

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKER’S COMPENSATION APPEAL PANEL
AT NASHVILLE

March 26, 2018, Session

STEAK N SHAKE v. THOMAS YEAGER

**Appeal from the Chancery Court of Davidson County
No. 14-103-IV Russell T. Perkins, Chancellor**

No. M2017-01558-SC-R3-WC – Mailed October 22, 2018

This cause of action originated when Thomas Yeager (“Employee”) sustained an on the job injury when he slipped and fell while performing duties in the course and scope of his employment with Steak N Shake (“Employer”). Employee was originally treated at Hendersonville Medical Center in the Hendersonville Medical Center Emergency Department. Employee was treated for acute neck and back pains and was released on said day with limiting instructions as well as various prescriptions. On October 21, 2012, Employee returned to the emergency department with abdominal pain. It was determined that Employee had a gastrointestinal bleed. Employer maintained that neither the abdominal pain nor gastrointestinal bleed and resulting medical treatment were related to the work injury. After a request for assistance and based on medical records then available, the Department of Labor ordered Employer to pay medical expenses arising from said gastrointestinal condition. Employer brought this action, seeking recovery of payments made pursuant to the Department of Labor Order. Employer filed a Motion for Summary Judgment, which was denied by the trial court. After certain stipulations were entered, a trial was had on the merits at which time the trial court found that Employee’s gastrointestinal bleeding and accompanying treatment was caused by medications prescribed to treat the initial work-related injury. Employer has appealed. The appeal has been referred to the Special Worker’s Compensation Appeals Panel for hearing and a report of findings of fact and conclusions of law, pursuant to Tennessee Supreme Court Rule 51. We reverse the trial court judgment.

**Tennessee Code Annotated, Section 50-6-225(e) (2014) (applicable to injuries occurring prior to July 1, 2014) Appeal as of Right:
Judgment of the Chancery Court Reversed.**

J. RUSSELL PARKES, SP. J., delivered the opinion of the court, in which JEFFREY S. BIVINS, C.J., and ROBERT E. LEE DAVIES, SR. J., joined.

Robert O. Binkley, Jr., Jackson, Tennessee, for the appellant, Steak N Shake.

Steven Fifield, Nashville, Tennessee, for the appellee, Thomas Alan Yeager.

OPINION

Factual History

On October 14, 2012, Employee slipped and fell at work. Employee received initial treatment through the emergency department of Hendersonville Medical Center. Employee was diagnosed with acute neck pain, thoracic contusion and lumbar contusion. Employee was discharged with limiting instructions and given prescriptions for Flexeril, Ultracet, Naprosyn, and Prednisone. Employer does not dispute that this initial event was compensable. Employee does not contest that all medical bills and medical treatment associated with this initial treatment have been paid.

On October 21, 2012, Employee returned to the emergency department of Hendersonville Medical Center complaining of weakness, dizziness and chest pain. The notes of Dr. William Bollin, the attending physician, reveal that “the patient is unable or unwilling to provide me with much history, so the bulk of the history is obtained through the patient’s chart as well as conversation with the patient’s friend.”

On that same day, Dr. Scott Hande performed an endoscopy. The medical records¹ reveal that on this date Dr. Hande’s impression was “upper gastrointestinal bleed secondary to peptic ulcer disease. Ulcer disease is likely caused by the combination of nonsteroidal anti-inflammatory drugs and steroids, with a possible addition of *Helicobacter pylori* infection.”² The cost of medical treatment for Employee’s peptic ulcer disease totaled \$48,278.85. Employer denied that the peptic ulcer disease and/or any medical bills associated with his treatment were related to the October 14, 2012, work-related injury. Employee filed a request for assistance with the Department of Labor. The Department of Labor, based on the medical records then provided, ordered Employer to pay for medical treatment for the peptic ulcer condition. After an unfavorable decision from the Department of Labor, Employer retained the services of Dr. Michael A. Revelle.

¹ Although the parties entered into a stipulation admitting Dr. Hande’s medical records for purposes of trial, Dr. Hande was never deposed and never offered any opinions outside of those contained in his medical records.

² *Helicobacter pylori* infection is a form of bacteria that lives in ones digestive tract. This bacteria generally causes infection in the stomach.

Employer filed the instant civil action against Employee seeking a judgment that the peptic ulcer disease and resulting bills were not compensable. A judgment in favor of Employer would allow Employer to recover all amounts it paid for treatment associated with the peptic ulcer disease from the Second Injury Fund, pursuant to Tennessee Code Annotated, section 50-6-208(b) (2014) (applicable to injuries occurring prior to July 1, 2014).

Procedural History

The pertinent procedural history in this case is set forth below:

- 01/24/14 Complaint filed by Employer.
- 12/19/16 Employer files Motion for Summary Judgment with attached Memorandum of Law, Statement of Undisputed Material Facts. Employer's Statement of Undisputed Material Facts cite and incorporate certain Requests for Admissions, as well as the Affidavit of Dr. Michael Revelle.
- 02/06/17 Employee files response to Employer's Motion for Summary Judgment, attaching certain medical records including records from Hendersonville Medical Center. Employee's response also included Tennessee Department of Labor Order for medical benefits.
- 10/27/16 Order granting Motion to Deem Plaintiff's First Requests for Admissions to Defendant admitted, as well as accompanying admissions.³
- 04/28/17 Motion for Summary Judgment heard by Trial Court.
- 05/01/17 Order entered by Trial Court denying Employer's Motion for Summary Judgment.
- 06/29/17 Trial stipulations entered stipulating, among other things, and in pertinent part the following:

³ It does not appear in the record that the Defendant/Employee ever responded to Employer's First Set of Request for Admissions, nor does it appear that Employee ever sought relief from said request.

4. At trial, Plaintiff shall be entitled to enter as evidence the Affidavit of Dr. Michael Revelle, and Defendant shall make no objections.

5. At trial, Defendant shall be entitled to enter as evidence the medical records attached to his previously filed response in opposition to Plaintiff's Motion for Summary Judgment and Plaintiff shall make no objection.

6. Plaintiff and Defendant agree that the medical opinions expressed by Dr. Scott Hande in the Hendersonville Medical Center records previously filed by Defendant and by Dr. Michael A. Revelle, and the Affidavit of Dr. Michael A. Revelle previously filed by Plaintiff are submitted to the Court in lieu of the depositions of Dr. Hande and Dr. Revelle.

06/29/17 Trial conducted based on parties' stipulations.

Trial

The case proceeded to trial on June 29, 2017. There was no live testimony nor any depositional testimony. The Trial Court received a limited number of stipulations. Through the stipulation of the parties, the Court received certain Request for Admissions propounded to Employee in July 2016. The Court further admitted into evidence the Trial Court order granting Employer's request to deem admitted all matters contained within the Request for Admissions. As a result, these matters were deemed conclusively established: that Employee had dark, tarry stools (a symptom of gastrointestinal bleeding) in the weeks before October 14, 2012; had been diagnosed or told he had a bleeding ulcer at some point in time before October 14, 2012; was taking a minimum of 200-400 mg (1-2 pills) of Ibuprofen, Advil, Motrin, or similar non-steroidal anti-inflammatory medication both before and after October 14, 2012; had averaged consumption of alcohol on a daily basis in excess of the equivalent of three (3) ounces of liquor or one (1) glass of wine or two (2) beers before and after October 14, 2012; and took more Flexeril, Ultracet, Naprosyn, and Prednisone than prescribed on or after October 15, 2012. The Request for Admissions also conclusively established that Employee did not inform medical personnel of any of these facts. Also admitted at trial was the Affidavit of Dr. Revelle. In said Affidavit, Dr. Revelle opined that Employee's alcohol consumption, use of non-prescription Ibuprofen, and over-consumption of the medications prescribed on October 15, 2012, "directly and solely caused and resulted" in

the condition that caused Employee to seek and receive medical treatment on October 21, 2012, and thereafter.

After trial, the Trial Court entered a memorandum and order in which the Court stated as follows:

The medical evidence in the record reflects that [Employee] was predisposed to gastric ulcers and had the bacteria that is responsible for most duodenal ulcers and many gastric ulcers, and on October 21, 2012, he was diagnosed as having a bleeding gastric ulcer. His October 14, 2012, fall at work resulted in his being prescribed the steroids Naprosyn and Prednisone (among others), both of which can cause a gastric ulcer to bleed, and [Employee] also took over-the-counter NSAIDs, which can also cause a gastric ulcer to bleed. Furthermore, Dr. Hande opined that [Employee]'s bleeding gastric ulcer was likely caused by the combination of the steroids and the NSAIDs.

The Court adopts the statement of Dr. Hande as set out in hospital records that the most likely cause of [Employee]'s bleeding gastric ulcer was the combination of the steroids prescribed to him for pain related to his work-related October 14, 2012, fall and his use of over-the-counter anti-inflammatories, which he also took for pain related to his work-related October 14, 2012, fall. The record does not reflect that [Employee]'s use of over-the-counter anti-inflammatories alone was the primary cause of his bleeding gastric ulcer, and there is no proof in the record demonstrating that [Employee] would not have suffered a bleeding gastric ulcer if he had taken only the steroids prescribed to him as a result of his work-related injury. Accordingly, the Court does not find that [Employee]'s bleeding ulcer and the medical treatment related to it resulted from an "independent intervening cause attributable to [the Employee's] own intentional conduct.

Based on the Court's ruling, Employer's action was dismissed and this appeal followed.

