

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
March 25, 2013 Session

JEFFREY PATTERSON v. THYSSENKRUPP ELEVATOR COMPANY

Appeal from the Chancery Court for Hardeman County
No. 17209 Martha B. Brasfield, Chancellor

No. W2012-01619-WC-R3-WC - Mailed May 8, 2013; Filed June 10, 2013

In this workers' compensation case, the employee alleged he suffered a ruptured cervical disk while lifting metal plates at work. His employer denied the claim, contending the neck injury was caused or worsened by a subsequent motor vehicle accident. The employee filed this action in the Chancery Court of Hardeman County, seeking workers' compensation benefits. The trial court ruled in favor of the employee, awarding temporary and permanent disability benefits plus future medical benefits. The employer has appealed, contending the evidence preponderates against the trial court's finding. 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 in accordance with Tennessee Supreme Court Rule 51. We affirm the trial court's judgment.

**Tenn. Code Ann. § 50-6-225(e) (2008 & 2012 Supp.) Appeal as of Right; Judgment
of the Chancery Court Affirmed**

DON R. ASH, SR. J., delivered the opinion of the Court, in which CORNELIA A. CLARK, J., AND TONY A. CHILDRESS, SP. J., joined.

Deana C. Seymour and Gregory D. Jordan, Jackson, Tennessee, for the appellant, ThyssenKrupp Elevator Company.

Scott G. Kirk, Jackson, Tennessee, for the appellee, Jeffrey Patterson.

OPINION

Factual and Procedural Background

Jeffrey Patterson (“Employee”) began working as a welder for Thyssenkrupp Elevator Company (“Employer”) in 1995. His job consisted of welding metal plates to “stiles,” parts of the elevator cab. The plates weighed approximately twenty-five pounds. The plates were delivered to his work area by a forklift and placed in a basket. On November 1, 2007, a load of forty or fifty plates was placed on the floor near his work area, rather than in the basket, making it necessary for him to bend over and pick up each plate before welding it to a stile. While doing this, he felt a popping sensation, followed by pain. He immediately reported the injury to his supervisor, who directed him to the plant safety office. There, he reported the injury to Chad Garrett, the safety director. He requested medical attention and returned to his regular job. Shortly thereafter, he began to experience numbness and tingling in his right hand and wrist.

During the next few months Employee continued to work, but his pain persisted, including numbness and tingling in his right hand, wrist and arm. Employer did not refer Employee to a physician. Employee’s supervisor discussed the matter with Employer’s safety director, Mr. Garrett, but no referral was made. Mr. Garrett left the company and was replaced by Patrick McClowskey. Employee reported his ongoing symptoms to Mr. McClowskey, but was still not referred to a doctor.¹ Employee’s symptoms worsened. After he began to drop things from his right hand, Employee started to weld with his left hand.

In February 2008, Employee was involved in a motor vehicle accident. A car exiting a side road struck his pickup truck in the side, causing minor damage. Employee had stiffness in his neck and back after the accident. He received medical treatment at an emergency room and from Chet Rall, a Family Nurse Practitioner. Employee testified his hand and arm symptoms were the same after the accident as they had been before it.

Employee was finally provided with a panel of physicians on August 28, 2008, more than nine months after his reported injury. Employee chose Dr. Elliot, a general practitioner, who was unable to help. Employee was then provided with a panel of specialists and chose Dr. John Varner, an orthopaedic surgeon.

Employee first saw Dr. Varner on September 4, 2008, ten months after his work injury. During the exam, Employee complained primarily of pain in his right hand and wrist.

¹ From the date of Employee’s injury until the time of trial, Employer had four different safety directors.

He reported his symptoms had worsened recently due to an increased workload. Dr. Varner initially diagnosed carpal tunnel syndrome, prescribed medication, and ordered a nerve conduction study. The results of the test were normal, so Dr. Varner injected cortisone into Employee's wrist and placed temporary restrictions on the use of his right hand. These measures provided little or no benefit to Employee. At Employee's final visit on October 20, 2008, Employee told Dr. Varner he had recently been receiving treatment for "some neck problems" which began "three to four years" earlier and which were exacerbated by a motor vehicle accident that occurred "seven months [earlier]." Dr. Varner concluded the Employee had no permanent impairment, released him from further care, and placed no restrictions on his activities. Dr. Varner observed, "any time you have neck pain, it can cause pain down the arm." Dr. Varner did not investigate a possible neck injury in Employee's case because the results of the nerve conduction study were negative.

In late 2008, Employee received a series of injections from a Dr. Steuer. Dr. Steuer ordered an MRI scan in October 2008, which revealed a large herniated disk at the C5-6 level of the spine. Employee was referred to Dr. Glenn Crosby, a neurosurgeon, for further evaluation and treatment.

At his first visit with Dr. Crosby on February 20, 2009, Employee gave a history of having injured himself while lifting heavy plates at work. Based on Employee's symptoms and the MRI findings, Dr. Crosby recommended a C5-6 fusion to repair the ruptured disk and performed that procedure on May 5, 2009. Within a few days after the surgery, Employee's right hand and arm symptoms had almost completely resolved. In August 2009, Dr. Crosby released Employee to return to work with no restrictions. He assigned a 12% permanent anatomical impairment due to the injury and surgery. Dr. Crosby testified the herniated disk he observed and treated was consistent with the November 2007 work accident. Until the day of his deposition, Dr. Crosby had been unaware of Employee's February 2008 motor vehicle accident. Dr. Crosby acknowledged a ruptured disk can be caused by a motor vehicle accident and knowing of the accident "might have made a difference" in determining whether or not the accident had aggravated Employee's symptoms. Asked if he could apportion Employee's symptoms between the two incidents within a reasonable degree of medical certainty, Dr. Crosby stated: "As it stands now, based on my history and notes, I'm relating the pain, ruptured disc and treatment to the original work injury, and the aggravation of those symptoms from the motor vehicle accident was not addressed." He further testified that Employee

clearly had something happen to his neck when he lifted the plates. According to the patient, he indicated to me that he hurt his neck lifting those plates. So trying to understand the role of

the motor vehicle accident in this situation would be in my opinion one where it's an aggravation of his original injury.

Consistent with Dr. Crosby's testimony, Employee testified the May 2009 surgery immediately relieved his hand and arm symptoms and enabled him to perform his job and engage in all of his pre-injury activities. At trial, Employee was forty-six years old and had a twelfth-grade education. Prior to working for Employer, Employee had worked as a construction worker, factory maintenance worker, and sandblaster.

Employee testified he did not discuss his hand and arm symptoms with Mr. Rall, his primary medical care provider, because he anticipated Employer would provide medical care to him for those problems. Employee admitted receiving treatment for increased neck pain at an emergency room on December 24, 2008, but said no particular event precipitated this symptom.

The trial court issued its findings from the bench, stating: (1) Employee's right hand and arm symptoms began in November 2007; (2) Employee promptly reported the November 2007 injury to Employer; and (3) the symptoms resolved after Employee's 2009 surgery by Dr. Crosby. The trial court also found Employee was a credible witness. Based on these findings, the trial court ruled that Employee sustained a compensable injury in November 2007 and that the 2009 surgery was related to the injury. The trial court awarded Employee medical expenses, temporary total disability benefits and, based on Employee's testimony concerning the extent of his improvement following surgery, 15% permanent partial disability benefits. Judgment was entered in accordance with those findings. Employer has appealed, challenging only the trial court's ruling that Employee sustained a compensable neck injury. Employer has not challenged any other aspect of the trial court's judgment.

Standard of Review

Appellate review of decisions in workers' compensation cases is governed by Tennessee Code Annotated section 50-6-225(e)(2) (2008 & 2012 Supp.), which provides 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[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

Employer contends the medical evidence preponderates against the trial court's finding that Employee sustained a compensable neck injury. The factual premise of Employer's position is that Employee's medical records contain no reference to neck pain or stiffness until after the February 2008 motor vehicle accident. In addition, Employer points to Dr. Varner's notation of October 20, 2008, which indicates Employee's neck pain began three or four years earlier and had been aggravated by the motor vehicle accident, and to Dr. Crosby's testimony that such an accident could cause a ruptured C5-6 disk. Based upon this proof, Employer asserts the medical evidence preponderates against the trial court's finding that Employee sustained a compensable neck injury in November 2007. We disagree.

"Except in the most obvious, simple and routine cases," a claimant must establish a causal relationship between the claimed injury and the employment activity by a preponderance of the expert medical testimony, as supplemented by the lay evidence. Orman v. Williams Sonoma, Inc., 803 S.W.2d 672, 676 (Tenn. 1991). The element of causation is satisfied where the "injury has a rational, causal connection to the work." Braden v. Sears, Roebuck & Co., 833 S.W.2d 496, 498 (Tenn. 1992) "Although causation in a workers' compensation case cannot be based upon speculative or conjectural proof, absolute certainty is not required" Clark v. Nashville Mach. Elevator Co., 129 S.W.3d 42, 47 (Tenn. 2004); see also Glisson, 185 S.W.3d at 354. All reasonable doubts as to the causation of an injury should be resolved in favor of the employee. Phillips v. A&H Constr. Co., 134 S.W.3d 145, 150 (Tenn. 2004).

It is undisputed Employee reported an injury on November 1, 2007. Employer stipulated Employee gave notice of a right wrist injury on that date. Employee testified his right hand and arm symptoms began shortly after that date and persisted without interruption until Dr. Crosby performed surgery in May 2009. There is no dispute Employee was ultimately diagnosed with a ruptured C5-6 disk. Likewise, it is undisputed the surgical repair of the disk gave Employee complete and almost immediate relief of the symptoms which began in November 2007. Dr. Crosby repeatedly opined the disk rupture was consistent with and occurred in November 2007. Dr. Varner, Employer's witness, testified Employee's hand and arm symptoms were consistent with a C5-6 disk injury. He also testified:

Again, if you have surgery on your neck, and your pain, numbness and all of your symptoms go away completely, it's

certainly possible that the symptoms were related to a neck problem . . . I have to assume if he had surgery on his neck and all of his pain went away and no numbness in his hand or any other problems, then you might state with more assurance that these symptoms were more related to his neck than an actual carpal tunnel problem.

This evidence overwhelmingly supports the trial court's finding that the Employee's ruptured cervical disk resulted from his work-related injury on November 1, 2007. As the trial court noted, the only evidence which casts any doubt on the causation of Employee's ruptured disk is the February 2008 motor vehicle accident and Employee's subsequent additional symptoms of neck stiffness. Employee testified, however, that his right hand and arm symptoms were essentially the same before and after the motor vehicle accident. While Dr. Crosby testified the accident could have aggravated Employee's initial injury in some way, he was unwilling to attempt to apportion Employee's condition between those two events. There is little or no medical evidence concerning Employee's hand, arm, or neck for the period between the work injury and the motor vehicle accident, largely because Employer chose not to provide Employee medical care until almost ten months after the work injury occurred.

In this case, Employee offered strong proof of a rational, causal connection between the November 1, 2007 work injury and the ruptured disk surgically treated by Dr. Crosby. Braden, 833 S.W.2d at 498. The evidence concerning the effect of the February 2008 motor vehicle accident is vague and speculative at best. Absolute certainty is not required, and doubts as to causation should be resolved in favor of the employee. Phillips, 134 S.W.3d at 150; Reeser v. Yellow Freight Sys., Inc., 938 S.W.2d 690, 692 (Tenn. 1997). We therefore conclude the evidence does not preponderate against the trial court's finding on the issue of causation.

Conclusion

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

DON R. ASH, SENIOR JUDGE

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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 on appeal are taxed to the Appellant, ThyssenKrupp Elevator Company, and its surety, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM