IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
May 17, 2010 Session

JOHN CRUMBY, JR. v. RURAL/METRO CORPORATION OF TENNESSEE

Appeal from the Chancery Court for Knox County
No. 142052-1 John F. Weaver, Chancellor

No. E2009-00430-WC-R3-WC - Filed August 11, 2010

Pursuant to Tennessee Supreme Court Rule 51, this workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law. In 2001, the trial court found that Employee's coronary artery disease had been advanced by his employment. Medical benefits were awarded in accordance with the workers' compensation law. In 2007, a dispute arose between Employee and Employer as to whether certain medications and tests were related to the work injury. Employee filed a motion to compel Employer to provide the medications under the 2001 judgment. The trial court granted the motion, and ordered Employer to provide all of the medications at issue. On appeal, we conclude that the trial court erred by requiring Employer to provide medications for Employee's diabetes. We otherwise affirm the order.

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

JON KERRY BLACKWOOD, SR. J., delivered the opinion of the Court, in which GARY R. WADE, J., and WALTER C. KURTZ, SR. J., joined.

G. Gerard Jabaley, Knoxville, Tennessee, for the appellant, Rural/Metro Corporation of Tennessee.

Steve Erdely, IV, Knoxville, Tennessee, for the appellee, John T. Crumby, Jr.

MEMORANDUM OPINION

Factual and Procedural Background

Employee was an EMT for Employer. In 1998, he suffered an episode of angina while lifting a patient. This event led to a diagnosis of coronary artery disease. He had an angioplasty and placement of a stent as a result of that condition. He did not return to work for Employer thereafter. He had been receiving treatment for hypertension and high cholesterol for roughly thirteen years before the angina episode. Employer denied the claim for benefits for coronary artery disease, taking the position that the condition was pre-existing, and only the angina episode was work-related. The case was tried and a judgment was entered in favor of Employee in 2001. He was awarded 30% PPD to the body as a whole, and Employer was ordered to provide medical treatment for the condition.

In 2007, a dispute arose between the parties as to whether various medications being prescribed for Employee were related to his work injury. Twelve medications were at issue.[1] In addition, Employer argued that an annual or biannual treadmill test was also unrelated to his work injury. Ultimately, Employee filed a motion to compel Employer to pay for the medications and the test.

The medical proof consisted primarily of two depositions of Dr. John Acker, a cardiologist who had been treating Employee since 1985. The first was a deposition taken in 2001 in connection with the original trial of the claim. The second deposition was taken in November 2007, in connection with Employee's motion. In a general way, each of the medications is for the treatment of one of three conditions: hypertension (Coreg, Norvasc, HCTZ, Accupril, Aspirin), high cholesterol (Zetia, Lipitor), or diabetes (Actos, Glyburide, Glucophage).[2]

During direct examination, Dr. Acker testified, without explanation, that Coreg, Zetia, Norvasc, HCTZ, Lipitor, Accupril and Aspirin were prescribed to treat Employee's coronary artery disease. He was not questioned concerning the diabetes medications. On cross examination, Dr. Acker testified that neither Employee's hypertension, nor his high cholesterol, was caused or aggravated by his work for Employer, or the 1998 incident. It was

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[1]These were: Coreg, Zetia, Nitroglycerine, Norvasc, "HCTZ", Actos, Lipitor, Glyburide, Glucophage, Accupril, Cardiotek, and Aspirin.

[2]It appears that there is no dispute that nitroglycerine was prescribed for the direct treatment of coronary artery disease. By the time Dr. Acker's deposition was taken, he was no longer prescribing Cardiotek for Employee, because studies had determined it to be ineffective.

undisputed, as outlined above, that he had been treating Employee for both of these conditions for several years before 1998. He agreed that Employee was obese, and that this, along with hereditary and lifestyle factors, contributed to both conditions. Regarding the cholesterol-lowering medications, he stated "if somebody has coronary disease, we're going to aggressively lower cholesterol as a way of treating the coronary disease." He did not make any similar direct statements concerning the use of hypertension medication to treat coronary artery disease, but did agree with the statement that Employee's pre-existing conditions "have to be controlled to treat coronary artery disease and to prevent him from having a heart attack."

Dr. Acker testified that Employee was diagnosed with Type II diabetes near the time of the 1998 angina attack. He testified that this condition was neither caused nor worsened by Employee's work for Employer. He had previously responded to a questionnaire from Employee's attorney that the medications prescribed were not related to coronary artery disease. During the course of his deposition, however, he stated that diabetes caused weakening of the blood vessels, which was an additional risk for persons with coronary artery disease.

Dr. Acker testified on direct examination that an annual treadmill stress test was necessary for the treatment of Employee's coronary artery disease. On cross examination, he testified that he had periodically ordered the same test prior for Employee prior to 1998.

In addition to the testimony of Dr. Acker, the record contains a copy of a letter from Dr. David Zhao, a cardiologist at Vanderbilt. Dr. Zhao examined records of Employee's medical treatment over the years. He did not examine Employee. Based upon that information, Dr. Zhao opined that the medications at issue were not related to the 1998 event.

The trial court ordered Employer to pay for all of the medications at issue, as well as the treadmill tests, past and future. Employer has appealed, contending that the trial court's ruling was erroneous.

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) (2008). 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. Madden v. Holland Group of Tenn., Inc., 277 S.W.3d 896, 898 (Tenn. 2009). "When the issues involve expert medical testimony that is contained in the record by

deposition, determination of the weight and credibility of the evidence necessarily must be drawn from the contents of the depositions, and the reviewing court may draw its own conclusions with regard to those issues." Foreman v. Automatic Sys., Inc., 272 S.W.3d 560, 571 (Tenn. 2008). 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).

Analysis

The trial court held that Employer "is responsible for all [of Employee's] reasonable and necessary medical expenses related to his compensable coronary disease whether or not the medicine or treatment or diagnostic procedure is also related to a noncompensable condition as long as the expenses also relate to the claim on the compensable coronary disease." Employer argues that the evidence preponderates against the trial court's implicit finding that the medications at issue were "related to" the treatment of Employee's coronary artery disease. In support of this argument, it points to the testimony of Dr. Acker on cross-examination that Employee's hypertension and high cholesterol were neither caused nor aggravated by the 1998 angina episode. However, in our view, the gist of Dr. Acker's testimony was that treatment of these conditions was inseparable from treatment of Employee's coronary artery disease. That condition was found to be compensable as a result of the original trial. We do not see any intellectually viable method to isolate the medical treatment of the pre-existing conditions from the treatment of the compensable condition. Employer suggests that perhaps some of the treatment would not be necessary if Employee would exercise, lose weight, and make other healthy lifestyle choices. However, this assertion would appear to fall under the familiar rule that an employer takes the worker as he is. See, e.g., Parks v. Tenn. Mun. League Risk Mgmt. Pool, 974 S.W.2d 677, 679 (Tenn. 1998). We therefore conclude that the evidence does not preponderate against the trial court's finding that Employer's statutory obligation to provide medical treatment for Employee's work-related condition extends to the medications prescribed for treatment of hypertension (Coreg, Norvasc, HCTZ, Accupril, Aspirin) and high cholesterol (Zetia, Lipitor). Dr. Acker's testimony concerning the reasons for, and necessity of, periodic treadmill testing, parallels his testimony concerning these medications. On that basis, we therefore further conclude that Employer is liable for the cost of that testing.

Treatment of Employee's diabetes presents a different question. This medical condition arose shortly after Employee's March 1998 work injury. Dr. Acker did not state on direct examination that diabetes medications were necessary for the treatment of the compensable condition. Further, he specifically indicated in a May 2007 response to a letter from Employee's attorney that those medications (Actos, Glyburide, Glucophage) were not being prescribed for the treatment of the compensable condition. However, as indicated

above, he did testify during cross-examination that Employee's diabetes, although unrelated to his coronary artery disease, rendered him more susceptible to the effects of that condition. Based on the trial court's 2001 order, the Employer is responsible for all medical costs related to the Employee's coronary artery disease. The record establishes that the diabetes medication is unrelated to the coronary artery disease and, therefore, is not compensable. We therefore conclude that the evidence preponderates against the trial court's finding that Employer is liable for those medications.

Conclusion

The judgment of the trial court is modified to remove Employer's obligation to provide the listed diabetes medications to Employee pursuant to the workers' compensation law. It is affirmed in all other respects. Costs are taxed one-half to the appellant, Rural/Metro Corporation of Tennessee and its surety, and one-half to the appellee, John T. Crumby, for which execution may issue if necessary.

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JON KERRY BLACKWOOD, SENIOR JUDGE