Analysis

The Appellant has raised two issues on appeal: (1) Whether the Trial Court erred in denying Steak N Shake's Motion for Summary Judgment; (2) Whether the Trial Court erred when it failed to conclude that Appellee's negligent conduct was an intervening cause resulting in the treatment and medical bills for his upper gastrointestinal ulcer bleed.

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 the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2014) (applicable to injuries occurring prior to July 1, 2014). When the issues involve expert medical evidence that is contained in the record by deposition or records, 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). The 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).

In a workers' compensation case, the Employee bears the burden of proving each element of his cause of action. Cutler-Hammer v Crabtree, 54 S.W.3d 748, 752, at n.2 (Tenn. 2001). At the time of the injury at issue in this action, Tennessee Code Annotated § 50-6-116 (2014) (applicable to injuries occurring prior to July 1, 2014), instructed the courts to give the workers' compensation law "an equitable construction by the courts, to the end that the objects and purposes of this chapter may be realized and attained."⁴ Thus, in examining the issue of causation, the courts were to resolve "all reasonable doubts" in favor of the Employee. Phillips v A & H Constr. Co., 134 S.W.3d 145, 150 (Tenn. 2004).

At trial, the court received certain stipulations regarding the expert opinion of Dr. Revelle. The Court also received certain medical records. Additionally, at trial, the court received as an exhibit the previously filed order deeming twenty-three (23) statements as admitted for purposes of trial. Among those statements are the following:

Request No. 5. Admit that Defendant went to Hendersonville Medical Center for medical treatment on or about October 15, 2012.

Request No. 6. Admit that Defendant did not tell anyone at Hendersonville Medical Center on or about October 15, 2012, of his history of diabetes and alcohol use.

Request No. 7. Admit that Defendant had had dark, tarry stools for recent weeks before October 15, 2012.

⁴ This section was amended effective July 1, 2014, and now directs that workers' compensation law "shall not be remedially or liberally construed, but shall be construed fairly, impartially, and in accordance with basic principles of statutory construction, and this chapter shall not be construed in a manner favoring either the employee or the employer." Tenn. Code Ann. § 50-6-116 (2014).

Request No. 8. Admit that Defendant had had dark, tarry stools at any point in time before October 14, 2012.

Request No. 9. Admit that Defendant had been diagnosed or told he had a bleeding ulcer at some point in time prior to October 14, 2012.

Request No. 10. Admit that Defendant did not tell anyone at Hendersonville Medical Center on or about October 15, 2012, that he presently or previously had black, tarry stools.

Request No. 11. Admit that Defendant was taking a minimum of 200-400 mg (1-2 pills) of Ibuprofen, Advil, Motrin or similar non-steroidal anti-inflammatory medication for a minimum of seven (7) days prior to October 14, 2012.

Request No. 12. Admit that Defendant did not tell anyone at Hendersonville Medical Center on or about October 15, 2012, that he was taking a minimum of 200-400 mg (1-2 pills) of Ibuprofen, Advil, Motrin or similar non-steroidal anti-inflammatory medication for a minimum of 3-7 days before October 14, 2012.

Request No. 13. Admit that Defendant had experienced shortness of breath, dizziness, and weakness at times during the two (2) weeks before October 14, 2012.

Request No. 14. Admit that Defendant did not tell anyone at Hendersonville Medical Center on or about October 15, 2012, that he had had any episodes of or experienced shortness of breath, dizziness, and weakness at any point in time during the two (2) weeks prior to October 14, 2012.

Request No. 15. Admit that Defendant had average consumption of alcohol on a daily basis in excess of the equivalent to three (3) ounces of liquor or one (1) glass of wine or two (2) beers before October 14, 2012.

Request No. 16. Admit that Defendant did not tell anyone at Hendersonville Medical Center on or about October 15, 2012, that he had averaged consumption of alcohol on a daily basis in excess of the equivalent of three (3) ounces of liquor or one (1) glass of wine or two (2) beers before October 14, 2012.

Request No. 17. Admit that Hendersonville Medical Center on or about October 15, 2012, gave him discharge prescriptions for Flexeril 10 mg (1 orally every 8 hours), Ultracet 37.5 mg (2 every 5 hours), Naprosyn 500 mg (1 every 12 hours), and Prednisone 10 mg (4 every day for 5 days).

Request No. 18. Admit that Defendant took more Flexeril, Ultracet, Naprosyn and Prednisone than prescribed daily on or after October 15, 2012.

Request No. 19. Admit that Defendant continued to average consumption of alcohol on a daily basis in excess of the equivalent of three (3) ounces of liquor or one (1) glass of wine or two (2) beers after October 14, 2012.

Tennessee Rule of Civil Procedure, Rule 36, specifically provides a procedure for a party to seek certain judicial admissions. Rule 36 provides in pertinent part,

A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26.02 set forth in the request that relate to (a) facts, the application of law to facts, or opinions about either;

Tenn. R. Civ. P. 36.01.

Rule 36 further provides that

[t]he matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney

Tenn. R. Civ. P. 36.01.

Rule 36.02 of the Tennessee Rules of Civil Procedure specifically provides “any matter admitted under this rule is conclusively established unless the Court on motion permits withdrawal or amendment of the admission.” In the case at bar, Employee never responded to Employer’s Request for Admissions. Employee also never sought relief permitting withdrawal or amendment or the answering of the Request for Admissions.

The Courts of this State have previously addressed the provisions of Rule 36. In Tennessee Department of Human Services v Barbee, 714 S.W.2d 263, 266 (Tenn. 1986), our Supreme Court stated as follows:

Unlike responses to other discovery procedures which are evidentiary and are obtained for the purpose of introduction at trial and subject to contradiction at trial, a Rule 36 admission, unless it is allowed to be withdrawn or amended, concludes the matter and avoids any need for proof at trial.

The Court further stated that “no evidence is necessary to establish a fact admitted, and no evidence should be permitted to refute it.” Id. at 267. The Barbee Court, in addressing an alleged waiver issue, further provided as follows:

Procedurally, admissions under Rule 36 should be brought to the trial court’s attention through one of three methods, at a pre-trial conference where issues may be eliminated or narrowed, a motion for summary judgment (Rule 56 T.R.C.P.), or by specific motion dealing with the requested admissions.

Id. at 266.

In Barbee the Court granted relief noting that “Plaintiff should have sought an order deeming the issues to be admitted.” Id. at 267. In the case at bar, that is exactly what Employer did. Not only did Employer file the Request for Admissions, Employer filed a motion to deem the requests admitted. Even through trial, Employee sought no relief relative to the Request for Admissions, the motion to deem the requests admitted, or the facts which were “conclusively established.”

In Maness v Woods, 2001 WL 29457 (Tenn. Ct. App. Jan. 10, 2001), the Court of Appeals again addressed a failure or untimely response to Request for Admissions. The trial court had deemed certain requests to admit as true. Id. at *3. The trial court had further entered an order denying withdrawal or amendment of the deemed admissions. Judge Farmer, writing for a unanimous Court, with concurrence from Judges Crawford and Lilliard, while citing Barbee with approval stated:

Requests for Admissions that are unanswered are deemed admitted. Barbee held that an admission under Rule 36, unlike an evidentiary admission, “concludes the matter and avoids any need for proof at trial.” [Barbee, 714 S.W.2d at 266.] Thus, no proof is necessary to establish a fact admitted, nor should evidence be allowed to refute the admission.

Id. (internal citations omitted).

In this case, the trial court had the Request for Admissions, and the Affidavit of Dr. Revelle. Dr. Revelle's Affidavit indicates that in his many years of medical practice he has seen "many, many patients with anemia experiencing upper gastrointestinal hemorrhages (bleeding gastric ulcers) and am very familiar with the causes, symptoms, and physical problems associated with bleeding gastric ulcers." Dr. Revelle had reviewed the Plaintiff's Requests for Admissions, along with a multitude of other facts. Dr. Revelle ultimately opined that the work injury of October 14, 2012, and resulting prescriptions were not the cause of the October 21, 2012, hospitalization, peptic ulcer and/or resulting medical charges. The trial court relied in great measure on the medical records of Dr. Hande which were received through stipulation. In contrast to the Affidavit of Dr. Revelle, many of the facts which were conclusively established by the Request for Admissions were not available to Dr. Hande and thus could not have been a basis for any of the impressions or opinions provided in Dr. Hande's medical records.

In evaluating conflicting expert opinion evidence, a court may consider, inter alia, "the qualifications of the experts, the circumstances of their examination, the information available to them, and the evaluation of the importance of that information by other experts." Orman v Williams Sonoma, Inc., 803 S.W.2d 672 (Tenn. 1991). Therefore, the opinions of Dr. Hande, as set forth in his medical records, are not based on important and significant conclusively established facts. These facts were available to Dr. Revelle when he formed his opinion and his Affidavit was prepared.

In light of the foregoing, including the facts conclusively established by the properly served Request for Admissions, we conclude that the evidence preponderates against the trial court's finding that the Employee's bleeding ulcer and resulting medical treatment and billings were caused by medications prescribed for his work injury and thus said treatment was not a medical consequence or sequelae that flows from the primary injury. Having found that the Employee failed to carry his burden of proof relative to said treatment, we find it unnecessary to address whether Employee's negligent conduct was an intervening cause. The judgment of the trial court is reversed.

Conclusion

The judgment of the trial court is reversed. The case is remanded to the trial court for entry of a judgment consistent with this opinion. Costs are taxed to Thomas Yeager, for which execution may issue if necessary.

J. RUSSELL PARKES, JUDGE