IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
February 12, 2018 Session

SAMUEL PANZARELLA v. AMAZON.COM, INC.

Appeal from the Workers' Compensation Appeals Board
Court of Workers' Compensation Claims
No. 2015-01-0383 Audrey A. Headrick, Judge

No. E2017-01135-SC-R3-WC – Mailed April 12, 2018 / Filed May 16, 2018

An employee filed a claim for workers' compensation, alleging he injured his left knee in the course and scope of his employment. The Court of Workers' Compensation Claims denied the claim, finding the employee had failed to prove that his knee injury arose primarily out of his employment. The Workers' Compensation Appeals Board affirmed. The employee appealed, contending that the evidence preponderated against the judgment of the Court of Workers' Compensation Claims. After careful review, we affirm the decision of the Workers' Compensation Appeals Board.

Tenn. Code Ann. § 50-6-217(a)(2)(B) (2014 & Supp. 2017) Appeal as of Right; Decision of the Workers' Compensation Appeals Board Affirmed

SHARON G. LEE, J., delivered the opinion of the Court, in which DON R. ASH, SR.J., and ROBERT E. LEE DAVIES, SR.J., joined.

Robert A. Wharton, Chattanooga, Tennessee, for the appellant, Samuel Panzarella.

W. Troy Hart and Kristen C. Stevenson, Knoxville, Tennessee, for the appellee, Amazon.com, Inc.

OPINION

I.

On November 6, 2015, Samuel Panzarella filed a Petition for Benefit Determination with the Tennessee Division of Workers' Compensation requesting temporary disability benefits from Amazon.com, Inc. ("Amazon"). Mr. Panzarella

alleged that while working for Amazon on August 21, 2015, he injured his left leg when he bent down to pick up a "paper pad" and fell on his left leg. Amazon denied the claim, disputing that the injury arose primarily out of Mr. Panzarella's employment. Initially, Mr. Panzarella sought an expedited hearing but later requested a trial on the merits.

On October 28, 2016, the Court of Workers' Compensation Claims ("trial court") heard the case. On November 23, 2016, the trial court issued its ruling, explaining that it considered the hearing to be an expedited hearing, rather than a hearing on the merits, because the extent of Mr. Panzarella's permanent partial disability had not been determined. The trial court found that Mr. Panzarella was likely to prevail at a hearing on the merits and awarded him temporary disability and medical benefits. Amazon appealed to the Workers' Compensation Appeals Board ("Appeals Board"). The Appeals Board vacated the trial court's order and directed the trial court to decide the case on the merits based on the evidence introduced at the October 28, 2016 hearing. On remand, the trial court denied Mr. Panzarella's claim, finding he had not proven the compensability of his claim by a preponderance of the evidence because the authorized treating physician's opinion failed to satisfy the requirements of Tennessee Code Annotated section 50-6-102(14) (2014 & Supp. 2015).

Mr. Panzarella appealed, arguing that the trial court erred and that he had met his burden of proof that his injury arose primarily out of his employment. A majority of the Appeals Board affirmed the trial court's decision, holding that Mr. Panzarella failed to prove that his employment contributed more than fifty percent in causing the injury as required by Tennessee Code Annotated section 50-6-102(14)(B) (2014 & Supp. 2015).

Mr. Panzarella appealed the decision of the Appeals Board to the Tennessee Supreme Court under Tennessee Code Annotated section 50-6-217(a)(2) (2014). This appeal was referred to the Special Workers' Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law under Tennessee Supreme Court Rule 51.

The issue we address is whether the evidence preponderates against the trial court's conclusion that Mr. Panzarella failed to prove that his left knee injury arose primarily out of his employment with Amazon.

We review factual findings of fact by a trial court de novo on the record with a presumption of correctness of the findings, unless the preponderance of evidence is otherwise. Tenn. Code Ann. § 50-6-225(a)(2) (2014 & Supp. 2015). We give the trial court considerable deference because the trial judge had the opportunity to observe and hear witness testimony firsthand. *Forman v. Automatic Sys., Inc.*, 272 S.W.3d 560, 571

(Tenn. 2008) (citing *Whirlpool Corp. v. Nakhoneinh*, 69 S.W.3d 164, 167 (Tenn. 2002)). When the issues involve expert medical testimony presented by deposition, we draw our own conclusion as to the weight and credibility of the testimony. *Id.* (citations omitted).

Mr. Panzarella testified that on August 31, 2014, he began working for Amazon at its Chattanooga facility. He had previously worked at Amazon's Kentucky facility. Mr. Panzarella's job at the Chattanooga location consisted of removing items from a conveyor, packing and labeling them, and placing the packages on a nearby conveyor. Mr. Panzarella explained that he ran out of labels between 11:30 p.m. on August 20, 2015, and 12:15 a.m. on August 21, 2015. While on his way to get more labels, Mr. Panzarella noticed a piece of paper on the floor. Mr. Panzarella testified that Amazon had a policy requiring workers to pick up paper from the floor, and he would have violated company rules had he not picked up the paper. Amazon trained its employees on how to safely bend over and pick up items from the floor.

Mr. Panzarella explained that as he bent down to pick up the paper, he "felt like somebody [was] wringing a towel behind" his knee. He fell to the floor and landed on his left knee. As Mr. Panzarella was falling, he twisted his left knee. Mr. Panzarella also hit his right knee on the floor when he fell, but did not injure his right knee. When he stood up, he felt a sharp, intense pain behind his left knee and had difficulty walking. Mr. Panzarella tried to resume his duties but could not do so because of the pain in his left leg. He told a nearby employee of his situation, left his work station, and went to AmCare, Amazon's onsite medical facility. Mr. Panzarella testified the staffer at AmCare said she did not feel like writing out the necessary documentation to send him to the emergency room. Mr. Panzarella told her he would see his doctor in the morning. While at AmCare, Mr. Panzarella filled out a Non Occupational Complaint Report at 1:00 a.m. on August 21, 2015. He reported the onset of his complaint was on "8-21-15" at "11:25 before lunch." The form asked: "Is there a specific cause for this complaint?" "Unknown at present," he answered. He described his reason for visiting the medical facility as "[m]uscle spasm in calf that radiated to behind knee caused loss of balance 2 times." He described the injury as "[m]uscle spasm in left (illegible) leg from ankle to knee." Mr. Panzarella finished out his shift, but with difficulty.

Mr. Panzarella then went to Fast Access Health Care where Jill Yeager, a physician assistant, examined him. Ms. Yeager's note of August 21, 2015, describes Mr. Panzarella's complaint as "chronic pain in [right] ankle, compensating on [left] leg caused a fall onto [left] knee." On August 24, 2015, Ms. Yeager completed Amazon's "Health Care Provider Request For Medical Information" and stated that Mr. Panzarella could return to work with "limited walking & standing due to knee pain secondary to fall." Amazon could not accommodate those restrictions and Mr. Panzarella returned

home. Mr. Panzarella stated there were jobs he could have performed at the Chattanooga location, but Amazon did not offer him work in any capacity. Mr. Panzarella did not return to work for Amazon.

Ms. Yeager ordered an MRI of Mr. Panzarella's left knee. The MRI, performed on September 17, 2015, revealed strains of the anterior cruciate ligament ("ACL"), the medial collateral ligament ("MCL"), and a possible meniscus tear. Amazon provided Mr. Panzarella with a panel of orthopedic physicians, and he chose Dr. Barry Vaughn, an orthopedic surgeon, as his authorized treating physician.

On November 24, 2015, Dr. Vaughn examined Mr. Panzarella and reviewed his MRI report. Mr. Panzarella told Dr. Vaughn that as he was walking back to his workstation at Amazon, he bent down to pick up a piece of paper. When he bent down, Mr. Panzarella felt pain in the backside of his left knee. His lower leg tightened up and he twisted his knee and fell, hitting the floor. Based on this medical history, Dr. Vaughn's examination of Mr. Panzarella, and the MRI report, Dr. Vaughn diagnosed Mr. Panzarella with a medial meniscus tear of the left knee and sprains of his ACL and MCL. Dr. Vaughn recommended arthroscopic surgery to treat the meniscus tear and conservative treatment for the ligament sprains. Dr. Vaughn restricted Mr. Panzarella to sedentary work. Describing the typical cause of a meniscus tear, Dr. Vaughn stated that "[u]sually a meniscus tear is caused by a twisting-type injury. The meniscus is a small piece of cartilage and it can become trapped between the bones, and when it's twisted, it will tear. So, usually, a twist of some fashion is what causes that to tear." In Dr. Vaughn's opinion, the sprains of the ACL and MCL were caused "[m]ost likely [by] the fall landing on his knee." Dr. Vaughn agreed that Mr. Panzarella did not state that he slipped or tripped over anything or that he fell because of any hazard on the floor. Dr. Vaughn agreed with the statement that Mr. Panzarella's "knee or leg could have given out and he could have developed this cramp whether he was at work or anywhere else doing this maneuver." Dr. Vaughn agreed that Mr. Panzarella's weight, which was noted to be 360 pounds, could have been a factor in causing him to lose his balance.

II.

An employee must prove every element of the claim by a preponderance of the evidence. Tenn. Code Ann. § 50-6-239(c)(6) (2014 & Supp. 2017). Causation must be established by expert medical evidence, except in the most obvious cases. *Trosper v. Armstrong Wood Products, Inc.*, 273 S.W.3d 598, 604 (Tenn. 2008). Mr. Panzarella had to prove that his left knee injury arose primarily out of and in the course and scope of his employment with Amazon. Tenn. Code Ann. § 50-6-102(14) (2014 & Supp. 2015). An injury arises primarily out of and in the course and scope of employment only if the

employee shows by a preponderance of the evidence that his employment contributed more than fifty percent in causing the injury, considering all causes. *Id.* § 50-6-102(14)(B). To establish that an injury causes disablement, the employee must show by a reasonable degree of medical certainty that the employment contributed more than fifty percent in causing the disablement, considering all causes. *Id.* § 50-6-102(14)(C). "'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." *Id.* § 50-6-102(14)(D). We presume the opinion of the treating physician, selected by the employee from the employer's designated panel of physicians, is correct on the issue of causation; however, this presumption is rebuttable by a preponderance of the evidence. *Id.* § 50-6-102(14)(E).

After the incident, Mr. Panzarella stated on Amazon's medical facility input form that the specific cause for his complaint was "unknown at present." His complaint was "[m]uscle spasm in calf that radiated to behind knee caused loss of balance 2 times." He described the injury as "[m]uscle spasm in left (illegible) leg from ankle to knee." He did not claim his injury was job-related or that he had fallen onto his knee while picking up paper on the floor. Ms. Yeager's clinical note from the morning of August 21, 2015, describes Mr. Panzarella's chief complaint as "leg pain, legs 'buckle,' fell to the floor." She also recorded a history of "chronic pain in [right] ankle, compensating on [left] leg & caused a fall onto [left] knee." Again, there is no report of a work-related fall.

Dr. Vaughn's testimony, based upon Mr. Panzarella's description of falling while bending over to pick up a piece of paper, is more favorable to Mr. Panzarella. Dr. Vaughn stated that a meniscus tear, such as Mr. Panzarella suffered, is "usually caused by a twisting-type injury" and that Mr. Panzarella reported twisting his knee as he fell. Dr. Vaughn acknowledged that Mr. Panzarella told Ms. Yeager he had leg pain and chronic right ankle pain, that a leg cramp could occur outside the work environment, and that Mr. Panzarella's obesity could have caused him to lose his balance and fall.

Mr. Panzarella was required to prove, by a preponderance of the evidence, that his employment at Amazon contributed more than fifty percent in causing his left knee injury. To satisfy his burden of proof, Mr. Panzarella had to show by expert medical testimony, within a reasonable degree of medical certainty, that it is more likely than not that his employment contributed more than fifty percent in causing the disablement. Dr. Vaughn's testimony failed to show, by a preponderance of the evidence, that Mr. Panzarella's employment contributed more than fifty percent in causing his left knee injury. Dr. Vaughn did not testify within a reasonable degree of medical certainty, either directly or indirectly, that Mr. Panzarella's work activity more likely than not contributed more than fifty percent in causing the injury, considering all factors. Dr. Vaughn

acknowledged that there were other possible causes of the fall, such as a leg cramp or obesity.

Mr. Panzarella was not required to disprove all possible causes of his injury, but he was required to prove that the injury arose primarily out of his employment. Dr. Vaughn's testimony, however, fell short of establishing, by a preponderance of the evidence, the necessary causal link between Mr. Panzarella's employment and his knee injury. *See Willis v. All Staff*, No. M2016-01143-SC-R3-WC, 2017 WL 3311318, at *5 (Tenn. Workers' Comp. Panel Aug. 3, 2017) (finding that the employee failed to satisfy his burden of proof when medical testimony indicated that the employee's work activities "could have" contributed to the injury or were a "possible" cause of the injury); *Payne v. D & D Elec.*, No. E2016-01177-SC-R3-WC, 2017 WL 1402116, at *4 (Tenn. Workers' Comp. Panel Apr. 18, 2017) (holding that medical testimony that the workplace accident was at least part of the cause of the employee's medical problem was insufficient to satisfy employee's burden of proof); *Gribble v. Alcoa Inc.*, No. E2015-02113-SC-R3-WC, 2016 WL 6883720, at *4 (Tenn. Workers' Comp. Panel Nov. 21, 2016) (holding that the employee did not carry his burden of proof where the medical testimony, when considered in its totality, was conjectural and speculative).

Based on our review of the record, we conclude that the evidence does not preponderate against the trial court's finding that Mr. Panzarella failed to sustain his burden of proof that his injury arose primarily out of his employment as required by Tennessee Code Annotated section 50-6-102(14) (2014 & Supp. 2015).

Conclusion

We affirm the decision of the Workers' Compensation Appeals Board and tax the costs to Samuel Panzarella and his surety, for which execution may issue if necessary.

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SHARON G. LEE, JUSTICE

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JUDGMENT ORDER

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 are assessed to Samuel Panzarella, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM