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

December 2, 2015 Session

CLYDE E. COWAN v. KNOX COUNTY, TENNESSEE

Appeal from the Chancery Court for Knox County
No. 1866302 Clarence E. Pridemore, Jr., Chancellor

No. E2015-00405-SC-R3-WC-MAILED-JANUARY 25, 2016
FILED-FEBRUARY 24, 2016

Employee suffered a work-related accidental injury to his back on April 27, 2001; he reported the injury, received conservative treatment, and returned to work without restriction in 2001. In 2011, his pain recurred, and he filed a second injury report. Employer denied Employee's claim for workers' compensation benefits. The trial court found Employee's claim timely and his injury compensable. The trial court awarded Employee temporary total disability benefits for the six-week period following his August 17, 2011 lumbar surgery and permanent partial disability benefits of thirty percent to the body as a whole. Employer appeals. Pursuant to Tennessee Supreme Court Rule 51, 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. We affirm.

Tenn. Code Ann. § 50-6-225(a) (2014) Appeal as of Right; Judgment of the Chancery Court Affirmed

DON R. ASH, SR. J., delivered the opinion of the Court, in which SHARON G. LEE, C.J., and KRISTI M. DAVIS, SP. J., joined.

David M. Sanders, Knoxville, Tennessee, for the appellant, Knox County, Tennessee.

J. Anthony Farmer and Christopher H. Hayes, Knoxville, Tennessee, for the appellee, Clyde E. Cowan.

OPINION

Procedural Background

On April 27, 2001, Clyde E. Cowan ("Employee") suffered an injury to his back—a herniated disc at level L-5—arising out of and in the course of his employment as a patrol shift supervisor and lieutenant in the Patrol Division of the Knox County Sheriff's Office. Employee filed a First Report of Injury indicating he had suffered a "ruptured dis[c] in lower back." Knox County, Tennessee, ("Employer") accepted the injury as compensable and furnished Employee with medical treatment. Following conservative treatment, Employee recovered and returned to work without restrictions. In June 2011, Employee experienced a recurrence of his back pain and was ultimately advised he would require surgery. Employee filed a second First Report of Injury on August 15, 2011, and notified Employer he believed his condition arose from the April 2001 accident and was now permanent. Employer denied Employee's claim for workers' compensation benefits. Employee underwent surgery on August 17, 2011, and remained off work for six weeks. Employee subsequently returned to work with restrictions.

The parties were unable to reach a resolution at a Benefit Review Conference. On December 13, 2013, Employee filed suit in the Knox County Chancery Court. Employer moved to dismiss, contending Employee's claim was barred by the statute of limitations, *see* Tenn. Code Ann. § 50-6-203(a) (2000). The trial court denied the motion by order entered April 15, 2014. On October 3, 2014, Employee filed a motion in limine to exclude a one-page note appended to Form C-32 prepared by Employee's original treating physician, Dr. Bert L. Meric.

Trial was conducted on October 8, 2014. The trial court granted Employee's motion in limine and excluded Dr. Meric's one-page note. The trial court found Employee's claim timely and his injury compensable. It further determined Employee was entitled to recover temporary total disability benefits for the six-week period following his August 17, 2011 surgery and that he suffered a thirty percent permanent partial disability to the body as a whole.

Employer appeals. Employer first argues Employee's claim is time-barred pursuant to Tennessee Code Annotated section 50-6-203. Alternatively, Employer contends Employee's claim is for a non-compensable pre-existing injury as, it maintains, Employee did not suffer a compensable aggravation of his pre-existing back injury. Finally, Employer claims the trial court erred in excluding Dr. Meric's one-page note appended to his Form C-32 and in awarding Employee temporary total disability benefits for the six-week period following his August 2011 surgery.

Factual Background and Testimony

Employee, then fifty-two years old, testified at trial. Employee graduated from high school in 1980, attended college for approximately two and one-half years, and at the time of trial, was working to obtain his bachelor's degree online. In 1983, Employee enlisted in the United States Air Force, where he served in the security police branch until 1986. After leaving the Air Force, Employee briefly worked as a physical therapist rehabilitation technician, before joining the Knox County Sheriff's Office as a corrections officer. Employee graduated from the law enforcement training academy and obtained his Peace Officer Standards Training certificate. In 1988, he began working as a patrol officer, and in 2011, after serving in various roles within the Knox County Sheriff's Office, Employee was promoted to Assistant Chief Deputy and Assistant Chief of the Detective Division. At the time of trial, Employee acted as Assistant Chief, Chief of the Detective Division, and SWAT Team Commander.

On April 27, 2001, while serving as lieutenant and Patrol Shift Supervisor, Employee injured his back as he exited his vehicle to chase a fleeing suspect. Employee did not seek immediate medical attention, but he contacted the SWAT team physician the following day. Employee was driven to the University of Tennessee hospital emergency room, where he underwent diagnostic testing, including an MRI. Employee was released from the emergency room, instructed to begin a series of epidural steroid injections, and referred to a neurosurgeon, Dr. Bert Meric.

On April 30, 2001, Employee completed a First Report of Injury. In the report, he described his injury as a "ruptured disk in lower back." At trial, Employee explained both the emergency room physician who performed the MRI and Dr. Meric informed Employee he had suffered a ruptured disc. Employee testified neither Dr. Meric nor any other physician offered surgery as a treatment option. Instead, Employee was treated with two epidural steroid injections, which left him "fe[eling] normal again[.]" Employee resumed his full level of activities and returned to work without restrictions. His back pain did not return until 2011.

In June 2011, while showering, the pain Employee experienced in 2001 returned. Employee met with his primary care physician, Dr. Robert Thompson, who referred Employee to Dr. Luke Madigan, an orthopedic physician at Knoxville Orthopaedic Clinic. Employee underwent a second MRI and then received another series of epidural steroid injections at Dr. Madigan's direction. After two injections proved unsuccessful in alleviating Employee's symptoms, Dr. Madigan recommended surgery. Employee testified surgery had not been previously recommended. Attempting to avoid surgery, Employee requested a third epidural steroid injection, but the injection again proved unsuccessful. Employee then sought a second opinion from Dr. Khajavi at the Georgia Spine & Neurosurgery Center in Atlanta, Georgia. Dr. Khajavi reviewed Employee's MRI and recommended surgery. Employee then notified Employer he believed surgery

was required as a result of his 2001 back injury, and he completed a second First Report of Injury, dated August 15, 2011. Dr. Khajavi performed surgery on Employee on August 17, 2011. By letter dated August 26, 2011, Employer denied Employee's claim for workers' compensation benefits.

Employee was off work for six weeks following surgery. He was then released to return to work with restrictions and with physical therapy. After he completed physical therapy, Dr. Khajavi released Employee to full duty without restrictions. Employee never sought nor received from Dr. Khajavi an impairment rating regarding his back.

After his release from Dr. Khajavi, Employee sought an independent medical examination by orthopedic surgeon Dr. William E. Kennedy. According to Employee, Dr. Kennedy placed work restrictions upon Employee, with which Employer required Employee to comply. Employee described the restrictions as follows: "not to lift over ten pounds for an extended period or not to lift over five pounds for a certain period of time, . . . not to be on heavy equipment or uneven ground or high places, things like that." Due to these restrictions, Employee is limited to performing administrative duties and is unable to perform the duties and responsibilities of any position he previously held with the Knox County Sheriff's Office. Specifically, he is unable to participate in certain SWAT team activities, and cannot act as a corrections officer, patrol officer, shift supervisor, narcotics detective, or major crimes detective; however, he could serve as a homicide detective "in a limited fashion, maybe."

Jeanette Harris, Employee's close friend and colleague, also testified at trial. Ms. Harris had been employed by the Knox County Sheriff's Office for over twenty-five years and was currently acting as Detective Division Captain and supervisor of the Family Crisis Unit. According to Ms. Harris, prior to 2011, Employee was "very active[;]" however, after the 2011 recurrence of his back injury symptoms, Employee "became more irritable" and "was in a lot of pain[,]" negatively impacting his ability to perform occupational and household activities.

Dr. William E. Kennedy, a board certified orthopedic surgeon and independent medical examiner, testified by deposition. On July 30, 2013, Dr. Kennedy performed an independent medical examination of Employee. In addition to physically examining Employee, Dr. Kennedy listened as Employee described "the residual and persistent complaints and losses of physical function that he was experiencing as a result of his symptoms in his low back and particularly his left lower extremity," and he reviewed Employee's prior medical records, including the reports from Employee's 2001 and 2011 MRIs. Dr. Kennedy concluded Employee "had suffered a . . . herniated disc on the left at L5 with a left S1 sensory radiculopathy in 2001 that was surgically decompressed on August 17, 2011." He further concluded Employee suffered from multiple-level degenerative disc disease of the lumbar spine.

Dr. Kennedy testified Employee's disc herniation, as shown on his 2001 MRI, "was consistent with a permanent weakening of the L5 disk segment explaining [Employee's] ongoing intermittent episodes of low back pain as well as his associated left lower extremity symptoms through the years since 2001." Dr. Kennedy explained the course of Employee's condition between his initial injury in April 2001 and the recurrence in June 2011 as follows:

> It was fortunate that he was able to gain sufficient control of his initial symptoms of April 2001 and maintain sufficient control of his ongoing symptoms as well as overcome the weakness of the L5 disk segment through the years in order to maintain a high level of function both in his work as a deputy sheriff and also in his normal activities of daily living.
>
> It was further my conclusion that the intermittent increases in his low back pain listed in my review of past medical records, as I gleaned them from the records and as I discussed and reviewed them with [Employee], were consistent with temporary increases or exacerbations, as we use the term in medicine, of his low back condition. They were not consistent with additional injuries or with permanent aggravations or advancements of his low back condition. Those temporary exacerbations of those episodes was demonstrated in the transient nature of treatment following each of those episodes and was further substantiated by the absence of subsequent treatment following remission of each of those episodes and further supported by [Employee's] history that after each of those episodes his symptoms returned to the pre-episode level of severity with the exception of the apparently spontaneous episode in the shower in June of 2011 that he described to me and that is contained in my report.
>
> That June 2011 increase in pain brought on the troublesome numbness in the left foot for the first time since shortly after the initial incident of April 27, 2001 and was the straw that broke the camel's back, so to speak, finally necessitating the surgery of August 17, 2011.

In sum, Dr. Kennedy opined Employee was fortunate to accommodate his 2001 ruptured disc injury and to resume, for ten years, normal activities with only intermittent periods of treatment. He explained that, although rare, he had witnessed patients in similar cases accommodate a herniated disc he initially believed would require surgery. He opined Employee's April 27, 2001 work-related accident caused the herniated disc on the left at L5, as demonstrated by Employee's 2001 MRI.

According to Dr. Kennedy, Employee's 2001 herniated/ruptured disc injury is permanent, although his radiculopathy subsided and then recurred in 2011. Dr. Kennedy opined Employee did not experience a new injury in June 2011, but instead further

aggravated and advanced his existing injury. Dr. Kennedy explained Employee experienced "intermittent episodes of temporary transient increases without any suggestion in those records that any of those intervening increases represented new injuries." Thus, Dr. Kennedy opined Employee's 2011 surgery stemmed from his 2001 injury. Dr. Kennedy stated Employee's testing and treatment—beginning in 2001 and continuing to the date of the independent medical examination to include Employee's August 17, 2011 surgery—were appropriate, necessary, and attributable to the 2001 work-related accident.

Dr. Kennedy testified regarding the medical notes of neurosurgeon Dr. Meric, who treated Employee in 2001 and 2002. As evidenced by the notes, Dr. Kennedy stated Dr. Meric discussed the 2001 MRI results "in detail" with Employee and "most likely" discussed his findings and treatment recommendations with Employee. Dr. Meric's notes listed surgery as a treatment option, and Dr. Kennedy agreed such option was appropriate.

To evaluate whether Employee suffered a permanent medical impairment as a result of his 2001 injury, Dr. Kennedy referred to the "AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition," in effect at the time of Employee's 2001 injury. Dr. Kennedy concluded Employee's injury was consistent with DRE Lumbar Category III—a disc injury with associated radiculopathy. Dr. Kennedy then considered the impact of Employee's residual symptoms on his activities of daily living and the residual loss of physical function on those activities and concluded that Employee had sustained a permanent physical impairment of twelve percent to the whole person. To control his symptoms, Dr. Kennedy placed certain restrictions on Employee including prohibitions against repeated bending, stooping, or squatting; working over rough terrain or in rough vehicles; climbing ladders or working at heights; working on his hands and knees or crawling; and lifting and carrying or pushing and pulling twenty pounds occasionally, or ten pounds frequently.

Employer called no witnesses to testify at trial and presented no medical testimony. Employer filed a Form C-32 completed by Employee's original treating neurosurgeon, Dr. Bert Meric, on September 4, 2014, together with Dr. Meric's office notes.[1] Dr. Meric indicated on the Form C-32 he had not seen Employee for twelve years.

Dr. Meric's April 30, 2001 office note recites Employee's medical and complaint history consistent with Employee's trial testimony. The note reflects Dr. Meric reviewed Employee's April 2001 MRI which, according to Dr. Meric, "demonstrate[d] a herniated disc paracentral and to the left at the L5 level with some S1 nerve root compression[,] . . . which add[ed] to the foraminal compromise of the S1 nerve root on the left." According

[1] Dr. Meric's office notes also were included as an exhibit to the Deposition of Dr. Kennedy.

to his office note, Dr. Meric discussed the MRI in detail with Employee and drew Employee a picture. Dr. Meric diagnosed Employee as follows: "Left S1 radiculopathy secondary to osteophyte and left L5 herniated disc." He discussed surgery to decompress the nerve root, but, given the recent nature of the injury, first recommended conservative measures. However, Dr. Meric noted Employee's injury was not limited to a soft disc rupture, and thus, "his chance of significant improvement with conservative measures may be decreased." Dr. Meric's conservative treatment plan included referring Employee to both physical therapy three times per week for four weeks and to an anesthesiologist for a caudal block for his S1 radiculopathy. Following this treatment, Employee was to follow-up with Dr. Meric.

Employee returned to Dr. Meric on July 9, 2001. Dr. Meric found Employee doing "extremely well," noting he had achieved "complete relief and resolution of his leg and back pain" following two nerve blocks. According to Dr. Meric's office note, Employee was "able to do all activities without exception and he never has any significant leg discomfort." Upon examination, Dr. Meric found Employee's motor strength completely intact, he walked well on heels and toes, he had completely negative straight leg raising bilaterally, and he had excellent range of motion of his lumbosacral spine and was able to touch the floor without difficulty and rise back up to a standing position. Dr. Meric concluded:

> [Employee] has done extremely well with conservative measures. There is nothing else to offer him from a surgical standpoint. He is still at risk for recurrent nerve root irritation because of the presence of the osteophyte[;] however, his nerve root is completely normal at this time and he may never have another recurrence of this problem. He has no limitations at all from a neurosurgical standpoint.

Dr. Meric marked on the Form C-32 that Employee's April 2001 injury arose out of his employment, but he had not suffered a temporary total disability as a result. Dr. Meric indicated he had initially released Employee to return to work with restrictions on April 30, 2001, and without restrictions on July 9, 2001. He noted Employee reached maximum medical improvement for the April 2001 injury on July 9, 2001, and suffered no permanent impairment.

Analysis

The standard of review of issues of fact in a workers' compensation case is de novo upon the record of the trial court accompanied by a presumption of correctness of the findings, unless the preponderance of evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2012). When credibility and weight to be given testimony are involved, considerable deference is given the trial court when the trial judge had the opportunity to observe the witness' demeanor and hear in-court testimony. *Madden v.*

Holland Grp. of Tenn., 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 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 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)). A trial court's conclusions of law are reviewed de novo upon the record with no presumption of correctness. *Seiber v. Reeves Logging*, 284 S.W.3d 294, 298 (Tenn. 2009) (citing *Goodman v. HBD Indus., Inc.*, 208 S.W.3d 373, 376 (Tenn. 2006); *Layman v. Vanguard Contractors, Inc.*, 183 S.W.3d 310, 314 (Tenn. 2006)).

Statute of Limitations

Employer first contends Employee's claim is time-barred. At the time of Employee's injury in April 2001, the applicable statute of limitations, Tennessee Code Annotated section 50-6-203(a),[2] provided in pertinent part:

> The right to compensation under the Workers' Compensation Law shall be forever barred, unless, within one (1) year after the accident resulting in injury . . . occurred, . . . a claim for compensation under the provisions of this chapter is filed with the tribunal having jurisdiction to hear and determine the matter; provided, that if within the one-year period voluntary payments of compensation are paid to the injured person . . . , an action to recover any unpaid portion of the compensation, payable under this chapter, may be instituted within one (1) year from the latter of the date of the last authorized treatment or the time the employer shall cease making such payments.

Tenn. Code Ann. § 50-6-203(a). The accident resulting in injury in this case occurred on April 27, 2001. According to Employer, its last voluntary payment was made May 6, 2002. Consequently, Employee's 2011 claim is time-barred unless the statute of limitations was tolled.

It has long been the law in this State that a cause of action in a workers' compensation case does not accrue until the plaintiff discovers the injury that is the basis for the claim. *See Gerdau Ameristeel, Inc. v. Ratliff*, 368 S.W.3d 503, 508 (Tenn. 2012) (citing *Sherrill v. Souder*, 325 S.W.3d 584, 595 (Tenn. 2010); *see also Ogden v. Matrix Vision of Williamson Cnty., Inc.*, 838 S.W.2d 528, 530 (Tenn. 1992) (quoting *Norton Co. v. Coffin*, 553 S.W.2d 751, 752 (Tenn. 1977)) ("Although it is not provided in the statute,

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[2] Employer erroneously relies upon a later version of the statute. For purposes of our analysis, however, the error is immaterial.

it is well settled that 'the running of the statute of limitations is suspended until by reasonable care and diligence it is discoverable and apparent that an injury compensable under the workmen's compensation law has been sustained.'"); *Oliver v. State*, 762 S.W.2d 562, 565 (Tenn. 1988) (determining the statute of limitations did not begin to run until employee "learned he had a permanent anatomical change and impairment," which was almost twenty years after the employer-employee relationship ended). At trial, Employee argued the discovery rule tolled the statute of limitations until he discovered the permanent nature of his injury—which he claims occurred in August 2011. In contrast, Employer contended Employee knew or should have known the permanency of his injury on April 30, 2001. Thus, the critical question before the trial court was when Employee knew or reasonably should have known he had suffered a permanent injury to his back as a result of the April 27, 2001 accident.

Regarding Employee's knowledge, the trial court found, "in April 2001, [Employee] had no idea that the injury that he sustained would be permanent and in fact, based upon his testimony, as well as the Form C-32 submitted on behalf of [Employer], he had reason to believe that his injury had resolved as of July 2001." The trial court further found "it was not until August of 2011 that [Employee] had actual or constructive knowledge of his workers' compensation claim for a permanent injury and that his discovery at that time was the first time [Employee] had been diagnosed with a permanent work-related injury." Accordingly, the trial court concluded Employee's claim was filed within one year of discovery and, therefore, was not time-barred. On appeal, Employer contends the trial court's conclusion—that Employee did not discover the permanent nature of his April 2001 injury until August 2011—is contrary to the evidence.

"It is a familiar principle . . . that it is the date that an employee's disability manifested itself to a person of reasonable diligence, rather than the date of the accident, if a different date, which triggers the statute of limitations." *Banks v. St. Francis Hosp.*, 697 S.W.2d 340, 342 (Tenn. 1985) (citing *Jones v. Home Indem. Ins. Co.*, 679 S.W.2d 445 (Tenn. 1984)). The reasonableness of the conduct of an employee and the date on which the employee knew or reasonably should have known he or she suffered a permanent injury are typically questions of fact to be determined from all of the circumstances. *See Banks*, 697 S.W.2d at 342 (determining that the evidence supported the trial court's finding that the action was not time-barred, as the employee was not aware of her work-related injury until a point within one year of the filing of the action); *Jones*, 679 S.W.2d at 446 (same).

In support of its position, Employer points out Employee was diagnosed with a herniated or ruptured disc in April 2001 and made aware of such diagnosis. According to Employer, a herniated or ruptured disc "in general is always considered a permanent injury." Thus, Employer reasons that Employee knew or reasonably should have known, in April 2001, he suffered a permanent injury. However, both Dr. Kennedy's testimony

and Dr. Meric's office notes clearly demonstrate Employee's injury is atypical. Unlike most cases involving a herniated or ruptured disc, Employee's symptoms—including his radiculopathy—completely and fully resolved following relatively brief conservative treatment. No evidence was presented to demonstrate Employee had actual knowledge of his injury's permanency prior to August 2011, nor have we found any evidence to suggest a reasonable person in Employee's position should have discovered the true permanent nature of the injury prior to August 2011. To the contrary, a reasonable person would have likely concluded, as did Employee, no permanent injury existed. Again, Dr. Meric's office notes state that Employee's "nerve root is completely normal[,]" that "he may never have another recurrence of this problem[,]" and that "[h]e has no limitations at all from a neurosurgical standpoint[.]" Dr. Meric's notes document his "belie[f] that [Employee] will [not] require any surgical treatment[.]" In sum, we conclude the evidence does not preponderate against the trial court's factual findings regarding the manifestation of Employee's injury. Because Employee gained actual or constructive knowledge of his injury in August 2011, his claim is not time-barred.

Compensability of Injury

Employer next contends Employee did not suffer a compensable injury. Again arguing the claim for Employee's 2001 injury is time-barred, Employer maintains Employee cannot circumvent the statutory limitations period by attempting to recover for an allegedly non-compensable aggravation of the pre-existing 2001 injury. Having determined, however, Employee's claim for his 2001 injury is not time-barred, this issue is pretermitted.[3]

Exclusion of Dr. Meric's Note

Employer next argues the trial court erred in excluding, as inadmissible hearsay, a one-page note attached to the Form C-32 prepared by Dr. Meric. Employer contends the note in question should be deemed "part and parcel of the C-32 form" and considered in determining whether Employee possessed knowledge of his injury's permanency in 2001.[4]

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[3] Employer also contends Employee is precluded from claiming reimbursement for medical expenses incurred in 2011 because he failed to comply with Tennessee Code Annotated section 50-6-204. As Employee points out, however, he did not seek to recover, and the trial court did not award, such medical expenses.

[4] Employer fails to specify the allegedly pertinent language within the note. We assume Employer relies upon the following: "No way to know at time of 4/30/01 consult whether surgical treatment would be needed. Subjective symptoms may improve but the osteophyte will <u>not</u> "self correct. Osteophyte is degenerative, not caused by any injury."

"Decisions regarding the admission or exclusion of evidence are generally entrusted to the sound discretion of the trial court." *White v. Beeks*, 469 S.W.3d 517, 527 (Tenn. 2015) (citing *Mercer v. Vanderbilt Univ., Inc.*, 134 S.W.3d 121, 131 (Tenn. 2004)). "We review a trial court's decision to admit or exclude evidence under an abuse of discretion standard." *Id.* (citing *Otis v. Cambridge Mut. Fire Ins. Co.*, 850 S.W.2d 439, 442 (Tenn. 1992)). "A trial court abuses its discretion in applying an incorrect legal standard or reaching an illogical or unreasonable decision that causes an injustice to the complaining party." *Id.* (citing *Gonsewski v. Gonsewski*, 350 S.W.3d 99, 105 (Tenn. 2011); *Brown v. Crown Equip. Corp.*, 181 S.W.3d 268, 273 (Tenn. 2005); *State v. Gilliland*, 22 S.W.3d 266, 270 (Tenn. 2000); *State v. Shirley*, 6 S.W.3d 243, 247 (Tenn. 1999)). "In reviewing the trial court's exercise of discretion, we presume that the trial court's decision is correct and review the evidence in a light most favorable to upholding the decision." *Id.* (citing *Lovlace v. Copley*, 418 S.W.3d 1, 16-17 (Tenn. 2013)).

Tennessee Code Annotated section 50-6-235(c) provides an alternative method for introducing medical evidence in workers' compensation cases—Form C-32. *Carter v. Quality Outdoor Prods., Inc.*, 303 S.W.3d 265, 267 (Tenn. 2010) (citing *Arias v. Duro Standard Prods. Co.*, 303 S.W.3d 256 (Tenn. 2010)). Section 50-6-235(c) provides in relevant part:

> Any party may introduce direct testimony from a physician through a written medical report on a form established by the administrator. The administrator shall establish the form for the report. All parties shall have the right to take the physician's deposition on cross examination concerning its contents. Any written medical report sought to be introduced as evidence shall be signed by the physician making the report bearing an original signature. A reproduced medical report that it not originally signed is not admissible as evidence unless accompanied by an originally signed affidavit from the physician or the submitting attorney verifying the contents of the report. Any written medical report sought to be introduced into evidence shall include within the body of the report or as an attachment a statement of qualifications of the person making the report.

Tenn. Code Ann. § 50-6-235(c)(1). "The clear intent of the statute is to provide an alternative to evidentiary medical deposition." *Townsend v. C & GM Urban Elec. Serv., Inc.*, No. M2006-01165-SC-WCM-WC, 2007 WL 2983833, at *4 (Tenn. Workers' Comp. Panel Oct. 10, 2007) (citing *Salyers v. Jones Plastic & Eng'g Co.*, No. W2004-02979-WC-R3-CV, 2005 WL 2412879, *6 (Tenn. Workers' Comp. Panel Sept. 29, 2005); *Nelson v. Magnetic Separation Sys., Inc.*, No. M1999-02009-WC-R3-CV, 2001 WL 114663 (Tenn. Workers' Comp. Panel Feb. 12, 2001)).

The note in question is dated September 6, 2014—two days after Dr. Meric prepared the Form C-32. Our review of the note, which is partially typed and partially

handwritten, indicates the note was not prepared by Dr. Meric as a part of the Form C-32, but rather was prepared in response to questions posed to him by or on behalf of Employer subsequent to his preparation of the Form C-32. As such, the note does not strictly meet the requirements of the relevant statute and is not admissible via section 50-6-235(c)(1).[5]

However, our Supreme Court has previously held, "section 50-6-235(c) is not the exclusive means of introducing written reports in workers' compensation cases and that the Tennessee Rules of Evidence may serve as a basis for the admission of such reports." *Carter*, 303 S.W.3d at 268 (citing *Arias*, 303 S.W.3d at 261). Unfortunately, Employer has cited no basis beyond section 50-6-235 as grounds for admitting the note, and it is not this Court's duty to craft its argument. In any event, the contents of the note would not alter in any way our determination with respect to the timeliness of Employee's claim.

Temporary Total Disability

Finally, Employer contends the trial court erred in awarding Employee temporary total disability benefits for the six-week period following his August 17, 2011 surgery. According to Employer, such benefits are improper because Employee reached maximum medical improvement and was returned to work in 2001. We disagree.

Our Supreme Court has stated, "the fact that [temporary total disability benefits] were terminated by a nominal return to work does not necessarily mean that temporary total disability benefits can never be revived under any set of circumstances." *Cleek v. Wal-Mart Stores, Inc.*, 19 S.W.3d 770, 777 (Tenn. 2000) (allowing a second period of temporary total disability benefits after employee returned to work but was later advised to resign due to pain). Moreover, this Court recently allowed a second period of temporary total disability benefits, although employee had reached maximum medical improvement. *Webb v. Gen. Motors Co.*, No. W2014-00975-SC-R3-WC, 2015 WL 4997866, at *12 (Tenn. Workers' Comp. Panel Aug. 21, 2015). In making this allowance, we noted the "unique characteristics" of employee's diagnosis—specifically, her "condition would wax and wane and she would have flare-ups of the original injury . . . that could temporarily prevent [her] from being able to perform her job duties." *Id.* We find *Webb* analogous to the instant case. Here, although Employee originally reached maximum medical improvement and was returned to work without restrictions on July 9, 2001, he suffered a recurrence of his symptoms from his original injury, necessitating surgery and resulting in another period of temporary total disability beginning in August 2011. The award of temporary total disability is affirmed.

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[5] Having determined the note is separate from the Form C-32, we reject Employer's contention Employee waived his objection by failing to object within the ten-day period espoused in section 50-6-235.

Conclusion

The judgment is affirmed. Costs are taxed to Knox County, Tennessee, and its surety, for which execution may issue if necessary.

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DON R. ASH, SENIOR JUDGE

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

CLYDE E. COWAN v. KNOX COUNTY, TENNESSEE

Chancery Court for Knox County
No. 1866302

No. E2015-00405-SC-R3-WC-FILED-FEBRUARY 24, 2016

JUDGMENT ORDER

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 on appeal are taxed to Knox County, Tennessee, and its surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM