

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-09-00448-CV

CITY OF BEAUMONT, Appellant

V.

TRACY A. O'QUINN, Appellee

**On Appeal from the 60th District Court
Jefferson County, Texas
Trial Cause No. B-181,294**

MEMORANDUM OPINION

The City of Beaumont appeals a jury's determination that Tracy A. O'Quinn's compensable injury of November 6, 1995, includes coronary artery disease and gastritis. We reverse the final judgment of the trial court and render judgment in favor of the City of Beaumont.

This case involves a judicial appeal from a determination by an appeals panel of the Division of Workers' Compensation, Texas Department of Insurance. In November 1995, O'Quinn suffered an on-the-job heart attack while he was working as a firefighter for

the City of Beaumont. It is undisputed that the heart attack was a compensable injury covered by workers' compensation. O'Quinn returned to work without restrictions in April 1996. He worked without restrictions until June 2003, when he had an abnormal result on a myocardial perfusion stress test. On June 26, 2003, O'Quinn "underwent coronary artery bypass surgery times five[.]" The surgery in June 2003 was not covered by workers' compensation insurance.

At some point following his 1995 heart attack, a dispute arose regarding the scope of O'Quinn's compensable injury. O'Quinn testified at trial that for about two or three years following his heart attack his prescribed medications were covered by workers' compensation insurance. O'Quinn explained that thereafter workers' compensation denied coverage of his prescribed medications and coverage was switched to his major medical insurance provider. O'Quinn testified that the co-pays and deductibles had increased over the years and that he is the "one footing the bill" for his medications. O'Quinn further testified that he did not file a workers' compensation claim for his 2003 surgery. However, at some point following his 2003 surgery, O'Quinn sought a determination from the Department of Insurance, Division of Workers' Compensation regarding the extent of his 1995 injury.

On September 18, 2007, a benefit review conference was held on the issue of whether O'Quinn's compensable injury of November 6, 1995, included coronary artery disease, HDL (high density lipoprotein), and gastritis. The matter was not resolved by the benefit review conference and was referred to a benefit contested case hearing. In

November 2007, the contested case hearing officer issued a decision and order finding that O’Quinn’s compensable injury did not cause him to sustain or aggravate coronary artery disease, HDL, or gastritis. Thereafter, O’Quinn filed suit in the district court.

The Texas Workers’ Compensation Act provides that a party who has exhausted administrative remedies and is aggrieved by a final decision of the appeals panel may seek judicial review of the appeals panel decision. TEX. LAB. CODE ANN. § 410.251 (Vernon 2006). The party appealing a final decision of the appeals panel regarding compensability has the burden of proof by a preponderance of the evidence. *Id.* § 410.303. “The pleadings must specifically set forth the determinations of the appeals panel by which the party is aggrieved.” *Id.* § 410.302(b). The jury’s determination is “limited to the issues that were before the . . . appeals panel; . . . [the jury] does not simply review the appeals panel decision for reasonableness, but decides the issues independently based on a preponderance of the evidence.” *Sec. Nat’l Ins. Co. v. Farmer*, 89 S.W.3d 197, 200 (Tex. App.—Fort Worth 2002, pet. denied) (citing TEX. LAB. CODE ANN. § 410.302-.303, and *Tex. Workers’ Comp. Comm’n v. Garcia*, 893 S.W.2d 504, 531 (Tex. 1995)).¹

The issue addressed by the appeals panel was “[w]hether [c]laimant’s compensable injury of November 6, 1995[,] extends to and includes coronary artery disease, HDL, and/or gastritis.” In its decision and order, the hearing officer stated,

¹ O’Quinn sought a judicial determination that his compensable injury of November 6, 1995, included coronary artery disease, HDL (high density lipoprotein), and gastritis. A determination of health care reasonably required by the nature of the injury as provided for under the Texas Workers’ Compensation Act, is outside the scope of the underlying lawsuit and of this appeal. *See* TEX. LAB. CODE ANN. § 408.021(a) (Vernon 2006).

Although Dr. Sotolongo, [O'Quinn's] treating cardiologist, did state that [O'Quinn] sustained ischemic cardiomyopathy due to the claim injury, and also stated that [O'Quinn's] continued need for medication was properly attributable to that event, his opinion is conclusory, at best, and does not explain how [O'Quinn's] heart attack allegedly caused or contributed to the medical conditions at issue herein. To the contrary, the available medical evidence instead suggests that [O'Quinn's] heart attack did not exacerbate his previously undiagnosed heart disease, but was the simply [sic] event that caused [O'Quinn] to become aware of the need to monitor and treat this condition.

....

Notwithstanding the foregoing comments, the Hearing Officer observes that the claim injury caused an appreciable degree of permanent damage to [O'Quinn's] heart, as evidenced by the thirty per cent whole body Impairment Rating assessed on account of such injury. It consequently appears likely, if not certain, that [O'Quinn] will require continued medical treatment that is traceable to his compensable injury of November 6, 1995. The decision in this case addresses only the issue presented for resolution, and is not intended to eliminate Self-insured's liability for reasonable and necessary treatment occasioned by the injury in question.

Based on the decision, the following order was issued: "Carrier is not liable for the medical benefits at issue in this hearing; [c]laimant remains entitled to medical benefits for the compensable injury in accordance with Section 408.021 of the Act." O'Quinn's pleadings state that he "has been fully aggrieved by the hearing officer's findings of fact and conclusions of law[.]" specifically the following determination by the appeals panel:

That the claimant's injury of November 6, 1995[,] does not extend to or include coronary artery disease, HDL, or gastritis, and these conditions do not constitute part of the claim injury.

After hearing the evidence in the trial below, the jury found that O'Quinn's compensable injury of November 6, 1995, included coronary artery disease and gastritis,

but not HDL. The City of Beaumont appeals the final judgment of the trial court. The City argues in two issues that the evidence is legally and factually insufficient to support the jury's determination that O'Quinn's compensable injury includes coronary artery disease and gastritis.

The City contends that there is no competent evidence to support the jury's findings, or, in the alternative, that the evidence is so weak and the findings so contrary to the weight of the evidence that the verdict should be set aside. In reviewing the legal sufficiency of the evidence, we determine whether the evidence "would enable reasonable and fair-minded people to reach the verdict under review." *City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005). We "credit favorable evidence if reasonable jurors could, and disregard contrary evidence unless reasonable jurors could not." *Id.* Additionally, we view the evidence in the light most favorable to the verdict, and indulge every reasonable inference that would support it. *Id.* at 822. In reviewing the factual sufficiency of the evidence, we consider all the evidence, and set aside the verdict only if the findings are so against the great weight and preponderance of the evidence that they are clearly wrong and unjust. *See Ortiz v. Jones*, 917 S.W.2d 770, 772 (Tex. 1996); *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986).

At trial, the jury heard testimony from O'Quinn, as well as his treating cardiologist, Dr. Rodolfo Sotolongo. The jury was also presented documentary evidence, including reports and notes from other physicians. O'Quinn testified that prior to the November 1995 heart attack he was not taking any medication and had never been diagnosed with

coronary artery disease or gastritis. O'Quinn explained that around 1994 he had some "indigestion or gas" that ultimately caused him to get "checked out on the heart floor." According to O'Quinn, he was admitted to the hospital for four days during which he underwent numerous tests. O'Quinn told the jury the test results showed that he was "healthy as a horse." However, upon examination for the November 1995 heart attack, O'Quinn was diagnosed with an acute myocardial infarction. O'Quinn underwent a cardiac catheterization and was diagnosed with severe coronary artery disease with one vessel stenosed over 75% and was diagnosed with massive myocardial infarction. O'Quinn told the jury his diagnosis came as a surprise to him. However, he admitted that he had multiple risk factors for coronary artery disease, including heavy tobacco use and a positive family history.

O'Quinn explained to the jury the types of medications he had taken since the 1995 heart attack and the purpose of each medication. O'Quinn testified that Dr. Sotolongo told him that as a result of his heart attack he was going to need to take the prescribed medications for the rest of his life. With respect to Prevacid, O'Quinn testified that he started taking the Prevacid "probably within six months of the heart attack," and that "it was given to [him] with the idea that -- because [he] was taking so much medicine, it was giving [him] acid reflux[.]" The Discharge Summary following O'Quinn's November 1995 heart attack identified peptic ulcer disease with GERD as one of the final diagnoses, and O'Quinn was discharged with the medication Prilosec to treat this condition.

O'Quinn presented the expert testimony of Dr. Sotolongo by video deposition.

O'Quinn prefaced his examination of Dr. Sotolongo by stating that there was a dispute regarding "the medications Mr. O'Quinn is taking currently and whether or not those medications are on the one hand, being taken because of his heart attack in 1995, an on-the-job event, or independent of the heart attack and, therefore, not covered within the bounds of the workers' compensation coverage." Thereafter, Dr. Sotolongo was questioned with regard to the medications O'Quinn was prescribed following his 1995 heart attack.

Dr. Sotolongo testified that after the 1995 heart attack, O'Quinn was prescribed a beta blocker. According to Dr. Sotolongo, beta blockers "decrease the [heart's] pumping function and the work the heart does" and "protect the heart from getting dilated and poorly contracting . . . to try to preserve the heart muscle as much as possible." Dr. Sotolongo explained that the heart attack "basically damaged the heart muscle and weakened it. And [beta blockers are] used to protect the heart. Anyone that's had a heart attack who gets placed on beta blockers tends to have a better survival and better outcome." According to Dr. Sotolongo, the beta blocker Toprol XL, as well as Altace, another medication prescribed to O'Quinn, "were directly related to the heart attack." Dr. Sotolongo explained that these medications are prescribed to treat "damage to the heart" that resulted from the heart attack and to "prevent adverse remodeling of the heart." Dr. Sotolongo also described other medications O'Quinn was prescribed after the heart attack. For example, Dr. Sotolongo testified that O'Quinn was prescribed Triamterene "to prevent any fluid build-up as a result of the damage to the heart." Dr. Sotolongo also testified that

O'Quinn was prescribed Clopidogrel to prevent blood clots in the arterial system. According to Dr. Sotolongo, this medication was necessary because of "the heart attack and the blockage." Dr. Sotolongo further testified that O'Quinn was prescribed Prevacid as a result of gastroesophageal reflux disease, but that it was "unrelated to the heart attack."

Upon cross-examination, Dr. Sotolongo testified regarding the risk factors present in O'Quinn's medical history for coronary artery disease. He indicated that O'Quinn had a history of smoking for many years, as well as a "positive family history [for coronary artery disease] in his brother and on his father's side of the family." Dr. Sotolongo explained that cardiologists look at risk factors for coronary artery disease because such factors increase the possibility that a person will have the disease. Dr. Sotolongo indicated that O'Quinn's coronary artery disease, diagnosed by Sotolongo following O'Quinn's 1995 heart attack, was not related to O'Quinn's occupation as a firefighter. According to Dr. Sotolongo, the treatment of O'Quinn's heart attack during his hospitalization in 1995 "was successful." Dr. Sotolongo also indicated that, "based upon [a] reasonable medical probability," O'Quinn's coronary artery disease is not related to the November 1995 heart attack. Likewise, Dr. Sotolongo testified that the gastritis that O'Quinn suffers from is not related to the November 1995 heart attack.

The City of Beaumont argues, based on Dr. Sotolongo's testimony, that there is no competent expert testimony or evidence that supports the jury's findings. We agree. Dr. Sotolongo testified that certain medications prescribed following the November 6, 1995, heart attack were prescribed because of damage to the heart muscle resulting from

O'Quinn's heart attack. While the evidence offered through Dr. Sotolongo at trial established that certain medications prescribed to O'Quinn are and continue to be reasonably required as a result of the 1995 heart attack and the resulting damage to his heart muscle, this is not the issue that was submitted to the appeals panel in the administrative proceeding, nor is it the issue that was presented to the jury. To show that O'Quinn's compensable injury of November 6, 1995, includes coronary artery disease and gastritis, it is not sufficient to simply show that O'Quinn was prescribed certain medications after the November 6, 1995, heart attack that he had not been prescribed before the heart attack. Dr. Sotolongo offered no evidence that either the coronary artery disease or gastritis was caused by the November 6, 1995, heart attack or aggravated by such event. Dr. Sotolongo's testimony regarding whether O'Quinn's prescribed medications were made necessary as a result of his 1995 heart attack amounts to no evidence of whether the coronary artery disease or gastritis should be included as part of the compensable injury of November 6, 1995.

In addition to Dr. Sotolongo's testimony, documentary evidence was also admitted at trial. O'Quinn submitted a July 10, 2006, letter from Sotolongo, which states as follows:

The current medications prescribed for Mr. O'Quinn is the acceptable standard of care for a patient who has suffered a myocardial infarction (MI) resulting in Cardiomyopathy.

Mr. O'Quinn's cardiac condition to date is related to the MI he had in 1995.

O'Quinn also presented an August 3, 2007, letter from Dr. Thomas Digler, Jr. Dr. Digler

described his evaluation of O'Quinn and noted that O'Quinn "has ongoing coronary artery disease, which [is] being treated by his cardiologist." Dr. Digler further stated that in his opinion "the examinee's disability is a direct result of the work-related injury." Like Dr. Sotolongo's testimony at trial, the documentary evidence submitted by O'Quinn does not address the issue before the jury. These letters amount to no evidence that O'Quinn's coronary artery disease or gastritis should be included as a part of his November 1995 compensable injury. Even were we to view the documentary evidence submitted by O'Quinn as evidence pertinent to the issues before the jury, and we do not, we note that the opinions stated therein are bare conclusions insufficient to support the judgment. *See City of San Antonio v. Pollock*, 284 S.W.3d 809, 816 (Tex. 2009) (recognizing that an expert's bare conclusions do not constitute competent evidence).

The jury charge asked the jury whether O'Quinn's compensable injury of November 6, 1995, included coronary artery disease and gastritis. The jury answered "yes" to both questions. We conclude that the evidence in the record is legally insufficient to support the jury's findings. While there is a preponderance of evidence to establish that most of the medications prescribed by Dr. Sotolongo were reasonably required by the nature of the injury, there is no evidence in the record to support a finding that his coronary artery disease was caused or aggravated by his November 1995 heart attack. Likewise, the evidence establishes O'Quinn suffered from peptic ulcer disease at the time of the November 1995 incident, and this condition was exacerbated as a result of the medications prescribed subsequent to his heart attack. It is undisputed in the record that O'Quinn's

gastritis was drug-induced and not a result of his 1995 heart attack. We conclude the evidence is legally insufficient to support the jury's findings. We sustain issues one and two, reverse the judgment of the trial court, and render judgment that Tracy A. O'Quinn's compensable injury of November 6, 1995, does not include coronary artery disease, HDL (high density lipoprotein) or gastritis.

REVERSED AND RENDERED.

CHARLES KREGER
Justice

Submitted on July 19, 2010
Opinion Delivered September 16, 2010

Before Gaultney, Kreger, and Horton, JJ.