

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

September 24, 2012 Session

BILLY WARD v. DELL PRODUCTS, L.P. ET AL.

**Appeal from the Chancery Court for Wilson County
No. 09268 C.K. Smith, Chancellor**

**No. M2011-01714-WC-R3-WC - Mailed January 7, 2013
Filed March 8, 2013**

In this worker's compensation case, the employee alleged that his job caused a compensable aggravation of arthritis in his knees. The trial court found that his employment had caused only an increase of symptoms, and, therefore, he did not sustain a compensable injury. The employee has appealed. Pursuant to Tennessee Supreme Court Rule 51, this 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. 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**

C. CREED MCGINLEY, SP. J., delivered the opinion of the Court, in which CORNELIA A. CLARK, J., and DONALD P. HARRIS, SP. J., joined.

Billy Ward, Lebanon, Tennessee, pro se.

John W. Barringer, Jr., and Neesha S. Hatcher, Nashville, Tennessee, for the appellees, Dell Products, L.P. and Insurance Company of the State of Pennsylvania.

MEMORANDUM OPINION

Factual and Procedural Background

The evidence in this case consisted of stipulated facts and medical depositions. There was no live testimony. Billy Ward (“Employee”) was employed as an assembly worker by Dell Products, L.P. (“Employer”). In his complaint, Employee alleged that he had sustained gradual injuries to both of his knees as a result of his employment. Employer denied that compensable injuries had occurred. At trial, the parties stipulated to the following facts:

[Employee’s] job included repetitive bending and squatting up to 300 times a work shift; that there was no repetitive lifting involved in his job; and that there is no history of direct trauma or acute injury to his knees; that [Employee] was employed at the time of the alleged injury by [Employer]; . . . [t]hat [Employer] could not accommodate . . . [E]mployee’s work restrictions and he was terminated; and as a result, therefore, the 1.5 [times impairment] cap does not apply[; and that Employee] began working for [Employer] in July of 1999 and his employment ended in 2007 in August[.]

Three orthopaedic surgeons testified by deposition: Drs. Paul Rummo, David Gaw, and Richard Fishbein. Dr. Rummo first saw Employee in December 2007. Based on his clinical examination and x-rays, Dr. Rummo’s diagnosis was bilateral knee osteoarthritis. He ordered physical therapy, imposed temporary work restrictions, and recommended a low-impact aerobic conditioning program. He continued to treat Employee conservatively until February 20, 2008. At that time, Dr. Rummo determined that Employee had reached maximum medical improvement and released him from his care. He assigned no permanent impairment and placed no permanent restrictions on Employee’s activities.

Dr. Rummo testified as follows concerning the relationship between Employee’s work and osteoarthritis:

[O]steoarthritis being a degenerative problem, in my opinion, it would not be related to work in his situation. There was no history of any big trauma.

And, being such, even if there was, it would usually take many years for arthritis to develop afterwards. So from

what I could tell at that point, I did not think his arthritis was related to his work.

Asked if Employee's work could have aggravated the arthritic condition, Dr. Rummo testified:

Well, so arthritis is a condition. And any impact loading may aggravate his symptoms. And so we all have to walk in everyday activities outside of what we do for our job. And so . . . anything may aggravate his condition. You know, he did state to me at that time that he did do squatting at work which, again, I thought may be aggravating his symptoms. . . . It's impossible to know what specifically would aggravate arthritis in that situation.

Q: Okay. Now, this aggravation, was there any evidence that his work caused the progression of his condition?

A: No, there is no objective findings. I wouldn't support that.

Q: All right. Is there any evidence that his work caused any anatomic change?

A: Again, no objective findings.

Dr. Richard Fishbein examined Employee at the request of Employee's attorney on March 17, 2009. His diagnosis was chondromalacia of the patellae, which he described as follows:

It means due to squatting, bending, stooping, and other types of things, but generally the undersurface of the kneecap becomes damaged, and when you squat, it causes pain and swelling. It's quite a common . . . abnormality.

. . . .

I do not think his degeneration of his knee was the issue. I think the issue was that the undersurface of his kneecap was soft, and when you bend your knee, it hits against the femur or the tibia causing pain and weakness. And I feel that's what was wrong with him.

Dr. Fishbein opined that Employee sustained a permanent anatomical impairment of 5% to each lower extremity due to his condition. He advised Employee to avoid excessive squatting, bending, stooping, and climbing.

Dr. David Gaw examined Employee at Employer's request. His diagnosis was "early degenerative arthritis of both knees." He opined that this condition was not related to Employee's work:

No, I do not believe that the arthritis that he has was caused by the work at [Employer].

....

This is more of a degenerative thing, so it's due to wear and tear and it's not -- it's not a specific etiology such as a fracture into that area. So in this type of instance, I think it was just an idiopathic or plain wear and tear arthritis.

Q: All right. Now, was there any evidence that his work caused the progression of his condition?

A: No. I did not see any x-rays made before or after. I didn't see any x-rays before he started working at [Employer].

Q: Okay. Was there any evidence of any anatomic change arising out of his work at [Employer]?

A: No.

Dr. Gaw also opined that Employee did not have a permanent anatomical impairment according to the applicable edition of the AMA Guides. He noted that Table 17-31, the section of the Guides relied upon by Dr. Fishbein, required a history of direct trauma in order to assign impairment. Employee had no history of direct trauma. For that reason, Dr. Gaw opined that Dr. Fishbein had incorrectly interpreted the Guides.

The trial court issued its decision from the bench. It found that Employee's work had merely worsened the symptoms of his degenerative arthritis and that he had, therefore, not sustained a compensable injury. Judgement was entered in accordance with the trial court's findings, and Employee has appealed.

Standard of Review

Appellate review of workers' compensation cases is governed by Tennessee Code Annotated section 50-6-225(e)(2) (2008 & Supp. 2012), which provides that appellate courts must review the trial court's findings of fact "de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding[s], unless the preponderance of the evidence is otherwise." As the Supreme Court has observed many times, reviewing courts must conduct an in-depth examination of the trial court's factual findings and conclusions. *Wilhelm v. Krogers*, 235 S.W.3d 122, 126 (Tenn. 2007). When the trial court has seen and heard the witnesses, considerable deference must be afforded the trial court's factual findings. *Tryon v. Saturn Corp.*, 254 S.W.3d 321, 327 (Tenn. 2008). No similar deference need be afforded the trial court's findings based upon documentary evidence such as depositions. *Glisson v. Mohon Int'l, Inc./Campbell Ray*, 185 S.W.3d 348, 353 (Tenn. 2006). Similarly, reviewing courts afford no presumption of correctness to a trial court's conclusions of law. *Seiber v. Reeves Logging*, 284 S.W.3d 294, 298 (Tenn. 2009).

Analysis

In essence, Employee contends that the evidence preponderates against the trial court's finding that he did not sustain a compensable aggravation of his underlying arthritic condition. He asserts that the trial court gave undue weight to the medical evidence, and did not assign sufficient weight to other evidence concerning the requirements of his job. We must observe that the only evidence other than medical testimony presented to the trial court consisted of the stipulated facts set out above. However, the relative absence of supporting lay evidence is not dispositive.

In this case, as in most other workers' compensation cases, expert medical testimony is necessary to establish causation and permanency. *Arias v. Duro Standard Prods. Co.*, 303 S.W.3d 256, 264 (Tenn. 2010); *Thomas v. Aetna Life & Cas. Co.*, 812 S.W.2d 278, 283 (Tenn. 1991). The trial court in this case was presented with conflicting medical testimony. Drs. Rummo and Gaw testified that Employee had an arthritic condition neither caused nor advanced by his work for Employer, and both opined that he had no permanent impairment. Dr. Fishbein agreed that Employee had a degenerative condition, but opined that the frequent squatting required by his job had caused a separate condition that accounted for his pain and discomfort. Dr. Fishbein assigned a permanent impairment, but, according to Dr. Gaw, misinterpreted the AMA Guides in doing so. When expert opinions conflict, the trial court generally has discretion to choose which expert to accredit. *Johnson v. Midwesco, Inc.*, 801 S.W.2d 804, 806 (Tenn. 1990); *Kellerman v. Food Lion, Inc.*, 929 S.W.2d 333, 335 (Tenn. Workers' Comp. Panel 1996). In this case, we find no basis to conclude that the trial court abused its discretion by accrediting the testimony of Drs. Rummo and Gaw over that of Dr. Fishbein.

Conclusion

The judgment of the trial court is affirmed. Costs are taxed to Billy Ward, for which execution may issue if necessary.

C. CREED McGINLEY, Special Judge

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JUDGMENT

This case is before the Court upon the motion for review filed by Billy Ward 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 Billy Ward and his surety, for which execution may issue if necessary.

Clark, J., not participating