

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT JACKSON  
August 27, 2012 Session

**LORA VAWTER v. VOLUNTEER MANAGEMENT DEVELOPMENT**

**Appeal from the Chancery Court for Madison County  
No. 66706 James F. Butler, Chancellor**

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**No. W2012-00471-SC-WCM-WC - Mailed December 4, 2012;  
Filed February 13, 2013**

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In this workers' compensation case, the employee alleged that her work as a bookkeeper caused a compensable aggravation of her pre-existing rheumatoid arthritis. Her employer denied her claim. The trial court awarded benefits to the employee, and her employer has appealed. We affirm the judgment of the trial court.

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

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

Kyle C. Atkins and Terri Smith Crider, Humboldt, Tennessee, for the appellant, Volunteer Management Development.

Michael J. Cash, Jackson, Tennessee, for the appellee, Lora Vawter.

**MEMORANDUM OPINION**

**Factual and Procedural Background**

Lora Vawter began working for Volunteer Management Development ("VMD") as a bookkeeper in November 2006. VMD is a real estate management company that managed approximately twenty-nine residential apartment complexes during the time Ms. Vawter worked at VMD. Prior to November 2006, Ms. Vawter had worked as an accounts payable manager for a firm in Phoenix, Arizona, and as a personal assistant for an elderly couple in Ohio. Her job for VMD consisted of bookkeeping, payroll, and general office work. She

testified that her primary activity was data entry regarding electricity, water, and cable usage for the approximately nine hundred apartments under VMD management. In addition, she entered data concerning hours and locations for each employee. Ms. Vawter worked for VMD six to seven days per week, eight to twelve hours per day.

Although Ms. Vawter had been diagnosed with rheumatoid arthritis approximately twenty years earlier, she never experienced any problems or symptoms from that condition. A few weeks after she began working for VMD, however, Ms. Vawter began to experience pain in her left wrist. Shortly thereafter, she began to experience pain in her right wrist as well. She used ace bandages on her wrists, and these provided some relief. Ms. Vawter told Jamie Stevenson, vice-president of VMD, that she believed her symptoms were work-related, and she requested assistance with performing her job duties. However, no assistance was provided. Ms. Vawter was terminated in February or March 2007 because she was no longer able to perform her job duties. VMD's first report of injury was completed on March 9, 2007. Ms. Vawter was referred to several doctors through VMD's workers' compensation insurer, but Ms. Vawter consulted other doctors on her own. These included Dr. Harold Antwine, Dr. Laverne Lovell, Dr. Thomas Head, Dr. John Masterson, Dr. James Lanter, and Dr. Apurva Dalal.

Ms. Vawter filed a complaint for workers' compensation benefits in the Chancery Court for Shelby County on January 19, 2010, and a trial was conducted on January 17, 2012. Ms. Vawter was fifty years old at the time of trial. She had obtained a high school diploma and a certificate in "office education." Ms. Vawter continued to have pain and "muscle problems" in both hands as of January 2012. She was unable to carry a one-gallon container of milk and had difficulty driving. She testified that her condition had not improved since her symptoms began.

At trial, Kenneth Dixon, Ms. Vawter's son-in-law, testified that Ms. Vawter had lived with him and his wife in Arizona to help with their children. When the family relocated to Chattanooga, Ms. Vawter moved with them and continues to live with them. Mr. Dixon said that Ms. Vawter had no problems with her hands and arms until she went to work for VMD. Since the onset of her symptoms, she requires assistance with even "minuscule" tasks. Jennifer Dixon, Ms. Vawter's daughter and Mr. Dixon's wife, corroborated Mr. Dixon's testimony.

Kathy Slayton testified on behalf of VMD. She had worked for VMD for eight years and was VMD's office manager at the time of trial. This was the same position that Ms. Vawter previously held. She testified that VMD did not enter utility payments for each individual apartment but rather for each complex it managed. Residents of occupied apartments paid their own electricity and cable bills. She estimated that the average number

of checks issued each month was five hundred. For payroll and utility payments made by VMD, data was entered into a spreadsheet program and then transferred to a check-writing program using cut-and-paste. She did not consider the job performed by Ms. Vawter to require repetitive use of the hands.

Dr. Apurva Dalal, an orthopaedic surgeon, examined Ms. Vawter at the request of her attorney. The examination took place on August 7, 2009. His diagnosis was “severe inflammatory arthritis of both wrists with superimposed degenerative arthritis of the radiocarpal joint.” He opined that Ms. Vawter had a permanent anatomical impairment of 5% to each upper extremity for her condition. Regarding causation, Dr. Dalal testified that Ms. Vawter suffered from “overuse syndrome” that was caused by repetitively performing the same actions at work eight to twelve hours a day. Dr. Dalal testified that Ms. Vawter’s job caused her rheumatoid arthritis to be more symptomatic and painful. He explained that rheumatoid arthritis is a condition in which there is a very hyperactive joint lining, called “pannus,” that gets caught in the joint. He likened rheumatoid arthritis to a mushroom growing into the joints. With repetitive activity, bleeding occurs, and the joint becomes stiff and painful. He concluded that “it’s an overuse syndrome due to repetitively doing this work over a long time.”

During cross-examination, Dr. Dalal agreed that he relied primarily on Ms. Vawter’s subjective complaints to reach his conclusions.<sup>1</sup> He stated that the physical findings from his examination were “off the rheumatoid arthritis.” Dr. Dalal testified that Ms. Vawter’s issues with rheumatoid arthritis most likely existed before she became employed with VMD. When he was asked to clarify his earlier testimony concerning overuse syndrome, Dr. Dalal stated, “rheumatoid is not an overuse condition. Rheumatoid arthritis just genetically just occurs in some human beings, you know.”

Dr. Laverne Lovell, a neurosurgeon, examined Ms. Vawter on November 27, 2007. He stated that blood tests had revealed that she had a rheumatoid factor of sixty-seven. Twelve was the normal level for this factor. Her neurological examination was normal. Dr. Lovell’s diagnosis was “some sort of rheumatologic disorder such as rheumatoid arthritis.” Dr. Lovell attributed Ms. Vawter’s complaints to the rheumatoid arthritis but stated that her complaints were not related to work or any other outside factors and instead were “intrinsic” to Ms. Vawter’s body.

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<sup>1</sup> Dr. Dalal reviewed the records of several physicians as part of his evaluation, and those records were made exhibits to his deposition. Although these records were admitted as part of Dr. Dalal’s deposition and Dr. Dalal may rely on the notes to form his own opinion, he may not parrot the opinions of other physicians as his own. See Holder v. Westgate Resorts Ltd., 356 S.W.3d 373, 380 (Tenn. 2011).

Dr. Lovell did not assign any permanent impairment because he did not consider Ms. Vawter's condition to be work-related. On cross-examination, he agreed that Ms. Vawter had problems with her hands and that those problems were due to rheumatoid arthritis. Dr. Lovell was asked whether Ms. Vawter's condition could have been "made symptomatic and worse with repetitive keyboarding activities." Dr. Lovell explained that he did not think Ms. Vawter's activities caused her condition to worsen because Ms. Vawter experienced pain even when she was inactive, such as when she woke up in the morning.

The trial court took the case under advisement and issued its findings in the form of a letter to counsel. It expressed some concern about the wording of Dr. Dalal's testimony but ultimately found that Ms. Vawter had sustained a compensable aggravation of her pre-existing rheumatoid arthritis. It adopted Dr. Dalal's impairment rating of 5% to both arms and awarded 20% permanent partial disability to both arms. VMD has appealed from that decision. This appeal has been referred to a Special Workers' Compensation Appeals Panel for a report of findings of fact and conclusions of law. See Tenn. Sup. Ct. R. 51, § 1.

### **Analysis**

#### *Dr. Dalal's Deposition*

VMD's first contention is that the trial court erred by considering Dr. Dalal's deposition. After Ms. Vawter rested her case, VMD moved to dismiss the complaint on the ground that Dr. Dalal's testimony contained internal contradictions. Specifically, VMD argued that Dr. Dalal described Ms. Vawter's condition as an overuse syndrome and also as rheumatoid arthritis but later stated that rheumatoid arthritis was not caused by or related to overuse. VMD also argued that Dr. Dalal's opinion was based on the incorrect assumption that Ms. Vawter had worked for VMD for over one year. The trial court denied VMD's motion. In doing so, the court observed that although Dr. Dalal testified that the rheumatoid arthritis existed prior to her work with VMD, he also testified that the underlying arthritic condition was exacerbated by Ms. Vawter's work.

We agree with the trial court that Dr. Dalal's testimony on the critical issue—whether or not Ms. Vawter's work caused an advancement of her pre-existing condition—is not clear. It is also true that Dr. Dalal understood that Ms. Vawter had worked for VMD for over a year, but the in-court testimony at trial demonstrated that she had worked for VMD for only four months. These factors affect the weight of Dr. Dalal's testimony. In-court testimony may influence the trier of fact when considered in conjunction with medical proof contained in depositions. Cunningham v. City of Savannah, No. W2010-02411-WC-R3-WC, 2012 WL 2126015, at \*6 (Tenn. Workers' Comp. Panel Feb. 28, 2012). When credibility and weight to be given testimony are involved, considerable deference is given to the trial court when

the trial court had the opportunity to observe the witness' demeanor and to hear in-court testimony. Madden v. Holland Grp. of Tenn., 277 S.W.3d 896, 900 (Tenn. 2009). We cannot say that the trial court erred in giving weight to Dr. Dalal's testimony.

Moreover, VMD did not object to the admission of Dr. Dalal's deposition into evidence. VMD has not provided any authority for its proposition that a trial court can be required to disregard properly admitted expert testimony because of perceived internal inconsistencies. We cannot agree with VMD that the trial court was required to disregard Dr. Dalal's testimony.

Our standard of review of issues of fact is de novo upon the record of the trial court accompanied by a presumption of correctness of the findings, unless the preponderance of evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2008). We cannot conclude that the evidence preponderates against the trial court's decision to deny the motion to dismiss.

#### *Advancement of Pre-existing Condition*

VMD's second argument is that the evidence preponderates against the trial court's finding that Ms. Vawter's job duties caused a compensable advancement of her pre-existing rheumatoid arthritis. It is well-settled law in this state that an employer hires an employee "as is," assuming responsibility for any pre-existing condition that may be aggravated by the employee's work. Trosper v. Armstrong Wood Prods., Inc., 273 S.W.3d 598 (Tenn. 2008) (quoting Hill v. Eagle Bend Mfg. Inc., 942 S.W.2d 483, 488 (Tenn.1997)). An employer is liable for a disability that arises "out of and in the course of" the employee's employment even if the injury merely aggravates a prior condition. Baxter v. Smith, 211 Tenn. 347, 364 S.W.2d 936, 942-43 (1961).

An employee does not suffer a compensable injury when the work activity aggravates the pre-existing condition merely by increasing the pain. Trosper, 273 S.W.3d at 604-07. If the work injury advances the severity of the pre-existing condition, however, or the employee suffers a new, distinct injury other than increased pain, then the work injury is compensable. Trosper, 273 S.W.3d at 604-07.

As the trial court recognized in its decision, this case turns on the meaning of Dr. Dalal's testimony. The other medical evidence in the case either supports VMD's theory that there was no work-related aggravation or is essentially neutral on the subject. Dr. Dalal testified that all of Ms. Vawter's arthritic problems were "most likely" present before she came to work for VMD. Although he stated that her work activities did not "progress" her condition, he also said those activities made it "more symptomatic and painful." Dr. Dalal further testified that those activities "advanced" her condition "in terms of pain, swelling and

other difficulties,” although he found no swelling during his examination and did not specify what “other difficulties” to which he was referring. Nevertheless, he provided an anatomical explanation for the increase in Ms. Vawter’s symptoms during her tenure with VMD, stating that repetitive hand motion irritated her pre-existing rheumatoid arthritis, resulting in bleeding into the joint, which in turn caused increased pain and stiffness. Our role is not to substitute our judgment for that of the trial court, but rather to determine if the evidence in the record preponderates against that result. See Tenn. Code Ann. § 50-6-225(e)(2). We conclude that the evidence does not preponderate against the trial court’s conclusion.

### **Conclusion**

The judgment of the trial court is affirmed. Costs of this appeal are taxed to Volunteer Management Development and its surety, for which execution may issue if necessary.

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DONALD E. PARISH, JUDGE

IN THE SUPREME COURT OF TENNESSEE  
AT JACKSON

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**Chancery Court for Madison County  
No. 66706**

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**No. W2012-00471-SC-WCM-WC - Filed February 13, 2013**

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**JUDGMENT ORDER**

This case is before the Court upon the motion for review filed by Volunteer Management Development, pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law.

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

Costs are assessed to Volunteer Management Development, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

HOLDER, Janice M., J., Not Participating