IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
February 24, 2014 Session

BOBBY R. BEAN v. JOHNSON CONTROLS, INC. ET AL.

Appeal from the Chancery Court for Marshall County
No. 15601 J. B. Cox, Chancellor

No. M2013-01010-WC-R3-WC - Mailed March 26, 2014
FILED APRIL 30, 2014

This appeal involves the compensability of an alleged aggravation of a pre-existing degenerative back condition. After the employee began experiencing increased and more severe pain in his back, he filed a workers' compensation claim in the Chancery Court for Marshall County against his employer, its insurer, and the Second Injury Fund. Following a bench trial, the trial court awarded the employee temporary total and permanent partial disability benefits. The employer's 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 pursuant to Tenn. Sup. Ct. R. 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

WILLIAM C. KOCH, JR., J., delivered the opinion of the Court, in which FRANK G. CLEMENT, JR., J., and DONALD P. HARRIS, SP. J., joined.

Catherine C. Dugan, Nashville, Tennessee, for the appellants, Johnson Controls, Inc. and Indemnity Insurance Company of North America.

Steve C. Norris, Nashville, Tennessee, for the appellee, Bobby R. Bean.

OPINION

I.

Bobby Bean was 56 years old when he began working for Johnson Controls, Inc. in April 2008. Prior to coming to work for Johnson Controls, Mr. Bean had worked as a spot

welder for an air conditioning manufacturer for nineteen years. Mr. Bean began experiencing back problems while working as a spot welder. He underwent a successful laminectomy in April 2003 and was released to return to work without restrictions. However, because the pain in his left leg did not completely abate, his treating physicians prescribed Lyrica, Tramadol, and Gabapentin to take as needed.

Mr. Bean worked as a seat assembler at Johnson Controls' facility in Columbia, Tennessee. His specific duties involved building the metal frame of the third-row seat for the Chevrolet Traverse. He worked at three stations located a few feet apart from each other. Mr. Bean assembled the frame on an adjustable table from components located in nearby baskets, some behind him and some to his side. The beginning component weighed approximately ten pounds, and the finished product weighed nearly twenty pounds. The job required a substantial amount of turning, bending, and lifting.

The assembly process was divided into two-hour work intervals. Mr. Bean would spend two hours performing duties at the first two stations combined and then would spend two hours at the third station. The process would then start anew. Mr. Bean's normal work day was an eight-hour shift, but he worked overtime on occasion. Mr. Bean was expected to complete nearly one unit per minute. His supervisor viewed him as an average employee at best, testifying that Mr. Bean "would not overexert himself by any means."

The facility where Mr. Bean worked was scheduled to be shut down on November 24, 2009. The employees were aware of the impending closure and knew that many of them would be laid off when the facility closed. On Wednesday, November 11, 2009, Mr. Bean experienced back pain during his shift. The pain was different and sharper than the pain he had experienced in the past, and Mr. Bean thought he might have a kidney or prostate problem. He reported the pain to the plant nurse, but he did not report a specific injury either to the plant nurse or to his supervisor. Although Mr. Bean did not specifically tell the nurse or his supervisor that the pain was related to his job, the nurse's incident report reflects that Mr. Bean reported "the continual shuffling from side to side sure didn't help." The nurse referred Mr. Bean to his personal physician.

Mr. Bean made an appointment with Dr. Benny McKnight for November 12, 2009 and informed Johnson Controls that he could not work that day because of the pain in his back. Mr. Bean reported to Dr. McKnight that he was experiencing back pain and shooting pains down his left leg. However, he did not tell Dr. McKnight that he had sustained a work-related injury. Dr. McKnight treated Mr. Bean for suspected bursitis by giving him an injection of Depo-Medrol.

Mr. Bean returned to work on November 13, 2009. But his pain intensified, and he returned to Dr. McKnight that afternoon. His chief complaint was that his "left hip [was] still hurting." Dr. McKnight ordered an x-ray and scheduled an appointment for Mr. Bean with Dr. Fredrick Wade, the orthopaedic surgeon who treated Mr. Bean in 2002-2003.

The pain in Mr. Bean's left leg and back worsened over the weekend, so much so that he became "really scared" and went to the emergency room on Sunday, November 15, 2009. He was complaining of left thigh and buttock pain and stated that his symptoms arose on Wednesday. The emergency room medical records contain a note that Mr. Bean "denies injury that [he] can recall."

Even though he had an appointment with Dr. Wade for November 17, 2009, Mr. Bean "was going through so much pain" that he arranged to see Dr. Douglas Wilburn, Dr. Wade's partner, on November 16, 2009. According to Dr. Wilburn's notes, Mr. Bean reported that his symptoms began on Wednesday, November 11, 2009, but also that they arose "without any specific trauma." On his patient intake form, Mr. Bean wrote "don't know" in response to the question of whether his symptoms resulted from a work-related injury.

Dr. Wade examined Mr. Bean on November 17, 2009. Mr. Bean stated that his "injury date" was November 12, 2009 and that he did not know whether his symptoms were work-related. In contrast to previous records, Dr. Wade's notes state that Mr. Bean's pain began worsening acutely "several weeks ago."[1] By this visit, an MRI performed on November 16, 2009 revealed a herniated disc at the L3-4 level. Dr. Wade recommended surgery and, two days later, he performed a laminectomy and a discectomy at the L3-4 level.

On December 3, 2009, Mr. Bean notified Johnson Controls of a workers' compensation claim stemming from "injuries he sustained to his low back and lumbar spine on or about November 11, 2009, or in the alternative a repetitive gradual onset injury through the last day he worked." On July 9, 2010, after the claim had been denied, Mr. Bean filed suit in the Chancery Court for Marshall County, alleging that he "sustained an accidental injury to his low back arising out of and in the course of employment with defendant Johnson Controls, Inc., caused by repetitive overuse of his low back." The matter proceeded to trial on February 21, 2013.

The medical proof elicited at trial revealed some areas of convergence and some areas of divergence. There was no dispute that Mr. Bean suffered an injury to his spine in 2002, for which he had surgery in 2003. There was likewise no dispute that Mr. Bean had a

[1]Dr. Wade did admit that his dictated notes could have mistakenly referred to "several weeks" instead of "several days."

degenerative disc condition in his lumbar spine during that period. However, it was equally clear that Mr. Bean's November 2009 herniated disc was not present in 2003. The principal area of divergence involved the cause of Mr. Bean's increased symptoms in November 2009.

Dr. David Gaw testified by deposition on behalf of Mr. Bean. He conducted a one-hour independent medical evaluation of Mr. Bean at Mr. Bean's attorney's request on November 29, 2010. Dr. Gaw also reviewed the records of Dr. McKnight, the local emergency room Mr. Bean visited, Dr. Wilburn, and Dr. Wade, as well as Mr. Bean's past imaging studies. Dr. Gaw agreed that Mr. Bean's lumbar spine exhibited degenerative disc conditions as of 2002-2003. However, he noted that the 2003 imaging studies did not show a herniated disc at the L3-4 level, whereas the November 16, 2009 MRI revealed a definite anatomical change in the form of a herniated disc at the L3-4 level. Dr. Gaw testified that a herniated disc can occur either suddenly or gradually, and that symptoms may appear either suddenly or gradually. Dr. Gaw further testified that Mr. Bean's November 2009 symptoms were consistent with a herniated disc at the L3-4 level, but it would not be surprising for a person not to fully understand the nature of such an injury from the symptoms present.

Dr. Gaw also opined that Mr. Bean's work activities – "including, but not limited to, repetitive bending, stooping, and lifting up to 40 times per hour" – were the likely cause of his November 2009 herniated disc. However, he also agreed that herniated discs can occur as a result of the natural aging process and are not always activity-related. Accordingly, he conceded that it was possible that Mr. Bean's November 2009 herniated disc was the result of the natural continuing degeneration of his spine over time. In addition, Dr. Gaw acknowledged that Mr. Bean's medical records from 2007-2008 revealed complaints of "sciatica" – a term often referring to pain, burning, or numbness from the buttock into the leg[2] – and that sciatica could be associated with a herniated lumbar disc. Nevertheless, Dr. Gaw continued to believe that Mr. Bean's work activities were more likely than not what caused his November 2009 herniated disc.

Dr. Wade, the orthopaedic surgeon who performed Mr. Bean's surgeries in 2003 and 2009, testified by deposition on behalf of Johnson Controls. Dr. Wade had seen Mr. Bean eight to ten times and believed that he was in the best position to evaluate Mr. Bean's spinal condition and the cause of the November 2009 injury.

[2]The medical records in question – from the Lynchburg Medical Center – dated to September 2007, February 2008, April 2008, and July 2008. Mr. Bean was prescribed pain medications on these occasions. We note that on the first occasion – September 14, 2007 – the medical records described Mr. Bean as having pain similar to his previous pain.

Dr. Wade testified that Mr. Bean had a degenerative back condition as of 2002-2003 and that the 2003 surgery would not have stopped ongoing natural degeneration processes associated with aging. However, he believed that the 2003 surgery had a positive outcome and that Mr. Bean had no medical restrictions after the 2003 surgery. Dr. Wade also agreed that he did not examine Mr. Bean between 2003 and 2009.

In March 2010, after Mr. Bean had informed Johnson Controls of his workers' compensation claim, Dr. Wade informed both Mr. Bean's counsel and the Department of Labor and Workforce Development that he believed Mr. Bean's November 2009 herniated disc was a work-related injury. Dr. Wade's correspondence noted that Mr. Bean "reported a work related injury" that had occurred in November 2009 just before the onset of his pain symptoms. Dr. Wade's correspondence also explicitly reserved the possibility of changing his opinion should additional information come to light.

In April 2010, Dr. Wade retracted his opinion and informed counsel for Johnson Controls that Mr. Bean's November 2009 injury was caused by the natural aging process rather than his work activities. Dr. Wade indicated that he had not seen all of Mr. Bean's medical records at the time of his initial opinion. In his correspondence, Dr. Wade answered affirmatively to the following question posed by counsel for Johnson Controls:

> Considering the fact that Mr. Bean never reported a work injury to you, Dr. Wilburn or Dr. McKnight, the inconsistent dates of onset provided by Mr. Bean to you and Dr. Wilburn and the fact that Mr. Bean did not report an alleged injury until he retained an attorney, is it more likely than not, that Mr. Bean's November 19, 2009 surgery was necessitated by the natural progression of his severe lumbar spinal stenosis?

Dr. Wade's testimony in his March 2012 deposition tracked his April 2010 opinion. He stated that, based on all the records he had reviewed, he "would tend to say that [the November 2009 injury was] probably not work related." Dr. Wade followed up by stating, "I have far more documentation that leads me away from a direct causation or a direct injury than leads me to it. So I would . . . say it's probable that it was not related to a November lifting injury." Dr. Wade conceded, however, that it was possible that Mr. Bean's work activities caused the November 2009 injury, for he acknowledged that the "recurrent activity of lifting and bending at a fast pace" described by Mr. Bean could result in a herniated disc.

When pressed, Dr. Wade framed his opinion at times as "if you're asking me do I stand by the fact that it doesn't seem to be work-related, I still have a lot of questions that make me not be able to say more probably than not that it was related to a single day at work

in November." However, Dr. Wade admitted that the November 2009 injury could have been related "to many days at work in terms of a cumulative trauma" even though it was "hard for [him] to say more probably than not that [he] can pinpoint it to that single specific day that it was recorded."

Johnson Controls also presented the deposition testimony of Dr. Gray Stahlman, an orthopaedic surgeon with fellowship training in spinal surgery. While Dr. Stahlman did not examine Mr. Bean, he reviewed all of Mr. Bean's relevant medical records dating back to 2001, as well as the depositions of Drs. Gaw and Wade. Dr. Stahlman concurred that Mr. Bean had degenerative spinal conditions by the time of his 2003 surgery. He also agreed with Dr. Wade that the 2003 surgery, in spite of its positive outcome, did not prevent further natural degeneration of Mr. Bean's spine.

Dr. Stahlman found significant that Mr. Bean experienced recurring back issues between 2003 and November 2009, which Dr. Stahlman found consistent with Mr. Bean's November 2009 condition. In particular, Mr. Bean's medical records from the Lynchburg Medical Center revealed complaints of sciatica in September 2007, February 2008, April 2008, and July 2008. Additionally, Dr. McKnight's records revealed that in May 2009, Mr. Bean had complained of pain in his legs. Dr. Stahlman admitted that he could not discern from these medical records the precise nature of Mr. Bean's symptoms, nor could he identify whether the symptoms were more consistent with the spinal nerve associated with Mr. Bean's 2003 condition or the one associated with his 2009 condition.

Based on his review of the medical records and the depositions, Dr. Stahlman opined that Mr. Bean had several risk factors, including: (1) he already had significant degenerative changes in 2003; (2) he was obese; (3) he was diabetic; (4) he was middle-aged; and (5) he was male. Dr. Stahlman further noted that there was no specific precipitating event described by Mr. Bean leading up to his November 2009 complaints of pain. Dr. Stahlman testified that it was impossible to tell from the November 2009 medical imaging studies when Mr. Bean's disc herniation occurred. Dr. Stahlman also said that a herniated disc can be asymptomatic for a period of time.

Dr. Stahlman testified that it was not possible in Mr. Bean's case to single out a cause for the November 2009 disc herniation. He offered the following opinion on the issue of whether Mr. Bean's November 2009 herniated disc was causally related to his work activities:

> I do not . . . have enough information to support with a probability factor that his work was the sole cause of his disc herniation. Is it a contributing factor? Yes, because it's part of

> his daily life, but there's nothing to suggest that [it] was the sole cause of his disc herniation. And so, I can't say with any degree of certainty that that was, indeed, the causal effect of – or causal situation of his disc herniation.

Dr. Stahlman did acknowledge that twisting and lifting activities can put strain on the back and can lead to a herniated disc.

The trial court announced its ruling from the bench after both parties rested. The court found that Mr. Bean suffered a gradual onset injury to his back on November 11, 2009, as a result of repetitive overuse arising out of and in the course of his employment. The court awarded temporary total disability benefits[3] and found that Mr. Bean had a permanent partial disability of 60% to the body as a whole.[4] Judgment was entered accordingly against Johnson Controls and its insurer on April 3, 2013. All claims against the Second Injury Fund were dismissed. Johnson Controls and its insurer have appealed, contending that the evidence preponderates against the trial court's finding that a compensable injury occurred.

II.

Courts reviewing an award of workers' compensation benefits 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). Upon appeal, we review the facts de novo upon the record of the trial court, accompanied by a presumption of the correctness of the trial court's factual findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2008); *Whirlpool Corp. v. Nakhoneinh*, 69 S.W.3d 164, 167 (Tenn. 2002). We give considerable deference to the trial court's findings regarding the credibility of live witnesses and the weight that should be given to their testimony. *Vandall v. Aurora Healthcare, LLC*, 401 S.W.3d 28, 33 (Tenn. 2013); *Tryon v. Saturn Corp*., 254 S.W.3d. 321, 327 (Tenn. 2008); *Whirlpool Corp. v. Nakhoneinh*, 69 S.W.3d at 167. However, we need not give similar deference to a trial court's findings based upon documentary evidence such as depositions. *Orrick v. Bestway Trucking, Inc.*, 184 S.W.3d 211, 216 (Tenn. 2006); *Bohanan v. City of Knoxville*, 136 S.W.3d 621, 624 (Tenn. 2004). Similarly, we review a trial court's conclusions of law de novo without a presumption of correctness. *Seiber v. Reeves Logging*, 284 S.W.3d 294, 298 (Tenn. 2009).

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[3]The trial court found that Johnson Controls was entitled to a set-off in the amount of the short-term disability benefits previously paid to Mr. Bean.

[4]Neither side has contested the type or amount of the trial court's disability awards. We have therefore limited our discussion of the evidence pertaining to those issues.

III.

The sole issue in this appeal is causation. Johnson Controls argues that the evidence preponderates against the trial court's finding that Mr. Bean suffered an injury related to his work activities. In particular, Johnson Controls contends that Mr. Bean's "spinal condition actually resulted from his pre-existing degenerative condition." For his part, Mr. Bean contends that the lay testimony and expert proof sufficiently established that his work activities were causally related to his November 2009 injury.

A.

To obtain workers' compensation benefits, an employee must prove by a preponderance of the evidence that he or she suffered an injury that arose out of his or her employment and occurred in the course of such employment. Tenn. Code Ann. §§ 50-6-102(12), -103(a) (2008); *Dixon v. Travelers Indem. Co.*, 336 S.W.3d 532, 537 (Tenn. 2011). The phrase "arising out of" refers to the cause or origin of the injury; the phrase "in the course of" refers to the time, place, and circumstances of the injury. *Vandall v. Aurora Healthcare, LLC*, 401 S.W.3d at 31; *Dixon v. Travelers Indem. Co.*, 336 S.W.3d at 537. 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. *Foreman v. Automatic Sys., Inc.*, 272 S.W.3d 560, 571-72 (Tenn. 2008) (citing *Fritts v. Safety Nat'l Cas. Corp.*, 163 S.W.3d 673, 678 (Tenn. 2005)).

Except in the most obvious, simple, and routine cases, an employee must establish by expert medical testimony that he or she is injured and that there exists a causal relationship between the claimant's employment activity and the injury. *Excel Polymers, LLC v. Broyles*, 302 S.W.3d 268, 274 (Tenn. 2009); *Cloyd v. Hartco Flooring Co.*, 274 S.W.3d 638, 643 (Tenn. 2008). However, expert evidence need not be considered in a vacuum. It may be considered in light of relevant lay testimony, including the employee's testimony. *Eads v. GuideOne Mut. Ins. Co.*, 197 S.W.3d 737, 741 (Tenn. 2006); *Smith v. Empire Pencil Co.*, 781 S.W.2d 833, 835 (Tenn. 1989).

Although causation cannot be based on speculative or conjectural proof, absolute certainty is not required, for medical proof can rarely be certain. *Cloyd v. Hartco Flooring Co.*, 274 S.W.3d at 643 (quoting *Clark v. Nashville Mach. Elevator Co.*, 129 S.W.3d 42, 47 (Tenn. 2004)). As a result, Tennessee law provides that all reasonable doubts as to the causation of an injury should be resolved in favor of the employee. *Cloyd v. Hartco Flooring Co.*, 274 S.W.3d at 643 (citing *Phillips v. A&H Constr. Co.*, 134 S.W.3d 145, 150 (Tenn. 2004)). An employee sufficiently establishes causation when the evidence demonstrates that the "injury has a rational, causal connection to the work." *Foreman v. Automatic Sys., Inc.*,

272 S.W.3d at 572 (quoting *Braden v. Sears, Roebuck & Co.*, 833 S.W.2d 496, 498 (Tenn. 1992)).

B.

There is no dispute that Mr. Bean suffered an injury to his spine – focused at the L4-5 level – in 2002, for which he had surgery in 2003. There is likewise no dispute that Mr. Bean had a degenerative disc condition in his lumbar spine as of that time period. The dispute in this case focuses upon whether Mr. Bean's November 2009 spinal condition – at the L3-4 level – was merely a natural progression of his prior condition unrelated to his work activities.

Employees are not entitled to workers' compensation benefits for the effects of the aging process or for the progression of an illness or disease that is not work-related. *Jose v. Equifax, Inc.*, 556 S.W.2d 82, 84 (Tenn. 1977). However, Tennessee law is clear that 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 v. Hartco Flooring Co.*, 274 S.W.3d at 643 (citing *Hill v. Eagle Bend Mfg., Inc.*, 942 S.W.2d 483, 488 (Tenn. 1997)). Thus, an employee is entitled to workers' compensation benefits when work-related activities cause an aggravation, advancement, or actual progression of an underlying injury. *Trosper v. Armstrong Wood Prods., Inc.*, 273 S.W.3d 598, 605 (Tenn. 2008) (citing *Barnett v. Milan Seating Sys.*, 215 S.W.3d 828, 835 (Tenn. 2007)). One of the most common ways to establish the progression of a pre-existing condition is to present competent evidence of a physical or anatomical change. *See Fritts v. Safety Nat'l Cas. Corp.*, 163 S.W.3d at 679; *Kroger Co. v. Johnson*, 221 Tenn. 649, 651, 430 S.W.2d 130, 131 (1967).

In this case, the evidence unequivocally points to the conclusion that Mr. Bean's November 2009 spinal condition was a new or advanced injury, distinct from the injury for which Mr. Bean had surgery in 2003. Medical imaging studies revealed that Mr. Bean's 2009 injury was comprised primarily of a herniated disc at the L3-4 level of his spine. Mr. Bean's prior injury, in contrast, involved a bulging disc and accompanying stenosis primarily at the L4-5 level of his spine. There is no evidence of a herniated disc at the L3-4 level before November 2009. Thus, the proof at trial established that Mr. Bean's 2009 condition involved an anatomical change from his pre-existing degenerative disc condition.

Not surprisingly, then, the focus of Johnson Controls is less on whether Mr. Bean's 2009 injury was distinct from his prior condition and more on whether his new or advanced 2009 injury was, in fact, caused by his work activities. At trial, Johnson Controls offered expert testimony from Drs. Wade and Stahlman aimed at questioning whether there was a

sufficient causal connection between Mr. Bean's work activities and his 2009 injury. The two areas of focus were on (1) the fact that Mr. Bean did not inform his physicians in November 2009 that he had suffered a specific work-related injury; and (2) Mr. Bean's reports of back pain between 2003 and November 2009.

For his part, Dr. Wade retracted his original opinion that Mr. Bean's November 2009 injury was causally connected to his work activities, in part, because of concern over when Mr. Bean identified his injury as work-related. Dr. Wade questioned whether the injury was work-related because the first time Mr. Bean clearly identified it as such was on a December 2009 workers' compensation claim form, well after even his surgery for the injury. Dr. Wade also noted that Mr. Bean did not identify a specific injury to his doctors in November 2009 and that there were discrepancies as to the reported onset date of symptoms. Likewise, Dr. Stahlman noted that Mr. Bean did not describe a precipitating event to his doctors in November 2009, but rather merely indicated the onset of pain.

Unlike some other jurisdictions, Tennessee law does not require that an injury be traceable to a definite moment in time or to a particular triggering event to be compensable. *Cloyd v. Hartco Flooring Co.*, 274 S.W.3d at 643-44. Thus, Mr. Bean's inability to report a precipitating trauma on November 11, 2009 does not undermine his workers' compensation claim. *See Long v. Tri-Con Indus., Ltd.*, 996 S.W.2d 173, 178 (Tenn. 1999) (finding compensable injury even though employee could not identify one incident that triggered the onset of pain). It is sufficient that Mr. Bean reported pain beginning on November 11, 2009, and that he identified the pain as different from the pain he had previously experienced.

We note also that, contrary to Dr. Wade's concerns, Mr. Bean raised at least the possibility that his symptoms were work-related during his November 16, 2009 visit to Dr. Wilburn and his November 17, 2009 visit to Dr. Wade. Although Mr. Bean did not report his symptoms as work-related to Dr. McKnight on November 12 or 13, 2009, or to the emergency room on November 15, 2009, medical records from his November 16, 2009 visit to Dr. Wilburn and the November 17, 2009 visit to Dr. Wade contain a notation of "don't know" with respect to whether the injury was work-related.

The trial court's view of the evidence, supported by our reading of the record, was that neither Mr. Bean nor his physicians fully understood the nature of his condition until Mr. Bean's discussion with Dr. Wade on November 17, 2009, by which time an MRI had revealed a herniated disc at L3-4. In such circumstances, Mr. Bean's failure to specifically identify his injury as work-related from the onset of pain does not bar a finding of compensability.

Additionally, contrary to Dr. Wade's concerns, there are few discrepancies as to the onset date of Mr. Bean's symptoms. Virtually all of the medical records point to November 11, 2009. The principal countervailing record is Dr. Wade's note from the November 17 visit, which describes Mr. Bean's pain as worsening "several weeks ago." However, even Dr. Wade admitted that "several days" may have inadvertently been recorded as "several weeks," and "several days ago" would reasonably correspond to the November 11 onset date indicated by other records. The trial court explicitly placed weight upon Mr. Bean's report of pain to the plant nurse on November 11, 2009. In our view, the record supports the trial court and contains no credible evidence that Mr. Bean reported substantially different onset dates to different individuals.

As to concerns regarding Mr. Bean's reports of back pain between 2003 and 2009, the record contains medical records from the Lynchburg Medical Center – from September 2007, February 2008, April 2008, and July 2008 – which reflect complaints of "sciatica." However, both Dr. Wade and Dr. Stahlman readily admitted that the records were not detailed enough to draw firm conclusions or to reflect a herniated disc at the L3-4 level. In fact, the September 2007 record describes Mr. Bean's pain as similar to his previous pain, whereas Mr. Bean described his November 2009 pain as different from what he had previously experienced. As we have already noted, Mr. Bean's 2003 injury related to the L4-5 level, whereas his 2009 injury related to the L3-4 level. Similarly, Mr. Bean's medical records from Dr. McKnight contain a May 29, 2009 complaint about pain in his legs, but there is insufficient detail to draw any firm conclusions from it.

At the conclusion of the proof, the trial court acknowledged that Dr. Wade and Dr. Stahlman opined that Mr. Bean's injury was not work-related and that Dr. Gaw had concluded otherwise. When there is conflicting medical testimony, the trial judge must choose which view to accredit. *Cloyd v. Hartco Flooring Co.*, 274 S.W.3d at 644. In this case, the trial court, without meaning "to disparage either [Dr. Wade or Dr. Stahlman] and their opinions," chose to accredit Dr. Gaw. The trial court viewed the decision as more consistent with the totality of the proof, especially considering that neither Mr. Bean nor his physicians fully understood his condition until November 17, 2009. In so doing, the trial court made reference, correctly we believe, to the longstanding principle that reasonable doubts as to causation should be resolved in favor of the employee. *See Cloyd v. Hartco Flooring Co.*, 274 S.W.3d at 643 (citing *Phillips v. A&H Constr. Co.*, 134 S.W.3d at 150); *Bell v. Kelso Oil Co.*, 597 S.W.2d 731, 734 (Tenn. 1980).

From our review of the record, all of the physicians who testified in this case agreed that Mr. Bean had pre-existing degenerative disc disease. Likewise, they agreed that the condition rendered Mr. Bean more vulnerable to injury than a person who did not have that condition. At the time he was released by Dr. Wade following his 2003 surgery, Mr. Bean

had some residual symptoms but no medical restrictions. Furthermore, he did not have a herniated disc at the L3-4 level at that time. Mr. Bean returned to work in the manufacturing sector. Mr. Bean had an episode of sciatica in late 2007 and early 2008. He received medication and was able to continue working without restrictions.

In November 2009, Mr. Bean suffered an episode of significant back and leg pain. Indeed, his symptoms were so severe that, within a six-day period, he sought treatment from his primary care physician (twice), an emergency room, and two orthopaedic surgeons. Mr. Bean did not report a specific event, at work or elsewhere, that precipitated the increased symptoms.[5] An MRI revealed the presence of a herniated disc at the L3-4 level, a condition that was not previously present. All of the physicians agreed that repetitive bending and twisting could cause a herniated disc.

Benefits may properly be awarded upon medical testimony that shows the employment could or might have been the cause of the employee's injury when there is lay testimony from which causation reasonably can be inferred. *Glisson v. Mohon Int'l, Inc./Campbell Ray*, 185 S.W.3d 348, 354 (Tenn. 2006); *Fritts v. Safety Nat'l Cas. Corp.*, 163 S.W.3d at 678 (citing *Clark v. Nashville Mach. Elevator Co.*, 129 S.W.3d at 47); *Long v. Tri-Con Indus., Ltd.*, 996 S.W.2d at 177. In cases involving pre-existing conditions, the law does not weigh the relative importance of the pre-existing condition and an employment-related cause, nor does it look for primary or secondary causes. The law merely inquires whether the employment was a contributing factor. If so, the concurrence of the pre-existing condition or personal cause will not defeat compensability. *See Fink v. Caudle*, 856 S.W.2d 952, 958 (Tenn. 1993); 1 Lex K. Larson, *Larson's Workers' Compensation Law* § 4.04 (MB rev. ed. 2013). As set out above, the medical proof clearly established that Mr. Bean's work activities were a possible cause of his herniated disc. Even Dr. Stahlman described Mr. Bean's job as a factor contributing to his condition. Furthermore, Mr. Bean clearly reported the onset of symptoms during the work day on November 11, 2009. We therefore conclude that the evidence does not preponderate against the trial court's finding on the issue of causation.

At oral argument, Johnson Controls likened this case to *Beeler v. DeRoyal Indus., Inc.*, No. E2012-02340-WC-R3-WC, 2013 WL 6983396 (Tenn. Workers' Comp. Panel Nov. 20, 2013), *perm. app. denied* (Tenn. Jan. 14, 2014). In *Beeler*, the trial court found that Mr.

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[5]The plant nurse documented a telephone call from Mr. Bean on November 18, 2009, informing her that he was scheduled for surgery the following day. According to the nurse, Mr. Bean stated "that he fell at home over the weekend because his leg 'gave out on him.'" The trial court explicitly acknowledged the report, describing it as a "hurdle the Court is trying to overcome," but pointed out that it had not been the subject of much discussion at trial. Ultimately the trial court found in favor of Mr. Bean. The November 18 report of an alleged fall is not a point of contention for the parties on appeal.

Beeler had not sustained a compensable aggravation of a pre-existing lower back condition. Instead, the trial court found that his condition was the result of a natural progression of an injury he had previously suffered. *Beeler v. DeRoyal Indus., Inc.*, 2013 WL 6983396, at *4. The trial court's judgment was affirmed on appeal. *Beeler v. DeRoyal Indus., Inc.*, 2013 WL 6983396, at *1, *8.

We find the comparison inapposite. In *Beeler*, the trial court accredited the expert medical testimony offered by the employer, *Beeler v. DeRoyal Indus., Inc.*, 2013 WL 6983396, at *4-6, whereas the trial court in this case accredited the expert medical testimony offered on behalf of Mr. Bean. Just as the Special Workers' Compensation Panel in *Beeler* found no reason to second-guess the trial court, *Beeler v. DeRoyal Indus., Inc.*, 2013 WL 6983396, at *7, we find none in this case. We also point out that in *Beeler*, it was significant that the proof showed that before Mr. Beeler came to work for DeRoyal Industries, his back condition was such that it would likely require surgery in the future. Thus, the need for surgery pre-dated Mr. Beeler's employment with DeRoyal Industries. *Beeler v. DeRoyal Indus., Inc.*, 2013 WL 6983396, at *8. In contrast, the proof in this case reflects no such judgment before Mr. Bean's employment with Johnson Controls. Although Mr. Bean's medical records from the Lynchburg Medical Center from April 2008 describe the pain medication he was taking for his sciatica as a "stopgap measure," there is no mention of a need for surgery. Instead, the medical record makes reference to a need for physical therapy, with a notation that Mr. Bean could not afford it.

IV.

The judgment of the trial court is affirmed. Costs are taxed to Johnson Controls, Inc., Indemnity Insurance Company of North America, and their surety, for which execution may issue if necessary.

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WILLIAM C. KOCH, JR., JUSTICE

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

BOBBY R. BEAN v. JOHNSON CONTROLS, INC. ET AL.

Chancery Court for Marshall County
No. 5601

No. M2013-01010-WC-R3-WC - FILED APRIL 30, 2014

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 Johnson Controls, Inc., Indemnity Insurance Company of North America, and their surety, for which execution may issue if necessary.

PER CURIAM