

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
June 25, 2012 Session

PAMELA A. JONES v. VANDERBILT UNIVERSITY

**Appeal from the General Sessions Court for Warren County
No. 10439-GSWC**

**No. M2011-02250-WC-R3-WC - Mailed September 5, 2012
Filed October 12, 2012**

In this workers' compensation action, the employee, Pamela A. Jones, suffered a work-related injury in 2004 and reached a settlement agreement with her employer, Vanderbilt University (Vanderbilt). She filed this action arguing that Vanderbilt was required to pay for bilateral knee replacement pursuant to the settlement agreement. Vanderbilt alleged that the need for the requested medical treatment was not caused by the work injury. After a hearing, the trial court ordered Vanderbilt to pay for Ms. Jones's bilateral knee replacement. Vanderbilt has appealed.¹ We affirm the judgment.

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

DONALD P. HARRIS, SP. J., delivered the opinion of the Court, in which WILLIAM C. KOCH, JR., J., and WALTER C. KURTZ, SR. J., joined.

Raymond S. Leathers, Nashville, Tennessee, for the appellant, Vanderbilt University.

B. Timothy Pirtle, McMinnville, Tennessee, for the appellee, Pamela A. Jones.

¹Pursuant to Tennessee Supreme Court Rule 51, this workers' compensation 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.

MEMORANDUM OPINION

Factual and Procedural Background

Ms. Jones worked as an anesthesia technician for Vanderbilt for twenty years. Her job involved moving equipment, lifting, bending, and squatting. On March 20, 2004, she fell while at work and suffered injuries to her right wrist, shoulders, and both knees.² In 2009, the parties reached a settlement that provided Ms. Jones a lump sum award and required Vanderbilt to “pay future medical expenses which are made reasonably necessary by and which are related to the injuries sustained on or about March 20, 2004, as described above and which may be reasonably required. . . .” The settlement designated Dr. Kurt Spindler, a board-certified orthopedic surgeon, as the authorized treating physician with regard to the right and left knee injuries.

Ms. Jones testified that she returned to work and continued to receive treatments from Dr. Spindler. The treatments, including two surgeries on her right knee and numerous steroid injections in both knees, were covered by the 2009 settlement agreement. In April of 2011, Ms. Jones told Dr. Spindler that she was experiencing pain in her knees. She had been using a cane or a walker and she had fallen while at work in February of 2011. Dr. Spindler administered additional injections, but Ms. Jones continued to have pain and difficulty walking. In July of 2011, Dr. Spindler recommended bilateral knee replacements and referred Ms. Jones to another surgeon.

Dr. Spindler testified by deposition that he treated Ms. Jones following her injuries in 2004. He performed two surgeries on her right knee, but did not recall surgery on her left knee. According to medical records, Ms. Jones’s “chief complaint” in April of 2011 was “bilateral knee pain related to her original injury in 2004.” Dr. Spindler testified that from 2006 to present, he had been managing both knees with conservative measures including hyaluronic acid and exercise. Dr. Spindler stated that “at this point it is clear that, even on x-ray, that she has now extensive changes related to arthritis that no longer can be managed or not managed very well with conservative care.” He testified as follows:

Q. Would the current and ongoing progression of the arthritic changes be related to her original injury in 2004?

A. No.

²Vanderbilt previously had reached a settlement agreement with respect to an injury to her left knee in 1991.

Q. And I noticed from your records that you had from time to time utilized injections on both knees; is that correct?

A. Yes.

Q. What about the arthritic changes in her left knee; would those be related to the injury that she incurred in 2004?

A. No.

* * *

Q. Looking back at it as a whole, what were the reasons for the injections to both knees?

A. *They were a result of the arthritis in her knees.*

(Emphasis added).

On cross-examination, Dr. Spindler acknowledged that in August of 2006, he noted that Ms. Jones's "work-related injury aggravate[d] her arthritis." Likewise, Dr. Spindler said that medical records in April of 2011 included his assessment that Ms. Jones "aggravated her arthritis, which relates to the original 2004 injury and to the episode that brought her in." He further testified as follows:

Q. [W]ould it also be fair to say that the work-related fall in 2004 and perhaps the more recent work-related episode in February 2011 aggravated or advanced or exacerbated her underlying pre-existing arthritis in her knees.

A. *You could use the term aggravated. I would agree with that.*

Q. And would aggravated mean to your use of the term, causing the underlying pathology to become more symptomatic to the point that medical care is required?

A. *Yes. It could become symptomatic requiring an episode of care, yes.*

(Emphasis added).

After observing that there was “conflicting proof,” the trial court determined that it should “resolve any kind of reasonable doubt or conflict in favor of the employee.” In short, the trial court concluded that “the knee replacements should be covered . . . as a result of [Ms. Jones’s] original injury and the aggravation and progression of the arthritis as a result of that injury.” Vanderbilt has appealed.

Standard of Review

Our standard of review of factual issues in a workers’ compensation case is de novo upon the record of the trial court, accompanied by a presumption of correctness of the trial court’s factual findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2005); Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 167 (Tenn. 2002). When issues of credibility of witnesses and the weight to be given their in-court testimony are before the reviewing court, considerable deference must be accorded to the factual findings of the trial court. Richards v. Liberty Mut. Ins. Co., 70 S.W.3d 729, 733 (Tenn. 2002); see Rhodes v. Capital City Ins. Co., 154 S.W.3d 43, 46 (Tenn. 2004). When expert medical testimony differs, it is within the trial judge’s discretion to accept the opinion of one expert over another. Hinson v. Wal-Mart Stores, Inc., 654 S.W.2d 675, 676-77 (Tenn. 1983). This Court, however, may draw its own conclusions about the weight and credibility to be given to expert testimony when all of the medical proof is by deposition. Krick v. City of Lawrenceburg, 945 S.W.2d 709, 712 (Tenn. 1997).

Analysis

Vanderbilt argues that the trial court erred in finding that Ms. Jones’s need for bilateral knee replacement was caused by her 2004 injury. Ms. Jones maintains that the evidence does not preponderate against the trial court’s judgment.

Our Supreme Court has recently reviewed the standard to be applied in evaluating evidence concerning the issue of causation in workers’ compensation cases:

Generally speaking, a workers’ compensation claimant must establish by expert medical evidence the causal relationship between the alleged injury and the claimant’s employment activity, “[e]xcept in the most obvious, simple and routine cases.” Cloyd v. Hartco Flooring Co., 274 S.W.3d 638, 643 (Tenn. 2008) (quoting Orman v. Williams Sonoma, Inc., 803 S.W.2d 672, 676 (Tenn. 1991)). The claimant must establish causation by the preponderance of the expert medical testimony, as supplemented by the evidence of lay witnesses. Id. As we observed in Cloyd, the claimant is granted the benefit of all reasonable doubts regarding causation of his or her injury.

Excel Polymers, LLC v. Broyles, 302 S.W.3d 268, 274-75 (Tenn. 2009).

Our Supreme Court also has provided guidance in cases where an employee seeks compensation on the grounds that a work injury has aggravated a pre-existing injury or condition.³ Generally, “an employer takes an employee ‘as is’ and assumes the responsibility of having a pre-existing condition aggravated by a work-related injury which might not affect an otherwise healthy person.” Cloyd, 274 S.W.3d at 643. An “employee does not suffer a compensable injury where the work activity aggravates the pre-existing condition merely by increasing the pain.” Trosper v. Armstrong Wood Products, Inc., 273 S.W.3d 598, 608 (Tenn. 2008); see also Smith v. Smith’s Transfer Corp., 735 S.W.2d 221, 224 (Tenn. 1987). “However, if the work injury advances the severity of the pre-existing condition, or if, as a result of the pre-existing condition, the employee suffers a new, distinct injury other than increased pain, then the work injury is compensable.” Trosper, 273 S.W.3d at 608.

In this case, Ms. Jones testified that she injured her knees in 2004, that she continued to work, and that she received steroid injections and other medical treatments over the next seven years. That treatment was provided under the settlement agreement she had reached with Vanderbilt. By 2011, these treatments were no longer effective. Ms. Jones had difficulty walking and had to use a cane or a walker. Although Dr. Spindler testified that Ms. Jones’s ongoing progression of arthritis was not related to Ms. Jones’s 2004 injury, he acknowledged that medical records from August of 2006 indicated that Ms. Jones’s “work-related injury aggravate[d] her arthritis.” Likewise, medical records from April of 2011 contained Dr. Spindler’s assessment that Ms. Jones “has aggravated her arthritis, which relates to the original 2004 injury. . . .” Finally, when asked if Ms. Jones’s 2004 injury “aggravated or advanced or exacerbated her underlying pre-existing arthritis in her knees,” Dr. Spindler agreed that the injury “aggravated” her condition. Although Vanderbilt insists that Dr. Spindler meant that the work injury only “aggravated” Ms. Jones’s level of pain, such a strained interpretation is simply not supported by the record. In short, having reviewed the record under the applicable standards of review, including the Tennessee Supreme Court guidance that Ms. Jones be granted the benefit of all reasonable doubt, we are unable to conclude the evidence preponderates against the finding of a causal relationship

³As pertinent to this case, “injury” means “an injury by accident arising out of and in the course of employment that causes either disablement or death of the employee and shall include occupational diseases arising out of and in the course of employment that cause either disablement or death of the employee and shall include a mental injury arising out of and in the course of employment.” Tenn. Code Ann. § 50-6-102 (12) (2005). The legislature since has amended the definition by adding that “[a]n injury is ‘accidental’ only if the injury is caused by a specific incident, or set of incidents, arising out of and in the course of employment, and is identifiable by time and place of occurrence. . . .” Tenn. Code Ann. § 50-6-102 (12)(A)(i) (2011)(2011 Public Acts, ch. 416 § 8).

between Ms. Jones' 2004 injury and the necessity for the treatment requested and, therefore, affirm the trial court's judgment.

Conclusion

For the foregoing reasons, the trial court's judgment is affirmed. Costs are assessed to Vanderbilt University.

DONALD P. HARRIS, SPECIAL JUDGE

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JUDGMENT

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 will be paid by Vanderbilt University, for which execution may issue if necessary.

PER CURIAM