IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
March 26, 2007 Session

JAMES RIGNEY v. UNITED TECHNOLOGIES ET AL.

Direct Appeal from the Chancery Court for Warren County
No. 8104 Larry B. Stanley, Chancellor

No. M2006-01590-WC-R3-WC - Mailed - July 17, 2007
Filed - August 17, 2007

This worker's compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated section 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. The trial court found that the employee suffered a permanent psychological injury while working, and awarded seventy percent (70%) permanent partial vocational disability to the body as a whole. The employer has appealed that ruling, contending that the evidence preponderates against the trial court's findings that the employee received a permanent psychological injury and that the award of seventy percent disability to the body as a whole is excessive. Also, the employer contends that the trial court erred in awarding the payment of past and future medical treatment. We affirm the judgment of the trial court.

Tenn. Code Ann. § 50-6-225(e) (Supp. 2006) Appeal as of Right;
Judgment of the Chancery Court Affirmed

JERRY SCOTT, SR. J., delivered the opinion of the court, in which CORNELIA A. CLARK, J. and DONALD P. HARRIS, SR. J., joined.

Terry L. Hill and Heather E. Hardt, Nashville, Tennessee, for the appellants, United Technologies and Carrier Corporation.

Garry Ferraris, Nashville, Tennessee, for the appellee, James Rigney.

MEMORANDUM OPINION

I. Factual Background

James Rigney, the appellee, worked for Carrier Corporation for over thirty years. Before working for Carrier, Mr. Rigney graduated from high school and held various jobs including working in a rubber plant and driving a truck. While at Carrier, Mr. Rigney inspected coils and worked as a brazier.

On January 8, 2001, Mr. Rigney was working at Carrier when a stack of tubes weighing several hundred pounds and containing brass parts fell on Mr. Rigney. Mr. Rigney was knocked unconscious, and when he regained consciousness, he was disoriented. Mr. Rigney was taken to Vanderbilt University Medical Center, where he was diagnosed with a concussion and was discharged after several days of treatment.

Mr. Rigney later returned to Vanderbilt complaining of stroke-like symptoms. He was referred to Dr. Garrison Strickland, a neurologist. Dr. Strickland performed numerous tests on Mr. Rigney, all of which resulted in normal and unremarkable findings. Dr. Strickland referred Mr. Rigney to Dr. Ray Potts for neuropsychological testing. Dr. Potts found inconsistencies in Mr. Rigney's neuropsychological testing that raised questions of malingering.

Later, Mr. Rigney was referred by Carrier to Dr. Murphy Martin for counseling. Dr. Martin is a licensed professional counselor/mental health service provider. As a licensed professional counselor, Dr. Martin cannot administer any medications or do any kind of psychological testing. Dr. Martin referred Mr. Rigney to Dr. Badshah Miatra, a psychiatrist, for psychiatric treatment. Dr. Maitra provided treatment for Mr. Rigney for five years and believed that Mr. Rigney suffered from a psychological injury as a result of the accident on June 8, 2001. Mr. Rigney returned to Carrier on October 29, 2001 and continued to work for four years until the plant closed in August 2005.

Mr. Rigney was evaluated on May 16 and 17, 2006, by Dr. William Bernet, a psychiatrist, and Dr. James Walker, a psychologist. Both Dr. Bernet and Dr. Walker performed tests that revealed signs of malingering, and Dr. Bernet was unable to assign an impairment rating due to his belief that Mr. Rigney was malingering.

At trial, four of Mr. Rigney's co-workers including Mickey Ralph, Jr., Denice Arnold, Bobby Miller, and Dave King, his wife, Jessie Rigney, and Dr. Potts testified. Dr. Miatra, Dr. Martin, Dr. Walker, Dr. Bernet, and Mr. Rigney's testimony were taken by deposition and entered into evidence at trial.

Mickey Ralph, Jr. testified at trial that he worked with Mr. Rigney for "six years prior to the accident and had on and off contact with him, worked around him, worked beside of him, actually did his job a time or two." He further testified that:

> Mr. Rigney before the accident, he was always funny. We always had a good time. After, of course, I didn't have as much dealings with him after. It was a long time before he come back. Definitely there's no doubt he was sad and depressed when he came back. He was definitely not himself.

Mr. Ralph stated several times that Mr. Rigney was not the same after he returned.

Denice Arnold testified, but had many inconsistencies within her testimony. For example, after being asked how Mr. Rigney performed his job after the accident compared to before, Ms. Arnold said that "[h]e was not able to keep his job up," but later said "I never saw him perform a job after the accident."

Bobby Miller testified that when Mr. Rigney came back "you could walk up to him and he was just like a stranger, you know. And I just grabbed his hand and shook his hand and he said he didn't even know who it was at the time." Mr. Miller also testified that "you had to keep the line up" to work at Carrier Corporation and that "as far as I knew [Mr. Rigney] was doing the job," but he testified that he was working on the other side of the line and didn't know about Mr. Rigney's work performance.

Dave King testified about Mr. Rigney's job performance. Mr. King worked with Mr. Rigney for approximately four to five months prior to the plant closing. He stated that Mr. Rigney was slow, and he helped Mr. Rigney almost every day.

The trial court found Jessie Rigney, Mr. Rigney's wife, was "especially credible in describing [Mr. Rigney's] disabilities since the accident." When asked what Mr. Rigney did mentally after the accident, she testified that Mr. Rigney called her "mama," which he had never done before. She further testified that after the accident he did not recognize his friends, his manner of dressing changed, the types of food he liked changed, their sex life changed, and that he was no longer able to understand their finances. She described numerous incidents including one time when Mr. Rigney went fishing out on his boat, but forgot how to get back to the bank, and when Mr. Rigney rode his lawnmower around the yard with the blade up, not cutting any grass but claiming that he was mowing the lawn. She also described a time when he passed out in church. When asked whether Mr. Rigney was able to drive after the accident, Mrs. Rigney stated that "he could drive to Wal-Mart and stuff sometimes when he was taking that medicine." When asked if Mr. Rigney was driving to work every day, Mrs. Rigney replied "most the time, unless I took him, you know. When he felt bad, I would take him." Mrs. Rigney also testified that she would not let him drive unless he was taking his medicine because of her fear that he might "have one of them spells."

Dr. Potts, a licensed psychologist who performed an evaluation of Mr. Rigney on March 7, 2001, testified that "the best explanation [he] could come up with was malingering, that [Mr. Rigney] was choosing on purpose to distort his capabilities and the distortion was intended to show extremely bad problems that he had." In arriving at this conclusion, Dr. Potts relied on several tests. He described one test were Mr. Rigney was asked how high he could count. Mr. Rigney replied that

he could only count to ten. However, when asked to count the number of dots on a card he was able to count to fifteen. Also, on another test, Mr. Rigney was having trouble subtracting single digit numbers like nine minus four, but was later able to multiply single numbers and subtract double digit numbers. Dr. Potts stated that "that's an incredibly unusual behavior that a person with depression wouldn't do it that way, schizophrenia wouldn't do it that way, brain injury wouldn't do it that way."

Dr. Martin, a licensed professional counselor/mental health service provider, saw Mr. Rigney from April of 2001 to February of 2006 for a total of 51 counseling sessions. By deposition, he testified that "it would be very difficult for [Mr. Rigney] to adapt to some other type of work, especially any technical kind of work that would allow him to come close to making the money he made with the job he had at Carrier."

Dr. Maitra, a psychiatrist, treated Mr. Rigney from April 27, 2001 to December 13, 2005. In describing Mr. Rigney, Dr. Maitra stated in his deposition that:

> Mr. Rigney has been extremely depressed. He had severe anhedonia, which is loss of pleasure of normal activities. He has had problems with change in weight, trouble with sleep, poor energy levels, gets tired easily, sort of minimal feelings of guilt, but definitely a lot of helplessness, hopelessness, worthlessness, problems with his normal sexual functioning, but he has not had severe thoughts of wanting to hurt himself at any time, and all through the time I've been seeing him, it does fluctuate from time to time to very severe or to the moderate range of the scores . . . .

Dr. Maitra further stated that:

> I feel [Mr. Rigney] is definitely about 45 to 50 percent cognitively deficient. He is not able to – how would you put it down – can he balance a checkbook? I don't think so. Would he be able to supervise people? I don't think so. Would he be able to plan activities which are related to any job, like look after a store or things like that? I don't think so. He would probably be able to do only very menial work like a greeter somewhere like at Wal-Mart where a lot of cognitive thinking is not required. He cannot plan things very well. Most of his day-to day functioning is done by his wife. She has to be here. He is not able to understand anything that is going on. That has been consistent.

Using the *Guides to the Evaluation of Permanent Impairment*, Fifth Edition, 2000, published by the American Medical Association and commonly referred to as the AMA Guides, Dr. Maitra stated that "Mr. Rigney would definitely fall between Class 3 and Class 4, which is moderate to marked impairment in mental functioning." Referring to the AMA Guides, Second Edition, Dr. Maitra said that **"**moderate impairment is 25 to 50 percent, and moderately severe impairment is 55 to 75 percent, but I would say about 50 to 55 percent is where I would rate [Mr. Rigney]."

Dr. William Bernet, a psychiatrist certified in general psychiatry and in forensic psychiatry, is the director of Vanderbilt Forensic Services at Vanderbilt University Medical Center. Dr. Bernet saw Mr. Rigney on May 16, 2006. He interviewed Mr. Rigney for two and a half hours and then referred him to Dr. Walker for testing. In diagnosing Mr. Rigney, Dr. Bernet stated:

> Mr. Rigney has dysthymic disorder. Dysthymic disorder is a mild form of depression. My second conclusion was that Mr. Rigney described unusual spells, but I am not able to state a diagnosis for those spells without additional information. My suspicion is that the spells that he is describing, like seizures, really are not seizures. And I don't even know whether they even occur, at least, currently. As far as I know from the wife, they are not currently occurring. My third conclusion was that Mr. Rigney exaggerated the severity of his psychological and physical symptoms, and at times appeared to fabricate problems that he did not actually have. So that conclusion is really just a paraphrase of the conclusion that he is malingering. My fourth conclusion was that Mr. Rigney may have some problems with depression, anxiety, and memory, but the degree of impairment cannot be determined because of his tendency to exaggerate. And my fifth conclusion is that it is very unlikely that Mr. Rigney's current psychological and cognitive symptoms were caused by the injury he sustained at work in January of 2001.

Dr. Bernet stated that he based his diagnosis of malingering on inconsistencies that he found. In describing the inconsistencies, Dr. Bernet stated:

> Well, there are two main things. One is the kind of things that he did. For instance, having trouble finding the bathroom, having trouble writing the alphabet seemed that those are very easy tasks. And he did not seem anywhere near as impaired that he would have that kind of difficulty. For example, he knew the date. He figured out the date and wrote the date on a piece of paper accurately. But then he had trouble writing the alphabet. So, that's not consistent. There were also, for instance, in his recollection of things, that he was able to remember this accident that happened in 2001, and the details of what happened immediately before the accident and immediately after the accident, but he was not able to remember presidents of the United States. Now that's not consistent. In other words, in some respects his memory was unimpaired, but in other respects, it was.

Dr. Bernet further stated:

> I think [Mr. Rigney] was greatly exaggerating his degree of cognitive impairment. And I think he was making up symptoms that were not actually happening. For instance, as far as I know, he's not really having seizures. So, I think that his degree of malingering was much greater than sort of the common, simple exaggerations that people do.

Dr. James Walker is a clinical psychologist and a neuropsychologist at Vanderbilt. Dr. Walker and his staff performed numerous tests on Mr. Rigney over a two day period beginning on May 16, 2006. Dr. Walker described numerous tests that he performed that indicated Mr. Rigney was malingering. For example, Dr. Walker described a test stating:

> This is a test of memory that involves showing the patient 50 pictures. The patient is then asked to choose the 50 from – among a set of forced choice alternatives. In other words, he is shown two pictures later and he is asked to choose which picture he was shown before, either "A" or "B." A patient that has no memory at all would be expected to get approximately 25 of those right because you could get that many right simply by flipping a coin. You have just as much chance of guessing "A" as guessing "B". If a person gets below 25, like 24 or 23, that begins to suggest that a person may know the right answers, but is purposely choosing the wrong one because even if he had no memory at all, he would get a certain score by chance. In Mr. Rigney's case, his score on the first section of the test was 13 out of 50. The second, 15 out of 50. And the third trial, 9 out of 50. It would be impossible for him to get scores that low unless he actually knew the correct answers and was choosing the wrong ones.

Dr. Walker also testified about Mr. Rigney's motor speed noting that Mr. Rigney achieved a "score that was grossly disparate with his observed abilities, his observed speed." On another test, he "scored very poorly and in a manner that was consistent with no known mental disorder." In yet another example, Dr. Walker described a test where Mr. Rigney is asked what a word means, such as "assemble," and Mr. Rigney replied saying "to take an object apart." Dr. Walker calls this a "near-miss response." In defining a near-miss response, Dr. Walker stated:

> Near-miss responses are significant because it's very difficult to think on one's feet during the course of an evaluation like this, and give really credible wrong answers if you're trying to fake. What your brain automatically does, is it presents the right answer to you, and then you have to quickly choose something that is not right. The easiest thing to do is to choose a near-miss response, something that has some aspect of the correct answer, but then it's changed purposely to be incorrect.

Dr. Walker described other examples in his deposition that led him to conclude that Mr. Rigney was malingering.

Finally, Mr. Rigney's attorney offered Mr. Rigney's deposition as evidence in lieu of calling him as a witness with no objection from the other party. In his deposition, Mr. Rigney appeared to be very confused and claimed he did not know most of the answers to the questions. For example, the following is a typical exchange between Mr. Rigney and the attorney deposing him:

Q. Tell me how you were hurt at Carrier.
A. I can't do that either.

Q. Tell me something.
A. I don't know what to tell you.
Q. Do you remember getting hurt? I have read through your medical records, and you have told all these doctors how you got hurt, and now I am just asking you to tell me, too.
A. I can't tell you. I don't know.
Q. Well, you told Dr. Burnett [sic] a couple weeks ago. Can you tell me today.
A. No.
Q. Why not?
A. My thinking ain't the same.
Q. Do what?
A. My thinking ain't the same.
Q. It isn't the same as what?
A. One day to the next.

II. ISSUES

The Appellants raised the following issues on appeal:

(1) Whether the evidence preponderates against a finding that Mr. Rigney received a permanent psychological injury from the accident on January 8, 2001 at the Carrier plant in light of the testimony concerning malingering.

(2) Whether the award of seventy percent to the body as a whole is excessive.

(3) Whether the trial court erred in awarding the payment for past and future medical treatment.

III. STANDARD OF REVIEW

The standard of review of issues of fact 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) (2005). 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 to hear in-court testimony. *Whirlpool Corp. v. Nakhoneinh*, 69 S.W.3d 164, 167 (Tenn. 2002). Where 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 draw its own conclusions with regard to those issues. *Bohanan v. City of Knoxville*, 136 S.W.3d 621, 624 (Tenn. 2004). A trial court's conclusions of law are reviewed *de novo* upon the record with no presumption of correctness. *Ganzevoort v. Russell*, 949 S.W.2d 293, 296 (Tenn. 1997).

IV. ANALYSIS

A.

The first issue is whether the evidence preponderates against a finding that Mr. Rigney received a permanent psychological injury from the accident on January 8, 2001, at the Carrier plant. In this case, four lay witnesses and a psychologist testified in court while a counselor, two psychiatrists, a psychologist and Mr. Rigney testified by deposition. Based on the depositions and the in-court testimony, the trial court found that Mr. Rigney received a permanent psychological injury from the accident on January 8, 2001, at the Carrier plant. In the trial court's order, the trial judge stated:

> [Mr. Rigney] sustained a 70% permanent partial vocational disability to the body as a whole from the above-mentioned injury. The Court specifically finds [Mr. Rigney's] wife to be especially credible in describing [Mr. Rigney's] disabilities since the accident.
>
> While evidence exists that would indicate that there is no physical injury which would cause the psychological problems exhibited by [Mr. Rigney], the Court finds that [Mr. Rigney] does suffer from psychological problems due to the accident that severely impairs his ability to be gainfully employed. The Court also considered the psychological evaluations performed on [Mr. Rigney]. These tests suggested that [Mr. Rigney] was not giving a full effort on the tests or was exaggerating his intellectual disabilities. This Court is of the opinion that the overall performance of [Mr. Rigney] for the past five years is a better indication of [Mr. Rigney's] abilities than the results of these exams. Specifically, not driving a motor vehicle, asking another man for help in using the restroom, getting lost on a local fishing trip, total change in demeanor, and self-consciousness regarding people making fun of him, are indications of a person who has legitimately undergone a change in personality and cognitive abilities. This Court finds it almost unthinkable that a person would "fake" this behavior for over five years if he were a healthy individual. Lay testimony also supports this conclusion.

The Appellants claim that the trial court erred when it found that Mr. Rigney did not drive. In support of its claim, the Appellants quoted the following part of Mrs. Rigney's testimony:

> Q. Was he driving to work every day?
> A. Most the time, unless I took him, you know. When he felt bad, I would take him.
> Q. But most of the time he would drive to and from work?
> A. Yeah.

Q. And he continued with that up until the time the plant closed in August of last year?
A. Yes.

However, Mrs. Rigney also testified, in the following excerpt, that he does not drive unless he takes his medicine:

Q. Is he able to drive the same way he could before his accident.
A. No. But he could drive to Wal-Mart and stuff sometimes when he was taking that medicine.
Q. Do you let him drive at all without the medicine?
A. No, I don't.
Q. Why not?
A. I'm afraid he might have one of them spells. He can kill somebody and we could get our insurance took away. He says one time, says, you don't never let me drive this car. I said, James, I can take you places.

Reviewing the trial court's findings of fact *de novo* with a presumption of correctness, this Court affirms the trial court's finding that Mr. Rigney cannot drive because, based on Mrs. Rigney's testimony, Mr. Rigney cannot drive without medication.

Also, in support of their claim, the Appellants assert that the trial court did not rely heavily enough on the conclusions of Dr. Bernet, a psychiatrist, Dr. Walker, a psychologist, and Dr. Potts, a psychologist, all of whom believe that Mr. Rigney is malingering. Dr. Potts arrived at his conclusion based on interviews and tests all performed in a single day, while Dr. Bernet and Dr. Walker based their conclusion on interviews and tests performed over a two day period. Conversely, Dr. Miatra, a psychiatrist, and Dr. Martin, a licensed professional counselor, testified that Mr. Rigney was not malingering based on their observations of Mr. Rigney in interviews that occurred over a five year period. However, neither Dr. Miatra nor Dr. Martin performed the types of tests that the other doctors performed on Mr. Rigney.

Additionally, Dr. Bernet, Dr. Walker, and Dr. Potts were not able to relate Mr. Rigney's continued complaints and current mental status to the January 2001 closed head injury due to their belief that Mr. Rigney is malingering. However, Dr. Walker and Dr. Potts cannot testify as to causation because they are psychologists and not medical doctors. *Thomas v. Aetna Life & Cas. Co.*, 812 S.W.2d 278, 283 (Tenn. 1991) (Medical causation and permanency of an injury must be established in most cases by expert medical testimony.). Dr. Maitra, the only other medical doctor who testified besides Dr. Bernet, admitted that it would be impossible for him to determine the extent of Mr. Rigney's cognitive decline without knowing his cognitive abilities prior to the accident. However, Dr. Maitra stated that he believes that "the best conclusion we can come to is that [Mr. Rigney's condition] would be related to the head injury and would be considered a sequela of the head injury."

The main issue in dispute is the adequacy of proof of causation. We note that absolute medical certainty is not required to establish causation. *White v. Werthan Indus.*, 824 S.W.2d 158, 159 (Tenn. 1992). However, "medical proof that the injury was caused in the course of the employee's work must not be speculative or so uncertain regarding the cause of the injury that attributing it to the plaintiff's employment would be an arbitrary determination or a mere possibility." *Tindall v. Waring Park Ass'n*, 725 S.W.2d 935, 937 (Tenn. 1987). "'If, upon undisputed proof, it is conjectural whether disability resulted from a cause operating within petitioner's employment, or a cause operating without employment, there can be no award.' If, however, equivocal medical evidence combined with other evidence supports a finding of causation, such an inference may nevertheless be drawn by the trial court under the case law." *Id.* (citation omitted). Stated differently, the causal connection between the injury and the work-related accident, which needs to be established to prove causation, may be established by expert opinion combined with lay testimony. *White*, 824 S.W.2d at 159. Furthermore, even though "causation cannot be based upon speculative or conjectural proof, reasonable doubt is to be construed in favor of the employee." *Id.*

In this case, the trial court stated that it considered the testimony regarding malingering but found that "the overall performance of [Mr. Rigney] for the past five years is a better indication of [Mr. Rigney's] abilities than the results of these exams." Dr. Bernet testified that "it is very unlikely that Mr. Rigney's current psychological and cognitive symptoms were caused by the injury he sustained at work in January of 2001", while Dr. Maitra, who treated Mr. Rigney for over five years testified, as stated above, that "the best conclusion we can come to is that [Mr. Rigney's condition] would be related to the head injury and would be considered a sequela of the head injury." Dr. Maitra also testified that Mr. Rigney's condition was "chronic," but could not definitively determine whether the injury was permanent. Therefore, we find that the medical testimony is equivocal because one psychiatrist (Dr. Bernet) testified that it is unlikely that Mr. Rigney's current condition was caused by the January 8, 2001 accident, while another psychiatrist (Dr. Maitra) testified that the best conclusion would be that Mr. Rigney's condition is related to the head injury.

In this case, lay testimony supports Dr. Maitra's conclusions. Mr. Rigney's wife (whom the trial court found to be "especially credible" in describing her husband's disabilities) and co-workers described how Mr. Rigney had changed, and witnesses told numerous stories describing Mr. Rigney's problems that occurred after the accident, such as when Mrs. Rigney described his inability to find his way back to the bank. Therefore, we find, based on expert opinion combined with lay testimony, that the evidence does not preponderate against the trial court's finding that Mr. Rigney received a permanent psychological injury from the accident on January 8, 2001 at the Carrier plant.

B.

The second issue is whether the award of seventy percent permanent partial vocational disability to the body as a whole is excessive. In cases of unscheduled injuries, such as this case, the issue is "how much the injury impairs the employee's earning capacity, that is, the extent of

vocational disability." *Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 458 (Tenn. 1988). "In determining vocational disability, the question is not whether the employee is able to return to the work being performed when injured, but whether the employee's earning capacity in the open labor market has been diminished by the residual impairment caused by a work-related injury." *Id.* If an injured worker is re-employed after the accident, his re-employment is a factor when determining vocational disability, but it is "not controlling and is only one of many [factors] that must be considered." *Id.* at 459. "'The assessment of permanent . . . disability is based upon numerous factors, including the employee's skills and training, education, age, local job opportunities, and his capacity to work at the kinds of employment available in his disabled condition.'" *Id.* (citation omitted).

In this case, Mr. Rigney was sixty (60) years old at the time of trial and had a high school education. He was employed by Carrier Corporation for over thirty years. After the accident, Mr. Rigney continued to work for Carrier until the plant closed about four years later. Since the closing of the plant, Mr. Rigney has not been re-employed.

At trial, some of Mr. Rigney's co-workers testified as to Mr. Rigney's lack of ability to perform his job. Bobby Miller testified that "you had to keep the line up" and that "as far as [he] knew [Mr. Rigney] was doing the job," but that he "didn't know about [Mr. Rigney's] work. [Mr. Rigney] worked on the other side." However, Dave King testified that Mr. Rigney had problems keeping up, and he helped Mr. Rigney almost every day.

Because the other experts who testified could not rate Mr. Rigney's impairment due to their belief that he was malingering, Dr. Maitra was the only expert that rated Mr. Rigney's impairment. Dr. Maitra testified that Mr. Rigney had a forty-five to fifty percent (45% to 50%) mental impairment. Based on the Second Edition of the AMA Guides, Dr. Maitra stated that "under Class 3 and Class 4, which says moderate impairment is 25 to 50 percent, and moderately severe impairment is 55 to 75 percent, but I would say about 50 to 55 percent is where I would rate [Mr. Rigney]." Under the Fifth Edition of the AMA Guides, which does not provide for a numerical rating, Dr. Maitra testified that "Mr. Rigney would definitely fall between Class 3 and Class 4, which is moderate to marked impairment in mental functioning." Dr. Maitra also testified that he had previously stated in his notes from prior interviews with Mr. Rigney that Mr. Rigney was "working better in his job" and "doing quite well."

On appeal, the Appellants claim that the trial court erred by relying on Dr. Maitra's testimony concerning the numerical rating of Mr. Rigney's impairment under the Second Edition of the AMA Guides. The Appellants argue that use of any edition of the AMA Guides other than the current edition is prohibited pursuant to Tennessee Code Annotated sections 50-6-102(2) and 50-6-204(d)(3)(A). Section 50-6-204(d)(3)(A) states:

> To provide uniformity and fairness for all parties in determining the degree of anatomical impairment sustained by the employee, a physician, chiropractor or medical practitioner who is permitted to give expert testimony in a Tennessee court

> of law and who has provided medical treatment to an employee or who has examined or evaluated an employee seeking workers' compensation benefits shall utilize the applicable edition of the AMA Guides as established in § 50-6-102 or in cases not covered by the AMA Guides an impairment rating by any appropriate method used and accepted by the medical community.

Section 50-6-102(2) of the Tennessee Code Annotated states that "AMA Guides" means the "most recent edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, American Medical Association."

However, the Appellant did not object to Dr. Maitra's testimony regarding numerical ratings at the time of trial. "Generally, failure to make a timely, specific objection *in the trial court* prevents a litigant from challenging the introduction of inadmissible evidence for the first time on appeal." *Welch v. Bd. of Prof. Resp.*, 193 S.W.3d 457, 464 (Tenn. 2006) (emphasis added). The Appellant objected at the deposition, but not at trial. Having failed to present the objection to the trial court, the Appellant cannot raise that issue on appeal.

Additionally, the Appellant places great weight on the fact that Mr. Rigney returned to work for four years after the accident. As noted above, Mr. Rigney's re-employment is not controlling and is only one of many factors to be considered as to whether he has any disability. Furthermore, one of Mr. Rigney's co-workers testified that Mr. Rigney could not perform his job at the pace that was required. Based on Dr. Maitra's testimony, Mr. Rigney's age and education, and the testimony of Mr. Rigney's co-workers, we find that a preponderance of the evidence supports the trial court's award of seventy percent permanent partial disability to the body as a whole.

C.

The third issue on appeal is whether the trial court erred in awarding the payment for past and future medical treatment. "Tennessee Code Annotated section 50-6-204(a)(1), part of the workers' compensation statutory scheme, makes it crystal clear that the employer is obligated to the employee to pay reasonable and necessary medical expenses for work-related injuries." *Moore v. Town of Collierville,* 124 S.W.3d 93, 99 (Tenn. 2004). The trial court ordered the Appellants to pay "medical expenses related to [Mr. Rigney's] injury incurred prior to trial in the amount of $5,006.50 and all future medical treatment at the expense of the Defendant to the extent provided by the Workers' Compensation Law of the State of Tennessee." We concur in the finding that the past and future medical expenses related to Mr. Rigney's psychological injury that occurred on January 8, 2001, were extremely reasonable and clearly necessary and that the Appellants are required to pay those expenses. Therefore, the trial court did not err in ordering the payment of past and future medical treatment for the work related injury.

CONCLUSION

Accordingly, the judgment of the trial court is affirmed. Costs of this appeal are taxed to the Appellants, United Technologies and Carrier Corporation, for which execution may issue if necessary.

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JERRY SCOTT, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
MARCH 26, 2007 SESSION

JAMES RIGNEY v. UNITED TECHNOLOGIES, ET AL

Chancery Court for Warren County
No. 8104

No. M2006-01590-WC-R3-WC - Filed - August 17, 2007

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 the Appellants, United Technologies and Carrier Corporation, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM