

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
April 29, 2014 Session

RONALD BROWN v. NETHERLANDS INSURANCE COMPANY

**Appeal from the Chancery Court for Hamilton County
No. 120114 Jeffrey M. Atherton, Chancellor**

No. E2013-01935-SC-R3-WC-MAILED-JUNE 30, 2014 / FILED-JULY 30, 2014

After a work-related accident in August of 2010, the employee filed suit against his employer for workers' compensation benefits, claiming permanent injury to both knees. The employer agreed that the injury to the employee's right knee was compensable, but contended that the injury to the left knee was not work related. The trial court found for the employee, awarding benefits for injuries to each knee. The employer 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. The judgment of the trial court is affirmed.

**Tenn. Code Ann. § 50-6-225(e) (2008 & Supp. 2013) Appeal as of Right; Judgment
of the Trial Court Affirmed**

GARY R. WADE, C.J., delivered the opinion of the Court, in which E. RILEY ANDERSON, SP. J., and JON KERRY BLACKWOOD, SR. J., joined.

Charles W. Poss and James S. Hildebrand, Jr., Chattanooga, Tennessee, for the appellant, Netherlands Insurance Company.

Thomas L. Wyatt, Chattanooga, Tennessee, for the appellee, Ronald Brown.

OPINION

I. Facts and Procedural Background

In August of 2010, Ronald Brown (the "Employee") worked as a truck driver for P&E Distributors of Chattanooga (the "Employer"). While delivering automotive and audio parts at Wildcat Auto Parts in Dallas, Georgia, the Employee, age sixty-four, slipped and fell off

the bumper of the cargo area of his truck, landing on the pavement below in a sitting position—his left leg underneath his body and his right leg crossing his body. Although the Employee could not put weight on his right leg, he was able to finish his deliveries and drive the truck back to Chattanooga. The Employee then reported his injury to his supervisor, David Nelms, but declined immediate medical attention because he thought “maybe [he] could work through [the pain].” The Employee continued to work in his regular capacity. At night, however, he placed ice packs and heating pads on both of his knees in order to ease the pain.

During a routine office visit on September 9, 2010, the Employee complained of knee pain, but his primary care physician, Dr. Anthony G. Avitabile, declined treatment because the Employee indicated that the injury was work-related. When his symptoms did not improve and he experienced increased pain, the Employee asked the Employer to refer a doctor, and, on November 3, 2010, he was treated at Physicians Care by Dr. Bruce Thompson. The Employee reported having “pain in both knees, [right] is worse.” The medical records indicate that the Employee reported first injuring his knees when he slid off the bumper of a truck, but had “subsequently injured [his right knee] again, the last time [three] to [four] days ago by twisting.” The records further indicate that he told that doctor that his right knee “ha[d] swollen up considerably” after the subsequent injury. The doctor prescribed pain medication.

The Employee continued to work but, on November 9, 2010, when he stepped up to enter a delivery truck, his right knee “blew out” and “felt like a shotgun went off inside.” An x-ray was performed at Erlanger Medical Center and he was referred for further treatment. During a subsequent office visit, the Employee reported that, on a scale of one to ten, the pain in his right knee was an eight and the pain in his left knee was a five. An MRI was ordered on the right knee only.

On December 1, 2010, Dr. Chad C. Smalley, an orthopedic surgeon, reviewed the results of the MRI and determined that the Employee had suffered a complex tear of the medial meniscus and softening of the cartilage at the joint of the right knee. On December 14, 2010, Dr. Smalley performed surgery on the Employee’s right knee to trim the torn meniscus and polish the damaged cartilage. The Employee was then advised not to place weight on the right leg and to use crutches. Three days later, the Employee began physical therapy on his right knee. The Employer does not dispute the compensability of his right knee injury, and accordingly, has paid the Employee benefits pursuant to our workers’ compensation statutes.

The physical therapy records, however, reflect three separate occasions where the Employee reported left knee pain. On March 3, 2011, the Employee complained that “[he]

had to get [his] generator out of storage, and [his left] knee hurt[] more.” On March 7, 2011, the records documented that the Employee complained of increased left knee pain. Finally, on March 14, 2011, the Employee reported to his therapist that “[his left] knee still hurt[] worse than [his right] knee. [He] kept heat on the back of [his left knee] all weekend. No relief.” After driving himself home following this appointment, the Employee walked to his back steps and, after putting his left foot on the first step and starting to step up with his right leg, his left knee “blew apart, like it came completely apart inside.” The Employee’s wife then contacted the workers’ compensation insurance carrier, and the Employee was advised to return to Dr. Smalley. An MRI indicated that the Employee had a meniscus tear in his left knee.

After exhausting the benefit review process, the Employee filed suit. The Employer acknowledged that the right knee injury was work related, but contended that the left knee injury did not arise out of or in the course and scope of his employment and, therefore, was not compensable.

At trial, the Employee testified that he had never had any problems with his knees prior to the August 2010 injury. He explained that during the weeks following the fall his left knee pain “wasn’t [as] excruciating as the right [knee] pain, but it was enough that it hurt.”

David Nelms, the Employee’s supervisor at the time of the injury, also testified, confirming that prior to the accident at Wildcat Auto Parts there was no indication that the Employee had any problems with his knees. After the accident, however, he observed the Employee “hobble for a while” and “favor[] one leg.” Although he testified that he was only aware that the Employee had injured his right knee, Nelms believed that the Employee was an honest man and that he had no reason to doubt the claim of injury to his left knee.

Dr. Smalley, who testified by deposition, first treated the Employee on December 1, 2010, for pain in both knees. X-rays indicated that the Employee suffered from mild arthritis. Dr. Smalley testified that the Employee believed that the pain in his left knee was the result of overcompensation for his right knee injury, and so Dr. Smalley did not attempt to diagnose the source of the left knee pain. It was his belief, however, that there was a direct causation between the traumatic injury that the Employee experienced in August of 2010 and the meniscus tear of his left knee that occurred in March of 2011. Dr. Smalley explained that his opinion was based upon “the subjective reports from the [Employee] as to when the pain began and whether [he felt] like there w[ere] no symptoms prior.” Dr. Smalley further testified that he believed that the extreme pain that the Employee later experienced was caused when the torn meniscal tissue was captured in the knee joints when, as to his right knee, he stepped onto the delivery truck and, as to his left knee, when he stepped onto the

stair step.

Dr. Thomas M. Koenig, an orthopedic surgeon who conducted an independent medical evaluation, also testified by deposition. In his opinion, the Employee's intermittent pain in the left knee prior to March of 2011 was unrelated to the August 2010 incident, and was predominantly caused by arthritis and overcompensation for his right knee injury. After interviewing the Employee and reviewing the medical records, Dr. Koenig testified that he believed that the meniscal tears were degenerative in nature rather than due to the Employee's fall in August of 2010. Further, Dr. Koenig testified that the explosive sensation experienced by the Employee in March of 2011 was likely the result of the rupture of a Baker's cyst.¹

After the conclusion of the proceeding, the trial court took the case under advisement before entering a memorandum opinion and order. The trial court first found the Employee to be "extremely credible." After concluding that both experts were equally qualified, the trial court accredited Dr. Smalley's testimony because, as the Employee's treating physician, he had more first-hand information available. The trial court specifically found that both knee injuries occurred as a result of the August 2010 incident and that the Employee had sustained a 13% anatomical impairment to each leg. The Employee was awarded a combined award of 40% permanent partial disability for both legs. The Employer filed a timely notice of appeal. The sole issue presented before this Panel is whether the injury to the left knee arose in the course and scope of employment such that it is compensable under our workers' compensation statutes. The Employer does not contest the trial court's finding concerning the extent of the Employee's disability.

II. Standard of Review

A trial court's findings of fact in a workers' compensation case are reviewed de novo accompanied by a presumption of correctness of the findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2008 & Supp. 2013); see also Tenn. R. App. P. 13(d). When credibility and the weight to be given testimony are involved, considerable deference is given to the trial court when the trial judge had the opportunity to observe the witnesses' demeanor and to hear in-court testimony. Madden v. Holland Grp. of Tenn., Inc., 277 S.W.3d 896, 898 (Tenn. 2009) (citing Tryon v. Saturn Corp., 254 S.W.3d 321, 327 (Tenn. 2008)). "When the issues involve expert medical testimony that is contained in the record by deposition, determination of the weight and credibility of the evidence necessarily must be drawn from the contents of the depositions, and the reviewing court may

¹ Dr. Koenig testified that a "Baker's cyst is a collection of fluid that sits behind the knee, that occurs because of arthritis and because of swelling that occurs on the knee." Swelling of the knee due to arthritis may cause increased pressure on the cyst, causing it to "blow out" or "explode."

draw its own conclusions with regard to those issues.” Foreman v. Automatic Sys., Inc., 272 S.W.3d 560, 571 (Tenn. 2008) (citing Orrick v. Bestway Trucking, Inc., 184 S.W.3d 211, 216 (Tenn. 2006)).

III. Analysis

Any employee seeking to recover workers’ compensation benefits must prove that the injury both arose out of and occurred in the course of the employment. See Tenn. Code Ann. § 50-6-102(12) (2008). “The phrase ‘arising out of’ refers to the cause or origin of the injury and the phrase ‘in the course of’ refers to the time, place, and circumstances of the injury.” Crew v. First Source Furniture Grp., 259 S.W.3d 656, 664 (Tenn. 2008) (citing Hill v. Eagle Bend Mfg., Inc., 942 S.W.2d 483, 487 (Tenn. 1997)). An injury arises out of employment when there is a causal connection between the conditions under which the work is required to be performed and the resulting injury. Fritts v. Safety Nat’l Cas. Corp., 163 S.W.3d 673, 677 (Tenn. 2005) (citing Guess v. Sharp Mfg. Co. of Am., 114 S.W.3d 480, 484 (Tenn. 2003)). Except in the most obvious cases, causation must be established by expert medical evidence. Glisson v. Mohon Int’l, Inc./Campbell Ray, 185 S.W.3d 348, 354 (Tenn. 2006) (citing Orman v. Williams Sonoma, Inc., 803 S.W.2d 672, 676 (Tenn. 1991)). Although evidence of causation may not be speculative or conjectural, “absolute medical certainty is not required, and reasonable doubt must be resolved in favor of the employee.” Id. (citing Long v. Tri-Con Indus., Ltd., 996 S.W.2d 173, 177 (Tenn. 1999)). Accordingly, “benefits may be properly awarded to an employee who presents medical evidence showing that the employment could or might have been the cause of his or her injury when lay testimony reasonably suggests causation.” Id.; see also Clark v. Nashville Mach. Elevator Co., 129 S.W.3d 42, 47 (Tenn. 2004) (citing Hill, 942 S.W.2d at 487). Further, when conflicting medical testimony is offered, “it is within the discretion of the trial judge to conclude that the opinion of certain experts should be accepted over that of other experts and that it contains the more probable explanation.” Thomas v. Aetna Life & Cas. Co., 812 S.W.2d 278, 283 (Tenn. 1991) (quoting Hinson v. Wal-Mart Stores, Inc., 654 S.W.2d 675, 676-77 (Tenn. 1983)).

The Employer contends that the evidence preponderates against the trial court’s finding that the Employee’s left knee injury was work related. Because both medical experts testified by deposition as to causation, “we may make our own assessment of the evidence to determine where the preponderance of the evidence lies.” Cloyd v. Hartco Flooring Co., 274 S.W.3d 638, 644 (Tenn. 2008). Medical testimony by an expert, however, “must be considered in conjunction with the lay testimony of the employee as to how the injury occurred and the employee’s subsequent condition.” Thomas, 812 S.W.2d at 283.

The two experts provided conflicting opinions as to causation. Dr. Smalley, who, as the Employee’s treating physician had the opportunity to observe the Employee over an

extended period of time, and testified that he believed that the August 2010 incident caused the left knee injury. His opinion was corroborated by the Employee's testimony, which the trial court found to be "extremely credible." The Employee maintained that he injured both knees during the work-related fall and that his left knee pain, while initially lesser in degree than his right knee pain, never subsided. The Employee also testified that he did not experience pain in his knees prior to the incident, somewhat undermining Dr. Koenig's opinion that the pain reported by the Employee prior to March of 2011 was caused by pre-existing arthritis. Dr. Smalley's opinion and the Employee's testimony are also consistent with medical records indicating that the Employee reported left knee pain after his fall in August of 2010. We also acknowledge that Nelms, a witness called by the Employer, testified that the Employee was an honest man and that the Employee had never given him any indication that he experienced pain in either knee prior to the August 2010 incident.

Finally, because an MRI was not performed prior to March of 2011 and, therefore, absolute medical certainty as to causation cannot be ascertained, any reasonable doubt must be resolved in favor of the Employee. See Glisson, 185 S.W.3d at 354 (citing Long, 996 S.W.2d at 177). Thus, we hold that the evidence supports a finding that the Employee's left knee was injured during the course and scope of his employment, and, therefore, the evidence does not preponderate against the judgment of the trial court.

IV. Conclusion

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

GARY R. WADE, CHIEF JUSTICE

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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 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 Netherlands Insurance Company and its surety, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM