

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
April 20, 2015 Session

CHARLIE McRAE v. STATE OF TENNESSEE

Appeal from the Tennessee Claims Commission
No. 20070627041 Robert N. Hibbett, Commissioner

No. M2014-00709-SC-R3-WC – Mailed June 4, 2015
Filed July 10, 2015

A corrections officer for the Tennessee Department of Corrections (“TDOC”) was assaulted in the course and scope of his work by an inmate. His workers’ compensation claim for post-traumatic stress disorder (“PTSD”) was settled and approved. The next month, the employee resigned from TDOC and began working at a local county jail. Thereafter, he filed a petition for reconsideration of his settlement based on his resignation. The State contended that his resignation was voluntary and not related to his work injury. The Claims Commission ruled that his resignation was reasonably related to his work injury and awarded additional disability benefits. The State has appealed. Pursuant to Tennessee Supreme Court Rule 51, the appeal was referred to the Special Workers’ Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law. We affirm the judgment of the Claims Commission.

**Tenn. Code Ann. § 50-6-225(a) (2014) Appeal as of Right; Judgment of the Claims
Commission Affirmed**

SHARON G. LEE, C.J., delivered the opinion of the Court, in which DON R. ASH, SR. J., and DEBORAH C. STEVENS, SP. J., joined.

Robert E. Cooper, Jr., Attorney General and Reporter; Joseph F. Whalen, Acting Solicitor General; and Eric A. Fuller, Assistant Attorney General, for the appellant, State of Tennessee.

Rocky McElhaney and Landon P. Lackey, Nashville, Tennessee, for the appellee, Charlie McRae.

OPINION

Factual and Procedural Background

In November 2005, Charlie McRae (“Employee”) began working as a corrections officer for TDOC at the Charles Bass Correctional Complex (“Bass facility”). On June 12, 2007, Employee was assaulted by an inmate at the Bass facility, sustaining various physical injuries and PTSD, manifested by panic attacks, insomnia, profuse sweating, nausea, and vivid nightmares. Employee filed a workers’ compensation claim for his injuries arising from the 2007 assault. On April 21, 2011, the Claims Commission approved the settlement of Employee’s claim, awarding him a 26.25% permanent partial disability rating to his body as a whole, a monetary award of \$48,653.85, and the right to receive future medical care for his injuries.

In the fall of 2010, TDOC transferred Employee to the Lois M. DeBerry Special Needs Facility (“DeBerry facility”) where he continued to have fear, anxiety and more frequent nightmares. In October 2010, Employee was assaulted at the DeBerry facility by an inmate, aggravating his PTSD. Thereafter, he only worked a few days in October 2010 and in February 2011. He resigned from TDOC on May 31, 2011, and shortly thereafter began working at the Hickman County Jail.

On January 24, 2012, Employee filed a complaint for reconsideration of his prior workers’ compensation award with the Tennessee Claims Commission.¹ Employee alleged that he resigned from his employment on May 31, 2011, as a result of his work-related disability and did not make a meaningful return to work. The State denied that the resignation was related to his work injury.

The case was tried before the Claims Commission on November 13, 2013. Employee was thirty-one years old and had a high school education. He testified that on June 12, 2007, he was assaulted by an inmate at the Bass facility, sustaining a broken nose, an eye injury which caused cataracts, a facial fracture, a seizure, and PTSD. Dr. Scott West began treating him for the PTSD following the incident. After the inmate assault, Employee continued to work at the Bass facility. During that time, he experienced panic attacks, insomnia, profuse sweating, nausea, and vivid nightmares. When he was in the work area where the inmate attack occurred, he would get “really nervous and nauseous and weak.” He had violent nightmares, experienced difficulty sleeping, suffered memory loss, and grew “jumpy” and anxious when he was around large groups of people.

In August or September of 2010, TDOC transferred Employee and nine other

¹ Employee had previously filed a Request for Assistance with the Benefit Review Section of the Workers’ Compensation Division on June 28, 2011. The Workers’ Compensation Specialist issued a report on November 10, 2011, concluding that the benefit review process had been exhausted.

officers to the DeBerry facility. This correctional facility housed inmates who were either physically or mentally ill. Employee was assigned to the housing unit, where he was required to move inmates throughout the facility for meals, recreation, showers, and other similar activities. Employee testified that he frequently witnessed assaults by inmates on correctional officers, often several times a day. Of those assaults he witnessed, Employee described incidents where inmates threw feces and urine at guards, as well as head-butted, bit, and kicked officers. During that time, he only had a radio and a set of door keys for protection. His fear, anxiety, and violent nightmares continued.

Employee was assaulted twice by inmates at the DeBerry facility. The last time was in October 2010, when an inmate tried to head-butt and bite him. In the course of struggling with the inmate, Employee sustained a blow to the head and torn muscles in his chest. Employee testified that, after his October 2010 assault, his symptoms grew worse, to the point that he would grow nauseous when dressing for work in the morning. Following the October 2010 assault, Employee was only able to return to work for a few days in October 2010 and in February 2011.

Employee resigned from his job with TDOC on May 31, 2011. He explained his reasons for resigning:

I just couldn't do it anymore. I was staying nervous. I mean, it affected everything. Like I said, anything – I mean, even outside of work. Going places, I couldn't be around a lot of people. I had a hard time with anyone near me. I was just always on edge. And the whole being at work and not knowing what was going to happen or could happen every day, it just finally got to be too much, just worrying about if I go to work, what's going to happen?

In June 2011, Employee went to work for the Hickman County Sheriff's Department at the Hickman County Jail. His new job primarily consisted of supervising other officers, though he occasionally passed out food trays and booked new inmates. Employee felt safer working at the jail because there were fewer inmates and he had less direct contact with them. In addition, he had a taser and pepper spray for protection, and other officers were present when Employee dealt directly with inmates. Further, the majority of inmates at the Hickman County Jail had been incarcerated for nonviolent crimes such as drug possession or driving offenses, though there were some violent offenders in the population. This new job paid half as much as his former job with TDOC.

Although he felt safe in his new job, Employee was assaulted multiple times by inmates at the Hickman County Jail, including an incident in December 2012. He resigned from the Hickman County Sheriff's Department in March 2013. Employee testified that he could not work in a corrections environment again. He subsequently

obtained employment as a receiving clerk at Expeditors International and was still working there at the time of trial.

Employee admitted that, outside of a few isolated days during his tenure with TDOC, he received his full paycheck through some combination of assault pay, annual leave, or sick leave. He acknowledged that he had applied for the job at the Hickman County Jail more than a month before his resignation from TDOC. His daily commute to the Hickman County Jail was approximately forty miles less per day than his previous commute to the DeBerry facility. He admitted that he never discussed with his supervisors the possibility of being reassigned to a less stressful job at TDOC before resigning. Employee acknowledged it was possible that he could have continued to work for TDOC at the Bass facility. However, Employee testified that before resigning from TDOC, he had reached his breaking point for stress while working at the DeBerry facility, not the Bass facility.

When cross-examined about prior disciplinary actions against him while working for TDOC, Employee stated that he had no recollection of being disciplined for his role in the 2007 assault at the Bass facility, though he did confirm his signature on documents relating to a disciplinary proceeding stemming from that incident. The record reflects that Employee had a due process hearing on December 10, 2007, where he was charged with a violation of TDOC rules and was suspended for three days in January 2008. Employee also acknowledged that he had gone through a divorce and suffered the deaths of his mother and grandmother in 2010, events he admitted increased his stress level. Nevertheless, Employee asserted that these traumatic personal events did not impact his decision to pursue a workers' compensation claim against TDOC.

Dr. Scott West, Employee's treating psychiatrist, testified by deposition. He first saw Employee on October 19, 2009. After examining Employee's medical history and conducting an independent evaluation, Dr. West diagnosed Employee with PTSD, a personality change due to head injury, and a cognitive disorder, all of which he attributed to the 2007 assault. Dr. West prescribed additional medications after the 2010 assault to treat Employee's anxiety and insomnia, but his diagnoses did not change. Dr. West took Employee off work on March 11, 2011, due to his increased symptoms. Given Employee's condition, Dr. West testified that it was reasonable for Employee to resign from his employment at TDOC and that if Employee had stayed in that environment, his condition, more likely than not, would have worsened. As of April 2013, Employee told Dr. West that he still had nightmares about being attacked, and Dr. West attributed this ongoing issue to the assaults in 2007 and 2010.

During cross-examination, Dr. West testified that while there were certain "core" PTSD symptoms, individual manifestations would vary. Dr. West was also aware that Employee had several sources of stress in 2010, including a recent divorce, the death of both his mother and grandmother, and the birth of a new child. He opined that these

events likely contributed to Employee's condition when they occurred, but believed they had no permanent effect on Employee. He agreed that Employee showed improvement over time after the 2007 assault and, in October 2009, believed that Employee could safely continue to work in a correctional facility. Nevertheless, by March 2011, Dr. West determined that Employee would be better off working outside of a prison environment, or, at the very least, in an administrative or clerical position within a correctional facility. Dr. West knew that Employee had left his position at the DeBerry facility to work at the Hickman County Jail and that Employee did not feel threatened at his new job because he felt that the Hickman County Jail was "totally different" than the environment at the DeBerry facility. Though Dr. West was aware Employee had been assaulted at the Hickman County Jail, he testified that there was a difference between jails and prisons which could explain Employee's increased comfort working in the former.

The parties stipulated to the introduction of an October 27, 2010 letter from Dr. Greg Kyser, who had provided an independent impairment rating for Employee. Dr. Kyser's diagnoses mirrored those of Dr. West, as Dr. Kyser determined that Employee had "mild" impairments of his activities of daily living and concentration and a "moderate" impairment of social function according to the Fifth Edition of the AMA Guides. Ultimately, Dr. Kyser opined that Employee had a 10% to 20% overall psychiatric impairment rating.

The Commission took the case under advisement and issued a Final Judgment on February 4, 2014, and a Corrected Final Judgment on February 24, 2015. In its corrected judgment, the Commission specifically accredited Employee's trial testimony and found that Employee's resignation was reasonably related to his work injury. As a result, the Commission held that Employee was entitled to reconsideration of his previous settlement. The Commission concluded that Employee had sustained a permanent partial disability of 52.5% to his body as a whole and awarded additional benefits of 26.25%.

The State has appealed the judgment, contending the Commission erred by finding that Employee's resignation was reasonably related to his work injury. Alternatively, the State argues that reconsideration is barred by Employee's failure to make a reasonable effort to remain employed at TDOC by seeking an accommodation for his limitations.

Standard of Review

In a workers' compensation case, we review a trial court's factual findings de novo upon the record, accompanied by a presumption of correctness of the findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(a)(2) (2014). Applying this standard, we must examine a trial court's factual findings and conclusions in depth. *Padilla v. Twin City Fire Ins. Co.*, 324 S.W.3d 507, 511 (Tenn. 2010). When the trial court has had the opportunity to observe witness demeanor and hear in-court testimony, we must afford considerable deference to any

factual determinations if credibility is at issue. *Madden v. Holland Grp. of Tenn., Inc.*, 277 S.W.3d 896, 898 (Tenn. 2009). When the issues involve expert medical testimony contained in the record by deposition, determination of the weight and credibility of the evidence must necessarily be drawn from the contents of the depositions, and the reviewing court may draw its own conclusions with respect to those issues. *Foreman v. Automatic Sys., Inc.*, 272 S.W.3d 560, 571 (Tenn. 2008). We review a 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).

Analysis

I.

The State first contends that the Commission erred in finding that Employee's resignation was reasonably related to his work injury. Tennessee Code Annotated section 50-6-241(d)(1)(B)(i) provides:

If an injured employee receives benefits for body as a whole injuries pursuant to subdivision (d)(1)(A) and the employee is subsequently no longer employed by the pre-injury employer at the wage specified in subdivision (d)(1)(A) within four hundred (400) weeks of the day the employee returned to work for the pre-injury employer, the employee may seek reconsideration of the permanent partial disability benefits.

Tenn. Code Ann. § 50-6-241(d)(1)(B)(i) (2014). Section 50-6-241(d)(1)(B)(iii) further provides:

Notwithstanding this subdivision (d)(1)(B), under no circumstances shall an employee be entitled to reconsideration when the loss of employment is due to either:

- (a) The employee's voluntary resignation or retirement; provided, however, that the resignation or retirement does not result from the work-related disability that is the subject of such reconsideration[.]

Tenn. Code Ann. § 50-6-241(d)(1)(B)(iii).

A determination regarding whether an employee's resignation was related to his or her work injury necessarily implicates the "meaningful return to work" concept. The Tennessee Supreme Court has previously explained that "an employee has not had a meaningful return to work if he or she returns to work but later resigns or retires for reasons that are reasonably related to his or her workplace injury." *Tryon v. Saturn*

Corp., 254 S.W.3d 321, 328-29 (Tenn. 2008) (citing *Lay v. Scott Cnty. Sheriff's Dept.*, 109 S.W.3d 293, 298 (Tenn. 2003)). The Court also noted that an employee has had a meaningful return to work if “the employee later retires or resigns for personal reasons or other reasons that are not reasonably related to his or her workplace injury.” *Tryon*, 254 S.W.3d at 329. In *Tryon*, the Court clarified that when determining whether an employee had a meaningful return to his or her job, the Court “must assess the reasonableness of the employer in attempting to return the employee to work and the reasonableness of the employee in failing to either return to or remain at work.” *Id.* at 328. Further, determinations of reasonableness regarding the actions of the employer and employee must be predicated on the unique facts of each individual case. *Id.* If an employee has made a meaningful return to work after a work-related injury, his or her disability benefits are capped by statute at one and one half times the employee’s medical impairment rating. *Howell v. Nissan N. Am., Inc.*, 346 S.W.3d 467, 472 (Tenn. 2011). On the other hand, if the employee has not made a meaningful return to work, then his or her disability benefits can be up to six times the employee’s medical impairment rating. *Id.*

The Court has examined voluntary resignations and retirements in several cases since *Tryon*. Most recently, in *Cha Yang v. Nissan North America, Inc.*, the Court analyzed the case of an employee who had accepted a voluntary buyout offer from his employer while still temporarily disabled from his work injuries. 440 S.W.3d 593, 594 (Tenn. 2014). The employee testified that he had accepted the voluntary buyout because he knew he would be unable to return to work after undergoing multiple surgeries. *Id.* at 595. The trial court found that his resignation was reasonably related to his work injury and accordingly awarded benefits. *Id.* at 596-97. The Special Workers’ Compensation Appeals Panel reversed the trial court’s decision, finding that the employee’s decision to accept the buyout was not reasonable because the employee had accepted the buyout before his doctors had concluded he could not return to work and before his employer had an opportunity to determine whether it could offer him a return to work. *Id.* at 597. Nevertheless, the Tennessee Supreme Court granted the Employee’s motion for review and reinstated the trial court’s judgment. *Id.* at 600. In reaching its conclusion, the Court stated, “[I]f an employee retires or resigns or declines an offer to return to work for either personal or other reasons that are not related to his or her workplace injury, the employee has had a meaningful return to work.” *Id.* Further, the Court acknowledged that such a “fact-intensive determination” is best left to the trial judge who previously had the chance to view the witnesses, assess their credibility, and determine the reasonableness of the actions by both the employer and employee. *Id.*

The Claims Commission had the opportunity to observe Employee’s testimony, assess his credibility, and review Dr. West’s deposition testimony. The State offered no testimony rebutting Dr. West’s opinion that Employee’s decision to resign from TDOC was reasonable and was related to his work injuries. The Commission’s decision to accredit the testimony of both Employee and Dr. West is entitled to deference from this

Panel. *Madden*, 277 S.W.3d at 900. The State's arguments on this issue are aimed squarely at Employee's credibility. The State relies upon inconsistencies in Employee's testimony concerning his suspension resulting from his role in the July 2007 assault, the working conditions at the Hickman County Jail, the relatively short time between the approval of his workers' compensation settlement and his resignation, and even the gas mileage rating of his truck. All of these matters were considered by the Claim Commission, which resolved these questions in Employee's favor.

After a thorough review of the record and oral arguments on behalf of the parties, we hold that the evidence does not preponderate against the Claims Commission's finding that Employee's resignation was related to his work injury. Employee suffered from PTSD after an assault by an inmate. He returned to work and was assaulted again. His symptoms began after the first assault and increased after the second assault. Employee worked very little after the second assault and was not able to work after March 2011 due to his PTSD. His resignation on May 31, 2011, was reasonably related to his work injuries. The fact that he took another job in a less demanding and less threatening inmate facility does not alter the fact that he could no longer work at TDOC because of his PTSD. We affirm the Claims Commission's holding that Employee's resignation was reasonably related to his work injury.

II.

The State's second contention is that Employee's request for reconsideration is without merit because he made no reasonable effort to remain employed by TDOC. The State argues that, before he resigned, Employee had a duty to approach TDOC and provide the department with an opportunity to offer Employee a job within his limitations. But the worker's compensation statute does not require an employee to provide notice and an opportunity for reassignment before pursuing a claim for reconsideration. *See* Tenn. Code Ann. § 50-6-241(d)(1)(B)(i), (iii)-(iv). Rather, the statute requires, in pertinent part, the following: (1) the injured employee must have previously received benefits for body as a whole injuries; (2) the employee must no longer be employed by the pre-injury employer at a wage equal to or greater than the wage the employee received at the time of the injury within four hundred weeks of the day the employee returned to work for the pre-injury employer; (3) the employee's voluntary resignation must have resulted from the work-related disability that is the subject of the reconsideration; (4) the employee must have requested a benefit review conference within one year of the date when employee ceased to be employed by the pre-injury employer; and (5) the employee must file a complaint seeking reconsideration in a court of competent jurisdiction within ninety days of the benefit review conference. *Id.* Employee fulfilled all of these prerequisites when seeking reconsideration of his prior settlement.

While Employee's failure to discuss his concerns directly with TDOC and failure

to seek reassignment at a more suitable position within TDOC are factors for our consideration, these points are not determinative when deciding whether Employee's resignation was related to his work disability. We must assess the reasonableness of Employee's efforts to return to or remain at work under the unique facts of his individual case and weigh the reasonableness of Employee's actions against TDOC's efforts to return him to work. *Tryon*, 254 S.W.3d at 328. Thereafter, we can decide whether Employee had a meaningful return to work.

Employee was assaulted and suffered extensive injuries in June 2007 while working for TDOC at the Bass facility. In August 2010, TDOC transferred Employee without notice to the DeBerry facility, an environment that the Employee testified was much more volatile than the Bass facility. A few months after his transfer, Employee suffered another assault in October 2010 and began experiencing increased anxiety, nausea, sweatiness, and nightmares. Dr. West testified that these symptoms were compatible with PTSD and concluded that Employee's decision to resign from TDOC was reasonable. After the October 2010 assault, Employee only worked a few days in October 2010 and a few days in February 2011, and was taken off work by Dr. West in March 2011. At the time of his settlement on April 21, 2011, and resignation on May 31, 2011, he was not able to work for TDOC. Further, Employee offered a reasonable explanation for believing that his job at the Hickman County Jail offered a safer environment than his position at the DeBerry facility, in particular the smaller inmate population, the presence of other officers when dealing with inmates, access to a taser and pepper spray for protection, and reduced contact with inmates.

The State offered no testimony to contradict statements by Employee, instead opting to attack the credibility of Employee on cross-examination. The Claims Commission had an opportunity to observe Employee during the course of this testimony and decided to accredit his statements. We afford considerable deference to such a fact-intensive determination by the trial court. In addition, the State did not present any testimony to contradict Dr. West's deposition, and the Claims Commission accredited Dr. West's testimony. After our independent evaluation of Dr. West's deposition testimony, we agree with the Claims Commission's decision. The evidence in the record does not preponderate against the findings of the Claims Commission on this issue.

Conclusion

The judgment of the Claims Commission is affirmed. Costs are taxed to the State of Tennessee.

SHARON G. LEE, CHIEF JUSTICE

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

CHARLIE McRAE v. STATE OF TENNESSEE

**Tennessee Claims Commission
No. 20070627041**

No. M2014-00709-SC-R3-WC – Filed July 10, 2015

JUDGMENT

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

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

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

Costs will be paid by the State of Tennessee, for which execution may issue if necessary.

PER CURIAM