few days later and began experiencing pain. She explained that the pain was in her hip area, down her buttocks, and radiating to her knee. She also began to have spasms in her back. Ms. King continued her visits with Dr. Berry until early 2009 with complaints of "basically the same [pain]." She described the pain as "radiating down [her] leg . . . to

[her] knee" then around to her buttocks and back hip. Dr. Berry ordered an MRI in March 2009.

Ms. King said that Dr. Berry first referred her to Dr. Jett in Morristown, Tennessee. Dr. Jett opined that the problem was Ms. King's SI joint and planned an injection. Ms. King said she was uncomfortable allowing Dr. Jett to inject her because she found his office to be unclean. Ms. King was next referred to Dr. Duncan at Watauga Orthopedics, who referred her to his partner, Dr. McQuain. Dr. McQuain advised her that the problem was her SI joint and gave her an injection in her back. Ms. King said the pains eased for about ten days but came back. She then received some physical therapy but with little benefit. Ms. King returned to Dr. Berry at GUC. Dr. Berry made another referral to Dr. Terry, a physiatrist. Dr. Terry gave her a facet injection which again provided only temporary relief. During a follow-up visit with Dr. Terry, Ms. King described an incident during which Dr. Terry got on the table and pushed down very hard on her hips. Ms. King said that the encounter bruised her and resulted in a trip to the emergency room the next day. In the next visit, Dr. Terry ordered a pelvic x-ray, however, he released Ms. King shortly thereafter by a letter indicating that he had nothing else to offer her.

Ms. King explained that she did not have an authorized treating doctor at that point and was offered no options. She went to Dr. William Frost, a Greeneville chiropractor, because she did not know what else to do. Ms. King said she also contacted the Department of Labor.

Ms. King said that Dr. Frost referred her to Dr. Wiles. After obtaining her history and conducting his own tests, including an EMG, Dr. Wiles determined that she had a herniated disc and recommended surgery. Ms. King said that she had the initial surgery and returned to work approximately two weeks later. She returned to Dr. Wiles after feeling what she described as an "electric shock" when she moved. Dr. Wiles discovered disc fragments and performed a second surgery. Ms. King said she returned to work two weeks later with steroid treatment. In her follow up with Dr. Wiles, Ms. King noted that her pain level was much better with some residual pain.

She recalled the restrictions placed on her by Dr. Wiles and explained that she has pain when standing for long periods of time. She is careful to select heel size and has limited her shopping. Ms. King said she returned to the YMCA with an exercise regimen designed for her condition. She agreed that she is pleased overall with the outcome of her surgical treatment. She testified that Dr. Wiles' treatment was paid through her health insurance.

Jackie Brewer Turner testified that during the relevant period she worked as an

adjuster for Tri-State Claims. During her employment, she handled workers' compensation claims for Greene County and specifically handled Ms. King's claim. Ms. Turner explained that she made sure Ms. King had an authorized treating physician and she coordinated subsequent treatment or referrals. She said that Ms. King also had a nurse case manager—a registered nurse assigned to speak with the claimant about medical issues and coordinate treatment.

Ms. Turner said that Ms. King was provided a panel of doctors. Ms. King initially saw Dr. Aspley but was treated primarily at GUC by Dr. Berry. Dr. Berry first referred Ms. King to Dr. Jett, a spinal specialist. Ms. Turner was aware, however, that Ms. King had issues with the cleanliness of Dr. Jett's office and did not want to have an injection at that office. Ms. King was next referred to Dr. Duncan, who was also on the panel. She recalled that Dr. McQuain in Dr. Duncan's office did an injection. Ms. Turner said that Dr. Duncan did not feel Ms. King was a surgical candidate and released her. As a result, Ms. King returned to Dr. Berry. Because of continued pain, Ms. King was referred to Dr. Terry. Ms. Turner recalled that Dr. Terry's findings were consistent with Dr. Duncan and that "they all more or less said the same thing, the SI joint dysfunction and the degenerative disc." Ms. Turner was also aware that Dr. Terry had informed Ms. King that he had nothing else to offer her regarding this injury.

Ms. Turner had a discussion with Ms. King that both Drs. Duncan and Terry had released her without impairment or restrictions. She said that Ms. King nonetheless requested a chiropractor, which she denied. Ms. Turner said that following a conversation with Dr. Terry, she did not believe that the Greene County Board of Education had any further obligation for the 2008 injury.

On cross-examination, Ms. Turner explained that when Dr. Berry referred Ms. King to Dr. Terry, Dr. Berry ceased being the authorized treating physician. She admitted that once Dr. Terry released Ms. King on May 3, 2010, she no longer had an authorized treating physician unless Dr. Terry determined that subsequent treatment related to her injury. Ms. Turner also conceded that Ms. King tried to schedule an appointment with Dr. Terry but was told by Dr. Terry that he "was done" and "had nothing else to offer her." Ms. Turner acknowledged that Ms. King's initial counsel showed her a July 2010 MRI. She said that she took the MRI to the treating doctor who responded, "No, I don't need to see her." Ms. Turner added that Dr. Terry did not feel that the disc issue was related to Ms. King's injury.

The employee presented the deposition testimony of Dr. David Wiles. Dr. Wiles testified that he is a board-certified neurosurgeon with a private practice in Johnson City, Tennessee. His office first saw Ms. King on September 21, 2010. Ms. King reported that in 2008 she tripped over a desk at school and landed on her knee, awkwardly jarring

her back. Ms. King described her pain as traveling into the right buttock and hamstring but not typically extending below her knee. She indicated to Dr. Wiles that the pain has been persistent since the time of her fall.

Dr. Wiles recalled that Ms. King had some physical therapy and multiple injections that offered only temporary relief. He was also aware that she had been evaluated previously by Dr. Duncan, who felt surgery was unnecessary, and had been seen most recently by a chiropractor.

During the initial visit, the physical examination of Ms. King revealed that she had tenderness over the right L5 facet region and the right SI joint. Ms. King had "some limited range of motion and flexion of her back, secondary pain." He recalled that the straight leg raise was positive on the right at fifty degrees which was "most indicative of irritation from a herniated disc." Dr. Wiles reviewed the July 2010 MRI and noted the degenerative changes at the lower three levels of Ms. King's back. He surmised at that juncture that Ms. King had some chronic SI joint dysfunction on the right with sciatic pain syndrome. He also felt that Ms. King could have right L5 nerve root irritation causing the pain in her buttock and posterior thigh. As a result, he ordered an EMG, which he described as a nerve conduction test, and confirmed an L5 nerve root irritation.

Dr. Wiles opined that the L5 radiculopathy was related to Ms. King's fall at school. Dr. Wiles explained that, because of the long-standing symptoms and the failed extensive conservative treatment, he recommended surgery to decompress the nerve at the L4/5 level on the right side. Accordingly, Dr. Wiles performed surgery on November 4, 2010.

The surgery confirmed that Ms. King not only had arthritic change in the joints but she in fact had a soft disc herniation at the L4/5 level that was removed. When Dr. Wiles saw Ms. King again on November 24, 2010, she was doing well. Subsequently, Ms. King reported increasing right-sided pain in her back traveling again into the upper right buttock and hamstring. When an MRI scan revealed a small recurrent disc herniation at the right L4/5, Dr. Wiles performed a second surgery to remove that fragment. In follow up visits, Ms. King noted some improvement with continuous right-sided back pain. By July 18, 2011, Ms. King still had some back pain which she described as a four out of ten.

Dr. Wiles placed Ms. King at maximum medical improvement. Pursuant to the AMA Guidelines 6th Edition, he assigned an 8% impairment of the whole body. He added that the impairment is attributable to the September 2008 injury at school. He advised Ms. King to avoid repetitive twisting and bending and lifting more than twenty pounds.

Dr. Wiles said that Ms. King had a final EMG with Dr. Paul Chang on July 25,

2011, which revealed no abnormality. An October 5, 2011 MRI revealed a little post-operative scar as expected and the degeneration at the lower three levels but no evidence of recurrent disc herniation.

On cross-examination, Dr. Wiles indicated that he had not reviewed the medical records from Drs. Duncan, McQuain, Jett, or Terry. He acknowledged his awareness of a prior MRI but had not reviewed the actual film. After reviewing the medical records during the deposition, Dr. Wiles noticed that Dr. Duncan's notes lacked details of Ms. King's pain and its pattern. He indicated that Dr. Terry provided a little more detail, indicating that the pain started on September 2, 2008, and that the pain was in Ms. King's back, right buttock, and right lateral hip. The notes also referenced seeing Dr. Jett, Dr. McQuain, and Dr. Duncan. Dr. Wiles said that an MRI is probably the best single test available, but he agreed that an MRI does not show everything, including facet pain.

On re-direct, Dr. Wiles agreed that Ms. King had preexisting degenerative disc disease. He said that "[s]he had an injury to the disc through which a herniation occurred." He again agreed that an MRI can fail to disclose a herniated disc. Finally, Dr. Wiles opined that Dr. Terry's notes reflect the same distribution of pain symptoms that she had when she first came to his office.

The employer presented the deposition testimony of Dr. Richard W. Duncan. Dr. Duncan testified that he is a board certified orthopaedic surgeon in Johnson City, Tennessee. Dr. Duncan first saw Ms. King on July 15, 2009. Ms. King related to Dr. Duncan that she was injured in a fall at the school in September 2008 and was having pain from that injury. Dr. Duncan recalled that Ms. King had physical therapy and a Transcutaneous Electrical Nerve Stimulation unit which provided only temporary relief.

Dr. Duncan performed a physical examination of Mr. King. He noted no tenderness in her back, no muscle spasm, and a normal gait. Her nerve strength, as far as sensation and reflexes, was normal. Dr. Duncan also reviewed the March 10, 2009 MRI showing disc degeneration in the L3-4, L4-5, and L5-S1 discs. Dr. Duncan noted, however, Ms. King's subjective complaints of low back pain, which can be caused by disc degeneration. Dr. Duncan's records did not indicate that he had reviewed medical reports from any other doctor. Dr. Duncan said that surgery would not be helpful because she had no evidence of leg pain and no herniated disc pressing on the nerve corresponding with leg pain or radiculopathy. He told Ms. King that he could do nothing to help her. He encouraged her to remain active and to take anti-inflammatories as necessary. Dr. Duncan testified that a herniated disc can usually be seen on an MRI scan if it is there. He explained that a degenerative disc bulges a little but that a herniated disc is usually off to one side or the other pressing on a particular nerve. Dr. Duncan opined that Ms. King fell in the Class Zero, 0% permanent impairment to the body as a whole. He also

released her to return to work without restrictions.

On cross-examination, Dr. Duncan agreed that prior treatment records are beneficial. He reviewed the notes of his partner, Dr. Mark McQuain, who administered an SI joint injection due to right buttock pain. He said that the buttock pain could be referred from disc degeneration, the sacroiliac joint, or facet joints.

The employer also offered the deposition testimony of Dr. Frederick Wayne Terry. Dr. Terry testified that he is a board certified physiatrist, a speciality known for physical medicine and rehabilitation.

Ms. King came to him in March 2010 as a referral from Dr. Berry at GUC. Dr. Terry said that he had notes from Dr. Mark McQuain and Dr. Richard Duncan from Watauga Orthopaedics and Dr. Paul Jett in Morristown. Dr. Terry recalled that Dr. Duncan had nothing to offer Ms. King from a surgical standpoint and found no impairment. He was aware that Dr. McQuain or Dr. Jett had performed an SI joint injection. Dr. Terry said that Ms. King's chief complaint was right buttock or gluteal pain. According to Dr. Terry, Ms. King did not indicate that the pain went into the thigh or that she had back pain. He acknowledged, however, that Ms. King may have marked low back pain or perhaps hip pain on the intake forms. However, he noted that the other physicians had focused on the SI joint. Dr. Terry testified that SI joint pain typically results when someone falls onto the buttock directly, but he added that it was plausible that Ms. King suffered some SI joint dysfunction from the fall onto her right side. After his physical exam of Ms. King, Dr. Terry thought the pain may be suggestive of facet-type pain, which he described as "very small synovial joints along the spine." He recommended a facet joint injection.

Dr. Terry said he reviewed the March 2009 MRI and noted degenerative disc disease. He saw no evidence of disc protrusion or stenosis and no nerve root compaction. He acknowledged, however, that an MRI is not "fool proof by any means." Because he saw nothing to suggest that she had a radiculopathy, he did not recommend further studies to investigate it. Dr. Terry added that Ms. King's straight leg raise and slump test were negative. Dr. Terry also conducted "provocative maneuvers" designed to provoke pain. He found nothing, however, to suggest that Ms. King's SI joint was the source of her pain. A diagnostic facet block provided temporary relief but the pain continued. Dr. Terry referred Ms. King to Kim Countryman, a physical therapist in Johnson City, to try manual physical therapy, ultrasound, and core strengthening.

Dr. Terry testified that he received a call from an emergency room physician in Johnson City who reported to him that Ms. King was in their emergency room in "severe, agonizing pain" because of the physical exam Dr. Terry performed on her on April 20.

Dr. Terry said he did not feel he could do anything else for Ms. King and had nothing to offer her. He found no impairment and no objective basis for her complaints of pain.

After reading the depositions and hearing closing remarks from counsel, the trial court made its ruling on the record. At the outset, the trial court recognized that the issue was the causal relationship between the injury Dr. Wiles discovered and the 2008 work-related fall. The court accredited the testimony of Ms. King and Dr. Wiles. It found that Ms. King's complaints of pain had been consistent from the date of her injury until she was seen and treated by Dr. Wiles. The court noted that Dr. Wiles also found Ms. King's complaints to be consistent throughout the course of her two years of treatment since her fall at the school.

The trial court gave less weight to Drs. Duncan and Terry. The court discredited Dr. Duncan with regard to the ultimate issue because Dr. Duncan did not have all of the information eventually developed by Dr. Wiles, specifically noting that Dr. Duncan did not have the information from the other doctors. The court also noted that Dr. Duncan failed to note Ms. King's pain in her lower back and gluteal pain (and back spasms and decreased range of motion) even though the physical therapist Ms. Countryman noted the objective pains. The court also expressed its belief that Dr. Terry's ultimate opinion may have been affected to a certain extent by the information he was receiving from the workers' compensation carrier representative as to what he was going to end up deciding.

Based on the injury described and treated by Dr. Wiles, the trial court assigned an 8% anatomical impairment rating to the body as a whole. The court further noted that Ms. King is a fifty-one-year-old female with two advanced degrees and significant work in education. While recognizing other vocational skills, the trial court concluded that the only pertinent vocational background was education. The court indicated that the restrictions imposed by Dr. Wiles should not affect Ms. King's ability to work as a teacher or in the educational field. Based on relatively small impact on Ms. King's vocational ability, the trial court set her vocational impairment at 10%. The court found that the stipulated compensation rate was $591.79 per week for forty weeks for an award of $23,671.60 for permanent partial impairment.

Finally, the trial court considered whether the employer was liable for Ms. King's unauthorized medical expenses. The court specifically found that Dr. Wiles' services were reasonable and necessary for the work-related injury sustained by Ms. King. The court declined, however, to make the same finding as to Dr. Frost.

The employer's motion for a new trial or to alter or amend the judgment was denied. The employer appealed.

Standard of Review

The standard of review of issues of fact in a workers' compensation case 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) (2008 & Supp. 2013). 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' demeanor and to hear in-court testimony. 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

The employer argues that the 8% impairment rating is inconsistent with the injury Ms. King suffered in the 2008 fall. In other words, the employer contends that the employee failed to establish a causal connection between her fall and the injury ultimately treated by Dr. Wiles. Additionally, the employer maintains that the trial court erred in obligating the employer to pay the unapproved, unauthorized medical expenses stemming from Dr. Wiles' treatment.

Causation/Anatomical Impairment Rating

It is well settled that an employee seeking workers' compensation benefits must prove every element of her claim by a preponderance of the evidence. Vandall v. Aurora Healthcare, LLC, 401 S.W.3d 28, 32 (Tenn. 2013). For an injury to be compensable, the employee must prove that the injury arose out of the work and that it occurred in the course of employment. Padilla v. Twin City Fire Ins. Co., 324 S.W.3d 507, 511 (Tenn. 2010). Thus, the employee must prove that the injury has a causal connection with the work. Foreman, 272 S.W.3d at 572.

Except in the most obvious circumstances, causation must be established by expert medical evidence. Arias v. Duro Standard Prods, Co., 303 S.W.3d 256, 264 (Tenn. 2010). This expert evidence may be supported by relevant lay testimony. Excel Polymers, LLC v. Broyles, 302 S.W.3d 268, 274 (Tenn. 2009). Although causation

cannot rest on speculative or conjectural evidence, absolute medical certainty is not required. Clark v. Nashville Mach. Elevator Co., 129 S.W.3d 42, 47 (Tenn. 2004).

Upon review, the courts should resolve all reasonable doubts regarding the weight of the causation evidence in favor of the employee. Cloyd v. Hartco Flooring Co., 274 S.W.3d 638, 643 (Tenn. 2008). When the medical causation testimony is presented by deposition, the reviewing court may independently assess the evidence to determine where the preponderance of the evidence lies. Williamson v. Baptist Hosp. of Cocke Cnty., Inc., 361 S.W.3d 483, 487 (Tenn. 2012).

In the instant case, the employee presented the testimony of Dr. Wiles as well as her own testimony. Ms. King's complaints over the two-year period remained remarkably consistent. She described pain in her lower back, her right buttock, and her right posterior thigh, radiating as low as her knee. The pain began after her 2008 fall at school and continued with only intermittent relief throughout her course of treatment.

Dr. Wiles took Ms. King's history and reviewed the 2010 MRI. His initial findings were consistent with the previous treating physicians. As did Drs. Duncan and Terry, Dr. Wiles noted degenerative changes in Ms. King's lumbar spine and chronic SI joint dysfunction. Dr. Wiles was aware of the course of conservative treatment, including physical therapy and the SI and facet block injections. Because these measures had provided only temporary relief to Ms. King, Dr. Wiles investigated further. Dr. Wiles noted that Ms. King had "some limited range of motion and flexion of her back, secondary pain." He recalled that the straight leg raise was positive on the right at fifty degrees which was "most indicative of irritation from a herniated disc." Dr. Wiles was concerned that Ms. King could have right L5 nerve root irritation causing the pain in her buttock and posterior thigh. As a result, he ordered an EMG and confirmed an L5 nerve root irritation.

Dr. Wiles opined, to a reasonable degree of medical certainty, that the L5 radiculopathy was related to Ms. King's fall at school. Dr. Wiles explained that, because of the long-standing symptoms and the failed extensive conservative treatment, he recommended surgery to decompress the nerve at the L4-5 level on the right side. The surgery he performed on November 4, 2010, confirmed that Ms. King in fact had a soft disc herniation at the L4/5 level.

Dr. Duncan and Dr. Terry concluded that Ms. King had no impairment as a result of her injury at school. Although we are required to presume that the physicians chosen from the panel were correct as to the issue of causation, see Tenn. Code Ann. Section 50-6-102(13)(E) (2008 & Supp. 2013), the evidence presented by Ms. King was sufficient

to rebut that presumption. As summarized above, the trial court looked to the depth of Dr. Wiles's experience, the extent of his assessment of Ms. King, the additional measures he took to ascertain the root cause of Ms. King's pain, and the discoveries Dr. Wiles made during surgery. The trial court accredited the testimony of Ms. King and Dr. Wiles rather than that of Dr. Duncan and Dr. Terry. Having reviewed the testimony, we cannot conclude that the evidence preponderates against the trial court's findings.

Unauthorized Medical Expenses

The employer next argues that the trial court erred in obligating the employer to pay Ms. King's "unauthorized and unapproved" medical expenses. When an employee receives medical care for a work-related injury that has not been authorized by the employer, the employee must establish the necessity and reasonableness of the charges. Baggett v. Jay Garment Co., 826 S.W.2d 437, 439 (Tenn. 1992).

In the instant case, the "approved" medical expenses ended when Dr. Terry informed Ms. King that he had nothing left to offer her and assigned no impairment rating or restrictions. Because the workers' compensation adjuster considered the case completed, the employer refused to provide a new panel. Of course, Ms. King subsequently sought treatment from Dr. Frost and Dr. Wiles because of her continued pain. Ms. King's school insurance provider, Cigna, paid the medical expenses.

Again, the trial court accredited the testimony of Ms. King and Dr. Wiles and specifically found that the unauthorized charges of Dr. Wiles were reasonable and necessary for the treatment of Ms. King's work-related injury. Indeed, Ms. King was consistent in describing her pain from the time of her fall until surgery with Dr. Wiles. Dr. Wiles opined that Ms. King suffered the herniated disc as a result of her fall. Further, the surgery performed by Dr. Wiles confirmed that she had a herniated disc. Accordingly, the evidence does not preponderate against the trial court's determination that Dr. Wiles's medical expenses were reasonable and necessary and that the employer was responsible for those expenses. See also Moore v. The Town of Collierville, 124 S.W.3d 93 (Tenn. 2004) (holding that the health insurer was not required to intervene to recover medical expenses expended on the employee's behalf).

Conclusion

The judgment of the trial court is affirmed. Costs are taxed to the Greene County School System and its surety.

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D. KELLY THOMAS, JR., JUDGE

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
January 27, 2015 Session

SUZANNE KING v. GREENE COUNTY SCHOOL SYSTEM

Circuit Court for Greene County
No. 11CV580TJW

No. E2014-004840-SC-R3-WC

JUDGMENT

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation 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 jdugment of the Court.

Costs of this appeal are taxed to Greene County School System and its surety, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM

Thomas R. Frierson, II, J., not participating.