

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

January 28, 2013 Session

ERIC GRIER v. ALSTOM POWER, INC.

**Appeal from the Chancery Court for Hamilton County
No. 08-0837 W. Frank Brown, III, Chancellor**

No. E2012-01394-WC-R3-WC-MAILED-MARCH 8, 2013/FILED-APRIL 10, 2013

This appeal arises from a dispute over post-settlement medical care. The employee alleged that he developed asthma as a result of exposure to welding fumes in the workplace. The employee and employer settled the workers' compensation claim. The trial court's order approving the parties' settlement provided that the employer would pay employee permanent partial disability benefits and provide future medical care "for the work related injury described" in the order. The trial court also designated Dr. Robert Younger III as the treating physician. Following the settlement, a dispute arose between the parties regarding payment for Dr. Younger's treatment. The employer refused to pay for continuing treatment for the employee's asthma because he was no longer exposed to welding fumes. The employee sought to require the employer to pay for the medical treatment Dr. Younger provided. After reviewing the medical proof submitted by the parties, the trial court ordered the employer to pay for Dr. Younger's recommended treatment. The employer has appealed. 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 judgment of the trial court.

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

SHARON G. LEE, J., delivered the opinion of the Court, in which JON KERRY BLACKWOOD, SR. J., and PAUL G. SUMMERS, SR. J., joined.

Jeffrey L. Cleary, Chattanooga, Tennessee, for the appellant, Alstom Power, Inc.

Douglas M. Cox, Chattanooga, Tennessee, for the appellee, Eric Grier.

OPINION

Factual and Procedural Background

Eric Grier (“Employee”) was employed by Alstom Power, Inc. (“Employer”) as a welder. Employee alleged that on or about August 28, 2005 he developed asthma in the course of his employment. Employee and Employer settled the claim and the trial court approved the settlement on January 20, 2010. At the time of the settlement, Employee was no longer employed by Employer. The order approving the settlement provided that Employer did not admit that Employee had sustained the injury he alleged; however, to avoid further litigation and expense, Employer agreed to pay Employee permanent partial disability benefits in the amount of \$131,960.00. This amount represented a disability of 53.0266 % to the body as a whole. The agreement also provided for payment of future medical expenses related to the work injury. Specifically, the agreement stated:

[T]he parties have agreed that the employer and insurer shall remain responsible for future medical expenses pursuant to the provisions of the Tennessee Workers' Compensation Act from and after the date of entry of this Order, but only for the work related injury described herein. Provided, however, that said expenses are made necessary as a direct result of and directly caused by the injury described herein. Provided further that said medical expenses must also be reasonable in amount and derived from a physician or health care provider authorized by the insurance company herein named, Robert E. Younger, III, M.D. being the designated treating physician[.]

In January 2011, Employer filed a petition for injunctive and declaratory relief, stating that a dispute had arisen between the parties concerning payments for medical treatments being prescribed by Dr. Younger. In May 2011, Employee filed a motion to compel Employer to pay for Dr. Younger’s treatment, including prescribed medications. The parties entered into an agreed order to present the medical evidence to the trial court through stipulated documents. Pursuant to this order, Employer filed a November 2009 report and July 2011 letter prepared by Dr. Stuart Brooks, a professor of pulmonology at the University of South Florida. Similarly, Employee filed Dr. Younger’s March 2009 deposition, a January 2011 letter prepared by Dr. Younger, and various medical records compiled during Employee’s treatment.

Employer relied on evidence contained in Dr. Brooks’ report and letter. Dr. Brooks did not examine Employee but reviewed Employee’s medical records. In a report dated

November 23, 2009, Dr. Brooks opined that Employee suffered from bronchial asthma that was aggravated by exposure in the workplace to welding fumes. In a followup report dated July 22, 2011, he confirmed that Employer suffers from “work-aggravated asthma.” Dr. Brooks concluded that while workplace exposure temporarily aggravated Employee’s asthma, the condition was pre-existing and not caused by Employee’s work for Employer. Moreover, because Employee is no longer exposed to the workplace fumes, his need for ongoing medications is not the result of “the prior workplace aggravation.” Dr. Brooks explained that because Employee “is removed from the Alstom plant, there is no biologically plausible reason to attribute his current medication requirements to his prior workplace experience/exposures at the Alstom Plant. The requirement for his ongoing need for asthma medication is due to a pre-existing, ongoing asthmatic condition.”

Conversely, Employee relied on the reports and testimony of his designated treating physician, Dr. William Younger III, who began treating Employee in 2005. Dr. Younger diagnosed Employee with obstructive pulmonary disease with asthma and concluded that the condition was permanent and more likely than not caused by his employment. In a letter dated January 4, 2011, Dr. Younger stated Employee suffered from chronic obstructive pulmonary disease (“COPD”) which emerged during his work as a welder at Alstom Power. According to Dr. Younger, Employee must continue his “maintenance pharmacotherapy to maintain control of asthma/COPD which he contracted while welding for Alstom Power.” He believed that Employee had occupational asthma “acquired during his welding exposures and that his continued asthma/COPD is a consequence of that affliction.”

The trial court issued its decision in a written memorandum. Based on its review of the order approving the parties’ settlement of the workers’ compensation claim and the evidence the parties provided, the trial court held that Dr. Younger’s medical treatment, including prescribed medications, was covered under the settlement order and should be paid by Employer. Employer appeals.

Standard of Review

We are statutorily required to review the trial court’s factual findings “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.” Tenn. Code Ann. § 50-6-225(e)(2). Following this standard, we are further required “to examine, in depth, a trial court’s factual findings and conclusions.” Crew v. First Source Furniture Grp., 259 S.W.3d 656, 664 (Tenn. 2008) (quoting Galloway v. Memphis Drum Serv., 822 S.W.2d 584, 586 (Tenn. 1991)). We accord considerable deference to the trial court’s findings of fact based upon its assessment of the testimony of witnesses it heard at trial, although not so with

respect to depositions and other documentary evidence. Padilla v. Twin City Fire Ins. Co., 324 S.W.3d 507, 511 (Tenn. 2010); Glisson v. Mohon Int'l, Inc./Campbell Ray, 185 S.W.3d 348, 353 (Tenn. 2006). When the issues involve expert medical testimony that is contained in the record by depositions and medical reports, such as in this case, “determination of the weight and credibility of the evidence must be drawn from the contents of the depositions, and the reviewing court may draw its own conclusions with regard to those issues.” Foreman v. Automatic Sys., Inc., 272 S.W.3d 560, 571 (Tenn. 2008). We review conclusions of law de novo with no presumption of correctness. Wilhelm v. Krogers, 235 S.W.3d 122, 126 (Tenn. 2007). Although workers’ compensation law must be liberally construed in favor of an injured employee, the employee must prove all elements of his or her case by a preponderance of the evidence. Crew, 259 S.W.3d at 664; Elmore v. Travelers Ins. Co., 824 S.W.2d 541, 543 (Tenn. 1992).

Analysis

On appeal, Employer asserts that the trial court erred in three ways. First, the trial court erred by finding that Employee’s continuing medical care was related to his work injury. Second, the trial court misinterpreted the settlement agreement. Last, the trial court erred in not ruling that Employee’s continuing symptoms are the result of the intervening cause of Employee’s habit of smoking cigarettes.

Under Tennessee Code Annotated section 50-6-204(a)(1)(4) (2008 and Supp. 2012) an injured worker is entitled to reasonable and necessary medical treatment, including medicine, as ordered by the attending physician. This includes, in appropriate cases, expenses for future medical treatment. See Stephens v. Henley’s Supply & Indus., Inc., 2 S.W.3d 178, 179 (1999). In accordance with this statutory provision, the order approving the parties’ settlement provided that Employee would receive future medical care for his work related injury from the designated physician, Dr. Younger.

After the trial court approved the settlement, Employer disputed its obligation to pay for the medical care rendered by Dr. Younger. Employer contends that Employee’s asthmatic condition is not related to his workplace injury. This argument is based on Dr. Brooks’ opinion that Employee’s asthma was only a temporary condition that was aggravated by the workplace fumes. According to Dr. Brooks, because Employee was no longer working at the Alstom plant and exposed to the fumes, his current medical treatment could not be attributed to the workplace, but to his pre-existing asthmatic condition. However, Dr. Brooks stated in his 2009 report that “[m]any follow-up studies of persons with documented occupational asthma show a high percentage of subjects having an inability to completely recover after leaving a workplace exposure.” In addition, the trial court observed that while

the Employer did not agree that Employee had a permanent injury, it agreed to pay Employee substantial benefits for permanent partial disability.

Dr. Brooks' opinion was contrary to the opinion of Employee's designated treatment physician, Dr. Younger, who had treated Employee since 2005. Because Dr. Younger is the designated treating physician, his treatment is presumed to be reasonable and necessary and the burden of proof is on the employer to show otherwise. See Russell v. Genesco, Inc., 651 S.W.2d 206, 211 (Tenn. 1983). Dr. Younger opined within a reasonable degree of medical certainty that Employee's asthmatic condition was permanent and that continuing treatment was necessary to "maintain control of asthma/COPD which [Employee] contracted while welding for Alstom Power."

The trial court had before it conflicting opinions from two medical experts. Accordingly, it was "within the discretion of the trial judge to determine which expert testimony to accept." Story v. Legion Ins. Co., 3 S.W.3d 450, 455 (Tenn. 1999) (citing Kellerman v. Food Lion, Inc., 929 S.W.2d 333, 335 (Tenn. 1996)); see also Johnson v. Midwesco, Inc., 801 S.W.2d 804, 806 (Tenn. 1990)). In this case, the conflicting testimony was between a doctor who had served as the designated treating physician and a doctor who had only reviewed medical records. We therefore find that, despite Dr. Brooks' impressive qualifications, the evidence does not preponderate against the trial court's decision to give greater weight to Dr. Younger's opinion that Employee's asthma was caused by his exposure to workplace fumes and is a permanent condition.

Next Employer argues that the trial court misinterpreted the settlement agreement. This argument is without merit. The terms of the agreement obligate Employer to pay for future medical treatment made necessary as a result of the workplace injury. The trial court concluded that Dr. Younger's treatment was necessary for the workplace injury sustained by Employee. The evidence does not preponderate against this conclusion.

Finally, Employer argues that Employee's post-settlement symptoms are the result of an intervening factor, specifically Employee's cigarette smoking. There is evidence in the record that Employee smoked prior to his diagnosis of asthma. There is additional evidence that after his diagnosis, Employee curtailed his smoking and in May of 2006 had been smoke-free for over six weeks. There is some evidence in Dr. Younger's records that Employee's wife smoked at some point in time. There is no evidence regarding smoking by Employee or his wife subsequent to the 2010 settlement. This is insufficient evidence in the record to prove that Employee's cigarette smoking after the 2010 settlement is the cause of his current need for medical treatment from Dr. Younger. Employer's argument on this issue is without merit.

Conclusion

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

SHARON G. LEE, JUSTICE

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JANUARY 28, 2013 SESSION

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No. E2012-01394-WC-R3-WC

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 appeals 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 of this appeal are taxed to Alstom Power, Inc. and its surety, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM