

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
March 21, 2016 Session

ANNIEDENE WATERS V. GENERAL MOTORS, LLC

**Appeal from the Circuit Court for Maury County at Columbia
No. 14993 Stella Hargrove, Judge**

No. M2015-01429-SC-R3-WC – Mailed June 2, 2016
FILED AUGUST 19, 2016

An employee sought workers' compensation benefits, alleging the advancement of the osteoarthritis in her right knee was primarily caused by her employment, and therefore, her employer was liable for medical treatment and disability benefits. The employer denied that the employee sustained a compensable work-related injury under Tennessee Code Annotated section 50-6-102(12)(C)(ii) (Supp. 2011), because the pre-existing osteoarthritis did not arise "primarily out of and in the course and scope of employment." The trial court concluded that the employee sustained a compensable injury and awarded temporary and permanent partial disability benefits. The employer has appealed, challenging the trial court's application of Tennessee Code Annotated section 50-6-102(12)(C)(ii). Pursuant to Tennessee Supreme Court Rule 51, the 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 trial court's judgment.

**Tenn. Code Ann. § 50-6-225(a)(2) (2014) Appeal as of Right; Judgment of the
Chancery Court Affirmed**

PATRICIA J. COTTRELL, SP.J., delivered the opinion of the Court, in which CORNELIA A. CLARK, J., and BEN H. CANTRELL, SR.J., joined.

Jason A. Lee and Megan Carrick, Nashville, Tennessee, for the appellant, General Motors, LLC.

Jonathan Williams and Larry R. Williams, Nashville, Tennessee, for the appellee, Anniedene Waters.

OPINION

Factual and Procedural History

On August 21, 2014, Anniedene Waters (“Employee”) filed a complaint in the Circuit Court for Maury County seeking workers’ compensation benefits from General Motors, LLC (“Employer”). She alleged that her employment advanced the severity of pre-existing osteoarthritis in her right knee, causing loss of range of motion and disabling pain, which resulted in her undergoing knee replacement surgery on March 18, 2013.¹ Employer responded that Employee was not entitled to workers’ compensation benefits because the osteoarthritis did not primarily arise out of her employment, but was rather a pre-existing non-compensable condition, unrelated to her employment.

At the time of trial, Employee was sixty-one years old. The proof established that she had worked on assembly line jobs since at least 1976, working for Rebatron Electronics from 1976 until 1985, for General Motors Corporation (“GMC”) from 1985 until 1987, and for Ford Motor Company from 1987 to 1990. Employee relocated from Michigan to GMC’s Spring Hill, Tennessee factory in 1990, where she worked until GMC declared bankruptcy and underwent restructuring in mid-2009.²

After the restructuring, Employee remained at the Spring Hill facility and began working for Employer on July 10, 2009, but she was laid off in February 2010. Employee’s layoff ended in September 2011, when she went to work at Employer’s Ohio facility. In June 2012, Employee relocated back to the Spring Hill factory. Employee’s engine dress line position at the Spring Hill factory required her to stand on concrete floors covered by very thin mats, as well as climb the sixteen concrete steps daily at the factory entrance. On March 18, 2013, she underwent right knee replacement surgery, attained maximum medical improvement on December 11, 2013, and subsequently returned to work for Employer at the Spring Hill facility.

¹ As Employee first missed work as a result of her right knee injury on March 18, 2013, this will constitute the date of her injury under the last day worked rule. See Bldg. Materials Corp. v. Britt, 211 S.W.3d 706, 713 (Tenn. 2007).

² A complete description of the restructure process may be found in Cook v. General Motors Corp., No. M2010-00272-WC-R3-WC, 2011 WL 590456 (Tenn. Workers’ Comp. Panel Feb. 16, 2011). Neither party disputes the trial court’s finding that Employer and GMC are separate business entities.

To establish that her knee replacement surgery “arose primarily out of and in the course and scope of employment,” as required by Tennessee Code Annotated section 50-6-102(12)(C)(ii) (Supp. 2011),³ Employee introduced the deposition of her treating physician, Dr. Joseph Frederick Wade. Both Employee and Employer also introduced documentary proof, including copies of medical records and correspondence between Employee and Dr. Wade.

Employee saw Dr. Randall L. Davidson, Jr., a partner of Dr. Wade, on January 31, 2002, complaining of right knee sprain and right knee pain, and she was diagnosed with “an exacerbation of underlying degenerative arthritis.” When she saw Dr. Davidson, Employee was 5’6” tall and weighed 303 pounds. She had full range of motion in her right knee at that time, although x-rays showed “near bone to bone contact in the patellofemoral joint as well as some narrowing in both medial and lateral compartments.” According to Dr. Wade, Employee’s weight, gender, familial tendencies, and activities, including work activity, would have caused or contributed to the exacerbation of her arthritic condition.

By the time Employee came under Dr. Wade’s care in June 2006, she had bilateral knee arthritis and pain in both knees, although her left knee had become more symptomatic than her right knee. From June 2006 through February 2009, Dr. Wade treated both of Employees’ knees conservatively with injections and medications for the arthritic condition. On February 2, 2009, Employee underwent left knee replacement surgery. On June 1, 2009, Dr. Wade released Employee to return to regular duty work.

Employee returned to Dr. Wade’s office on September 17, 2009, complaining of worsening pain in her right knee and requesting an injection. During that visit, Dr. Wade administered the first of a three-shot injection series of a viscosupplementation, a substance that lubricates the knee and reduces pain. He administered the second and third injections on January 26, 2010, and February 9, 2010. Dr. Wade next saw Employee on August 11, 2010. She complained of worsening pain in her right knee. Dr. Wade administered the first of another three-shot injection series, with the second and third injections administered on August 18 and 26, 2010.

Dr. Wade next saw Employee on January 6, 2012, for worsening right knee pain. By then, Employee was working at Employer’s Ohio facility and would continue working there for six more months. Employee did not want to consider knee replacement surgery until she returned to Tennessee to work, although she “was worsening from the standpoint of pain.”

³ The parties stipulated that if the Panel affirms the trial court’s finding of compensable injury, Employee sustained a 25% permanent anatomical impairment to the right lower extremity and is entitled to sixteen weeks of temporary benefits and a permanent partial disability award of 37.5%.

Employee visited Dr. Wade on July 30, 2012, and October 30, 2012. Her right knee was continuing to worsen. Dr. Wade administered another round of injections and saw Employee again on December 26, 2012. The injections had relieved her pain for “about one month.” Additionally, at this visit, an examination of Employee’s right knee revealed her range of motion was “substantially worse”—a reduction to “about 70 degrees of flexion.” At her next visit on February 5, 2013, Dr. Wade and Employee discussed right knee replacement surgery because “she had lost so much motion, [and] because that’s the reason that kind of says you can’t just keep waiting” to have knee replacement surgery.

Dr. Wade performed right knee replacement surgery on March 18, 2013. At a July 17, 2013, follow up visit, Dr. Wade released Employee to return to work with restrictions. Employee returned to work July 22, 2013, with restrictions, and reached maximum medical improvement on December 11, 2013. Dr. Wade assigned a permanent impairment rating of 25% to the right lower extremity, and because Employee returned to work, she is limited to the 1.5 multiplier. Thus, the parties stipulated that if her knee replacement surgery arose out of her employment, Employee is entitled to an award of 37.5% permanent partial disability benefits to the right lower extremity.

Dr. Wade opined that Employee’s work for Employer from September 2009 into 2010, and throughout 2011 and 2012, caused advancement of the severity of the pre-existing condition in her right knee, in particular the loss of range of motion in the knee and disabling pain in her right knee, all of which in turn necessitated the right knee replacement surgery. Dr. Wade also opined that the advancement of Employee’s condition to one requiring surgery “primarily arose out of her repetitive work activities” for Employer since 2009.

On cross-examination, Dr. Wade agreed that, other than the time she was off work recovering from left knee replacement surgery, Employee never missed work as a result of her right knee problems. He acknowledged that Employee’s return to work after left knee surgery continued to progress her right knee condition, explaining that “a [forty]-hour a week job that was predominantly standing would progress the arthritis and exacerbate the symptom, which is mostly pain of the arthritis.” He agreed that Employee’s weight increased from 303 pounds in 2002 to 330 pounds in October 2012, less than six months prior to her surgery. Although Dr. Wade initially testified that Employee’s work with General Motors going back to 1985 would have had a significant impact on her right knee injury, he corrected his response after being advised that she had worked for the Employer in this case only since 2009. He then stated that, in the applicable time frame, any progression of her right knee condition caused by the new job would be “miniscule.” When asked to summarize he stated:

A. Well, again it’s all about the words we use. Her osteoarthritis arthritic condition was due to probably her genetics and her weight as much or more than anything. The fact that she had persistent, daily, disabling pain, or at least significant pain that led to the surgery, might have been avoidable had she

worked a different job, though. So I have to say that the job certainly is what led to daily symptoms that she wound up having surgery for. But there's no question she had arthritis before 2009. It was going to be there, and it was going to be a problem whether she continued to work at GM or not.

When asked whether her employment advanced her arthritic condition prior to her surgery, Dr. Wade opined that her two decades of factory work prior to her employment with Employer "had taken a larger toll" than her work for Employer. He explained that, "yes, the damage was done and it was clearly going to progress with or without continued work. However, her pain, her daily pain, was clearly exacerbated by a [forty]-hour work week on a production-type line on concrete floors." Dr. Wade maintained that her "persistent, daily, disabling pain," part of the condition that compelled the knee replacement surgery, "might have been avoidable had she worked a different job."

At trial, Employee testified that she had not participated in any physical activities aside from her employment with Employer which would have aggravated her knee condition, although she acknowledged that her weight had exceeded three hundred pounds for over twenty years. The proof showed that, following her return to the Spring Hill facility in June 2012, Employee completed a Workers' Compensation Incident Report on August 22, 2012, in which she explained that standing on concrete floors for two hours or more without a break was aggravating her right knee.

The trial court took the case under advisement and issued written findings of fact and conclusions of law on June 22, 2015. It determined that the statute permits a "finding of compensability when a specific repetitive work activity is the primary cause of a medical condition." The trial court found Dr. Wade's testimony credible concerning his treatment and diagnoses of Employee, and ruled:

[Dr. Wade] stated that prior to 2009, neither [Employee's] level of pain nor loss of range of motion indicated a condition requiring total right knee replacement.

Based on the testimony of [Employee's] treating physician, Dr. Wade, and corresponding evidence, this Court finds that, . . . the deterioration of [Employee's] knee from the time of her employment with [Employer] until it reached a condition requiring surgery was a compensable injury.

The trial court also found that, while GMC is a separate entity from Employer, Employer must take Employee as it found her and is therefore liable for any injury that caused greater trauma to Employee than a worker without Employee's pre-existing arthritis. The trial court subsequently entered its written judgment on July 2, 2015, finding that Employee was entitled to lifetime medical care for her right knee injury from Employer and,

in accordance with the stipulations, that Employee sustained a 25% permanent anatomical impairment, which resulted in a permanent partial disability of 37.5% to the right lower extremity, the equivalent of seventy-five weeks of benefits at the stipulated average weekly wage of \$806, for a lump sum of \$60,450 in permanent disability benefits.

Employer has appealed from the trial court's judgment, arguing that the trial court misinterpreted Tennessee Code Annotated section 50-6-102(12)(C), and, as a result, improperly concluded that Employee suffered a compensable injury.

Standard of Review

Appellate review of decisions in workers' compensation cases is governed by Tennessee Code Annotated section 50-6-225(a)(2) (2014), which provides that appellate courts must "[r]eview . . . 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, unless the preponderance of the evidence is otherwise." As the Tennessee 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). It is not the job of the reviewing court to "substitute our own judgment for that of the trial court merely because we might have chosen another alternative." Brown-Harper v. Nissan N. Am., Inc., No. M2006-00044-WC-R3-CV, 2007 WL 789527, at *3 (Tenn. Workers' Comp. Panel Mar. 16, 2007). 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.2d 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).

Interpretation and Application of Statute

In its appeal, Employer asserts that the trial court erred by finding that Employee suffered a compensable cumulative trauma injury under Tennessee Code Annotated section 50-6-102(12)(C).⁴ Of course, for an employee to prevail, he or she must establish a compensable injury. For claims arising between 2011 and 2014, the statute defined the terms "injury" and "personal injury":

⁴ 2011 Public Chapter 416, section 8. This statute has since been amended, so all references to Tennessee Code Annotated section 50-6-102(12)(C) are to the 2011 version, unless specifically noted.

(A) Mean an injury by accident, arising out of and in the course of employment, that causes either disablement or death of the employee; . . .

....

(C) Do not include:

(i) Cumulative trauma conditions, hearing loss, carpal tunnel syndrome, *or any other repetitive motion conditions unless such conditions arose primarily out of and in the course and scope of employment.*

Tenn. Code Ann. § 50-6-102(12) (emphasis added).

This appeal is determined by the interpretation and application of this statute. Specifically, whether the Employee's "condition" arose out of and in the course of her employment. This issue of statutory construction is a question of law to which no presumption of correctness attaches. See Seiber, 284 S.W.3d at 298.

Employer asserts the Employee's right knee arthritis did not arise primarily out of her employment for Employer between July 2009 and her surgery in March 2013. Indeed, the proof is undisputed that Employee was diagnosed with right knee arthritis in 2002, long before her employment with Employer.

Employer asserts that this unrefuted proof requires reversal of the trial court because the 2011 statute permits recovery only if Employee's "other repetitive motion condition arose primarily out of and in the course and scope of [her] employment." Tenn. Code Ann. § 50-6-102(12). Thus, Employer defines, and would have us define, "condition" as the underlying arthritis.

Employee, on the other hand, defines "condition" as the medical status that required knee replacement, *i.e.*, the loss of range of motion combined with the debilitating pain that created the necessity of surgery.

As support for her assertion, Employee relies upon DeGalliford v. United Cabinet Company, LLC, No. M2013-00943-WC-R3-WC, 2014 WL 1018170 (Tenn. Workers' Comp. Panel Mar. 17, 2014). In DeGalliford, the employee, a fifty-one year old table saw operator, experienced low back pain and other symptoms while working and had to undergo surgery to "remove the [herniated] discs [which were impinging on the spinal cord at the C5-6 and C6-7 levels] and stabilize the cervical cord." 2014 WL 1018170, at *2. Both his doctor and the employer's doctor agreed that the employee suffered from a pre-existing condition, severe spondylosis of the cervical spine, so the employee's ability to recover hinged upon "whether

the pressure placed on [the e]mployee's spinal cord by two herniated discs was primarily caused by repetitive work activities or was merely the inevitable result of the progressive nature of degenerative disc disease." Id. at * 7.

During his direct testimony, the DeGalliford employee's doctor differentiated between the employee's pre-existing condition and the condition of the employee's spine prior to surgery:

Q: And in your opinion, did [the employee's] work for [the employer] advance the severity of the *pre-existing condition* in his cervical spine at C5-6 and C6-7?

A: Yes.

Q: Therefore was [the employee's] *cervical spine condition* at C5-6 and C6-7 primarily caused by his work activities at [the employer]?

A: From all the data that I have available to me at this time, yes.

Id. at *3 (emphasis added). The DeGalliford Panel found that the evidence did not preponderate against the trial court's reliance on the employee's doctor, who testified that the employee's "condition was primarily caused by his repetitive work activities" and that the "[e]mployee's work did not merely increase his pain, but also advanced the severity of his pre-existing condition." Id. at *7. The Panel thus interpreted the 2011 statute as allowing for recovery when the repetitive motion condition arising primarily from employment is the *advancement* of an employee's pre-existing condition, rather than the pre-existing condition itself.

We agree with the DeGalliford Panel and hold that the 2011 statute was not intended to preclude workers' compensation recovery when employment activities are the primary cause of the advancement of severity in a pre-existing condition to the extent that employee's injury condition requires surgery. We agree with the trial court's findings that prior to 2009 Employee's condition did not require surgery, but that Employee's knee had deteriorated after that time until it reached a condition requiring surgery. Accordingly, we hold that Employee did suffer from a "condition", as that term is used in Tennessee Code Annotated section 50-6-102(12)(C)(ii).

Having concluded that Employee is not barred from recovering as a matter of law under the 2011 statute, we must next determine whether the evidence preponderates against the trial court's factual finding that Employee's employment primarily caused her right knee arthritis to reach a condition necessitating her right knee replacement surgery. See Banks v. United Parcel Serv., Inc., 170 S.W.3d 556, 562 (Tenn. 2005); Hardy v. Goodyear Tire &

Rubber Co., No. W2012-00369-SC-WCM-WC, 2013 WL 1932193, at *9 (Tenn. Workers' Comp. Panel May 9, 2013).

In order to prove causation, a plaintiff in a workers' compensation case must establish "the causal relationship between the alleged injury and the claimant's employment activity." Excel Polymers, LLC v. Broyles, 302 S.W.3d 268, 274-75 (Tenn. 2009). Proof of causation, in all but the most obvious cases, requires expert medical proof. Cloyd v. Hartco Flooring Co., 274 S.W.3d 638, 643 (Tenn. 2008). Where expert medical testimony is presented by deposition at trial, an appellate court may independently assess where the preponderance of the evidence lies. Thomas v. Aetna Life & Cas. Co., 812 S.W.2d 278, 283 (Tenn. 1991). This does not mean, however, that "the deposition testimony of experts should be read and evaluated in a vacuum." Id. Rather, "[w]hile causation and permanency of an injury must be proved by expert medical testimony, such testimony must be considered in conjunction with the lay testimony of the employee as to how the injury occurred and the employee's subsequent condition." Id. When a trial includes live testimony from a lay witness, an appellate court must afford "considerable deference . . . to the trial court's evaluation of such oral testimony." Id. We also take note of Tennessee Code Annotated section 50-6-116 (2014), which at the time this injury occurred stated that the workers' compensation law is "a remedial statute, which shall be given an equitable construction by the courts, to the end that the objects and purposes of this chapter may be realized and attained."⁵

Whether Employee's employment was the primary cause of the advancement of the severity of her bilateral knee arthritis is a close question. Given the lay and expert proof in the record, and our duty to apply the workers' compensation statute in a remedial and equitable manner, we conclude the evidence does not preponderate against the trial court's findings that Employee's work for Employer primarily caused the advancement of her right knee arthritis and necessitated knee replacement surgery.

Dr. Wade opined that Employee's work for Employer from September 2009 into 2010, and throughout 2011 and 2012, caused the loss of range of motion and disabling pain in her right knee, which in turn necessitated right knee replacement surgery. Dr. Wade also opined that the advancement of the severity of Employee's pre-existing right knee arthritis "primarily arose out of her repetitive work activities" for Employer, although he acknowledged that other factors contributed to the advancement. Employee testified that she had not participated in any physical activities other than her work for Employer which would have aggravated her knee condition. Additionally, Employee had completed a Workers' Compensation Incident Report on August 22, 2012, in which she explained that standing on

⁵ This section was amended, effective July 1, 2014, to state the workers' compensation law "shall not be remedially or liberally constructed . . . and . . . shall not be construed in a manner favoring either the employee or the employer." Tenn. Code Ann. § 50-6-116 (2016).

concrete floors for two hours or more without a break was aggravating her right knee. Although the proof is not overwhelming, the evidence in the record on appeal does not preponderate against the trial court's finding that the advancement of Employee's pre-existing right knee arthritis primarily arose out of her repetitive work activities.

Conclusion

The judgment of the trial court is affirmed. Costs are taxed to General Motors, LLC and its surety, for which execution may issue if necessary.

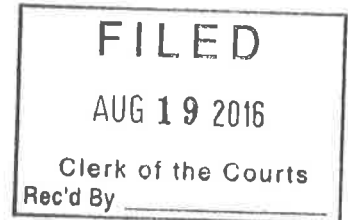
PATRICIA J. COTTRELL, SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

ANNIEDENE WATERS v. GENERAL MOTORS, LLC

**Circuit Court for Maury County
No. 14993**

No. M2015-01429-SC-WCM-WC



JUDGMENT ORDER

This case is before the Court upon the motion for review filed by General Motors, LLC pursuant to Tennessee Code Annotated section 50-6-225(e)(5)(A)(ii), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's 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 General Motors, LLC, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

Cornelia A. Clark, J., not participating