

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

February 27, 2012 Session

MARINE ACCESSORIES CORPORATION v. EDWINA WOODS

**Appeal from the Chancery Court for Knox County
No. 172915-3 Michael W. Moyers, Chancellor**

No. E2011-01116-WC-R3-WC-MAILED-APRIL 2, 2012/FILED-MAY 3, 2012

In this workers' compensation case, the employee sustained a compensable back injury for which he was prescribed medication. Approximately five weeks after his injury, the employee died from gastrointestinal bleeding. His widow sought workers' compensation benefits, claiming that his death was compensable because it was caused by the medication he was prescribed for his work injury. The employer denied her claim, contending that the employee's death was not caused by the medication, but was instead the result of esophageal varices caused by alcoholism and cirrhosis of the liver. The trial court held that the widow did not sustain her burden of proof, and she appeals.¹ We affirm.

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

SHARON G. LEE, J., delivered the opinion of the Court, in which D. KELLY THOMAS and THOMAS R. FRIERSON, SP.JJ., joined.

J. Anthony Farmer, Knoxville, Tennessee, for the appellant, Edwina Woods.

Timothy W. Connor and Adam F. Rust, Knoxville, Tennessee, for the appellee, Marine Accessories Corporation.

¹ 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.

MEMORANDUM OPINION

Factual and Procedural Background

Larry Woods was employed as a machinist by Marine Accessories Corporation (“Marine Accessories”). During the course and scope of his employment on April 13, 2007, Mr. Woods sustained a compensable back injury. On May 3, 2007, Mr. Woods was treated by Dr. Peter Vondreau, who diagnosed right-side low back pain radiating into the right leg and prescribed Flexeril and Naprosyn,² a non-steroidal anti-inflammatory (“NSAID”) medication.

On May 12, 2007, Mr. Woods fell at his home and injured his elbow. Two days later, he was taken to Blount Memorial Hospital (“Blount Memorial”) for treatment of that injury and was admitted after being diagnosed with a staph infection. Mr. Woods remained in Blount Memorial until May 19, 2007, and while there, he continued to receive Naprosyn.

On May 21, 2007, Mr. Woods was readmitted to Blount Memorial for severe gastrointestinal bleeding, and he died later that day. While no autopsy was conducted after his death, Mr. Woods’s death certificate lists the cause of death as “hypovolemic shock[,] due to or as a consequence of[,] upper gastrointestinal bleeding[,] due to or as a consequence of[,] esophageal varices[,] due to or as a consequence of[,] cirrhosis, liver.”

Mr. Woods’s widow, Edwina Woods, sought workers’ compensation death benefits from Marine Accessories, contending that her husband’s death from gastrointestinal bleeding was caused by his ingestion of the Naprosyn he was prescribed for his back injury and therefore his death was causally connected to his work-related injury. Marine Accessories denied Mrs. Woods’s claim, contending that Mr. Woods’s death was not caused by the use of Naprosyn, but rather the result of a pre-existing condition. After the parties exhausted available administrative remedies, Marine Accessories filed a petition for determination of rights in the Knox County Chancery Court. At trial, Mrs. Woods offered the deposition testimony of Dr. Mark Anderson, and Marine Accessories offered the deposition testimony of Dr. Sarkis Chobanian and Dr. Thomas Koenig, as to Mr. Woods’s cause of death.

Dr. Mark Anderson, a gastroenterologist, performed a colonoscopy on Mr. Woods in 2001 and 2006, an esophagogastroduodenoscopy in 2003 and 2006, and treated him from March 29, 2007, through April 20, 2007. He testified that Mr. Woods died from hypovolemic shock due to gastrointestinal bleeding, which was most likely caused by a

² In the record, this medication is alternately referred to as Naprosyn and Naproxen. Medical testimony in the record establishes that Naproxen is the generic form of Naprosyn.

peptic ulcer. Mr. Woods's pre-existing cirrhosis and the use of Naprosyn, prescribed for the work injury, were risk factors for the peptic ulcer. During cross-examination, Dr. Anderson testified that he had diagnosed Mr. Woods with alcoholic cirrhosis of the liver in 2003 and discussed that esophageal varices and portal hypertensive gastropathy were two complications of cirrhosis:

Varices, very often, are associated with the esophagus, occasionally with the stomach. But portal hypertensive gastropathy is strictly the stomach. And essentially what happens is all of the blood from the digestive tract flows toward the liver and is filtered through the liver which extracts the nutrients. People that have cirrhosis and scarring of the liver, the blood can't easily flow through the liver, and so it backs up toward the stomach and it engorges the lining of the stomach, making it beefy, juicy and oozing blood. That's called portal hypertensive gastropathy. And that can cause bleeding, it can cause melena, which are black stools, may cause a small amount of bleeding, but not life-threatening bleeding.

In contrast, variceal bleeding is when the back – when the blood backs up from the liver toward the stomach, it can enlarge the veins in the esophagus called esophageal varices and the veins in the stomach called gastric varices. When they bleed, they can be associated with a significant risk of bleeding. And they present very differently. That type of bleeding presents much more fulminantly.

Portal hypertensive gastropathy, you may have days of black stools, but someone is not dropping their blood pressure. Variceal bleeding is usually someone who is vomiting up a massive amount of blood and is hemodynamically very unstable.

An endoscopic examination of Mr. Woods conducted by Dr. Anderson on September 30, 2003, revealed portal hypertensive gastropathy, esophageal varices, and a duodenal ulcer. Dr. Anderson testified that at the time of that examination, Mr. Woods reported that he had had an episode of variceal bleeding in 1990. However, Dr. Anderson discounted the accuracy of that report because he considered it unlikely that Mr. Woods would have still been alive in 2003 if he had experienced variceal bleeding in 1990. Dr. Anderson conducted another endoscopic examination in July 2006, which showed findings similar to those

obtained in 2003. In a July 17, 2006 letter to Mr. Woods's primary care physician, Dr. Anderson stated that Mr. Woods continued to drink alcohol.

A University of Tennessee Memorial Hospital gastroenterology consultation report dated March 28, 2007, shows that on March 27, 2007, less than three weeks before sustaining his work-related back injury, Mr. Woods was admitted to the hospital's intensive care unit because he had been vomiting blood ("hematemesis") and passing blood through his bowels ("hematochezia"). The report, which identifies Dr. Anderson as Mr. Woods's treating physician, shows that Mr. Woods was given blood transfusions for three units of blood and includes the assessment "Hematemesis, possibly due to either variceal hemorrhage or portal hypertensive gastropathy." The report further states that Mrs. Woods "indicates continued abuse alcohol." A third endoscopic examination conducted by Dr. Anderson at that time still showed the presence of esophageal varices, although with apparently diminished severity. Dr. Anderson stated that because of this apparent diminution in severity, he considered esophageal varices to be a less likely cause of Mr. Woods's subsequent death than peptic ulcer disease. However, Dr. Anderson stated that although he "specifically look[ed]" for peptic ulcer disease during this endoscopic examination, he "saw no evidence of any active ulcer disease at that time, nor any scarring to indicate previous ulcer disease, nor did [Mr. Woods] give me any history of having been diagnosed with peptic ulcer disease."

Dr. Anderson last saw Mr. Woods on April 20, 2007, and testified that Mr. Woods did not have a history of peptic ulcer disease at that time or before that time. Dr. Anderson opined, however, that Mr. Woods developed peptic ulcer disease after April 20, 2007, as a result of his cirrhosis, which placed him at an "elevated risk for developing peptic ulcer disease," and his use of Naprosyn, which "precipitated the ulcer and contributed to the bleeding."

Marine Accessories's expert witness, Dr. Sarkis Chobanian, also a gastroenterologist, was deposed after reviewing Mr. Woods's medical records at the request of Marine Accessories. He disagreed with Dr. Anderson's opinion concerning the cause of Mr. Woods's death and instead, opined that Mr. Woods "drank himself to death." Dr. Chobanian noted that Mr. Woods's records showed cirrhosis and a variceal bleed as early as 1990. He also observed Dr. Anderson's notations that he had advised Mr. Woods to stop drinking on several occasions and that during the March 2007 examination, it appeared that Mr. Woods had not stopped drinking. Dr. Chobanian stated that "the most common complication [from untreated esophageal varices] is hemorrhage," which can lead to hypovolemic shock. "Here's a man with a cirrhosis, known esophageal varices, and we know the mortality rate from variceal hemorrhage and yet he continues to drink. And any gastroenterologist, any physician would advise their patients to stop drinking, otherwise they'll die."

Dr. Chobanian further testified that there are two known side effects of NSAIDs such as Naprosyn, “gastropathy; damage to the gastric or duodenal lining, caused by these drugs, both a direct and systemic effect. And also rarely we’ll see NSAID hepatotoxicity, damage to the liver.” Dr. Chobanian also stated that NSAIDs can cause gastrointestinal bleeding, by “causing a peptic ulceration.” However, he noted that in the medical records of Mr. Woods that he reviewed, there was no mention of peptic ulcer disease. He stated that NSAIDs did not cause the esophageal varices. He further noted that there is a correlation between the length of time the NSAID is taken and the likelihood of gastrointestinal bleeding and opined that it would be unusual to see a gastrointestinal bleed after just one month of taking NSAIDs. He testified that if someone did experience a gastrointestinal bleed in that period of time, more than likely, it would be the result of a pre-existing condition rather than the use of NSAIDs. Dr. Chobanian noted that Mr. Woods did not have peptic ulcer disease when he was examined by Dr. Anderson in March 2007. Dr. Chobanian did not consider peptic ulcer disease to be a likely cause of Mr. Woods’s death.

On cross-examination, Dr. Chobanian agreed that the medical records did not contain any “confirmed documentation” of bleeding esophageal varices in the past. He acknowledged Dr. Anderson’s detection of a duodenal ulcer in 2003, noting, however, that there was no direct linkage between Mr. Woods’s history of gastrointestinal bleeding and peptic ulcer. He also stated that the records of Mr. Woods’s March 2007 hospitalization showed a “decrease in hematocrit,” or percentage of red blood cells, which suggested the loss of about one-third of the patient’s blood. He agreed that Dr. Anderson’s examination at that time had shown a decrease in the severity of Mr. Woods’s esophageal varices, but Dr. Chobanian believed the reason for this apparent decrease was that the loss of blood had caused the varices to “flatten” or “decompress.” In conclusion, Dr. Chobanian stated that although theoretically “there may have been some small contributing factor of the NSAID effect on platelet function,” Mr. Woods “bled out from esophageal varices is what caused his death. And those varices were the result of portal hypertension, the result of cirrhosis, and the result of alcoholism.”

The trial court permitted Mrs. Woods to take and introduce a rebuttal deposition from Dr. Anderson. In that deposition, Dr. Anderson restated that he did not accept Mr. Woods’s statement in 2003 that he had an episode of variceal bleeding in 1990, and he opined that the results of his examination in 2003 were inconsistent with the occurrence of such an event. He further testified that the condition of Mr. Woods’s varices in March 2007 indicated that he was at a relatively low risk of bleeding at that time. Dr. Anderson also disagreed with the significance of Mr. Woods’s low hematocrit level at the time of the March 2007 hospitalization. He noted that Mr. Woods’s previous hematocrit level had been measured ten months earlier and posited that the hematocrit level drop had occurred gradually, rather than suddenly as Dr. Chobanian assumed. Dr. Anderson noted that Mr.

Woods's last endoscopy before his death showed small esophageal varices and he opined that, though not impossible, it was unlikely that small varices would increase to large varices within two months.

Marine Accessories also introduced the deposition testimony of Dr. Thomas Koenig, an orthopaedic surgeon, who had also conducted a review of Mr. Woods's medical records. Dr. Koenig testified that he frequently prescribed NSAIDs such as Naprosyn, and was familiar with the risks and side effects of those medications. He testified that NSAIDs can cause gastrointestinal bleeding. He stated that the possibility of such an event would increase greatly after the drug had been used for two months, but that it would be uncommon for gastrointestinal bleed to result after taking the NSAID for one month. He opined that Mr. Woods's death was not caused by the use of Naprosyn, stating, "NSAIDs for certain did not directly cause his death. NSAIDs for certain did not cause his esophageal varices. NSAIDs, if they were used, could have made the bleed that occurred a little more difficult to stop." Dr. Koenig stated that "sometimes [esophageal varices] bleed profusely, enough to where a patient can die." He further stated that "[m]ost likely [Mr. Woods] had an esophageal varices that cut loose, and he was going to bleed a bunch no matter whether he was on . . . Naproxen or not." While Dr. Koenig stated that use of Narposyn could have been a contributing cause of Mr. Woods's death, given the esophageal varices, Mr. Woods "probably would have had a close to similar outcome" without the Naprosyn.

The trial court ruled that Mrs. Woods had not sustained her burden of proof on the issue of causation, and judgment was entered in accordance with that finding. The trial court, in issuing this ruling, stated:

It is certainly -- the doctors agree that taking [Naprosyn] can be a contributing factor to internal bleeding. But the claimant here has the burden of establishing by a preponderance of the evidence that it was in fact the cause here. And the Court is simply not persuaded that the evidence is sufficient to draw by a preponderance of the evidence the conclusion that the [Naprosyn] was the cause of this gentleman's death. Although Dr. Anderson speculates that there may have been a peptic ulcer that erupted and caused the internal bleeding, as we stated there was no autopsy, there's no objective evidence that that was the case. The evidence that we have, the most recent evidence that we have of internal bleeding was that he had bled from esophageal varices. Dr. Chobanian's opinion that the varices had shrunk from threes to ones because of the recent bleeding the Court finds to be at least likely an explanation as Dr.

Anderson's speculation or opinion that the bleeding was caused by a peptic ulcer that was directly related to the [Naprosyn]. The Court can't say that that is not a possible reason for Mr. Woods' death, but the Court does not believe that the preponderance of the evidence supports that that is the most likely cause. This is simply a chain of events that is so stretched that the Court does not believe that justice would be served by requiring the employer to pay the benefits related to the death of Mr. Woods in this case.

Mrs. Woods has appealed, contending that the evidence preponderates in her favor and that the trial court applied an improper burden of proof in reaching its conclusions.

Standard of Review

We are statutorily required to review the trial court's factual findings "de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise." Tenn. Code Ann. § 50-6-225(e)(2) (2008). Following this standard, we are further required "to examine, in depth, a trial court's factual findings and conclusions." Crew v. First Source Furniture Grp., 259 S.W.3d 656, 664 (Tenn. 2008) (quoting Galloway v. Memphis Drum Serv., 822 S.W.2d 584, 586 (Tenn. 1991)). We accord considerable deference to the trial court's findings of fact based upon its assessment of the testimony of witnesses it heard at trial, although not so with respect to depositions and other documentary evidence. Padilla v. Twin City Fire Ins. Co., 324 S.W.3d 507, 511 (Tenn. 2010); Glisson v. Mohon Int'l, Inc./Campbell Ray, 185 S.W.3d 348, 353 (Tenn. 2006). We review conclusions of law de novo with no presumption of correctness. Wilhelm v. Krogers, 235 S.W.3d 122, 126 (Tenn. 2007). Although workers' compensation law must be liberally construed in favor of an injured employee, the employee must prove all elements of his or her case by a preponderance of the evidence. Crew, 259 S.W.3d at 664; Elmore v. Travelers Ins. Co., 824 S.W.2d 541, 543 (Tenn. 1992).

Analysis

It is not disputed that Mr. Woods suffered a compensable back injury on April 13, 2007. Once an injury has been found to be compensable under the workers' compensation law, "death or disability due to a poor result of treatment, or complications of treatment, or negligent treatment [of the injury] is [also] compensable." Rogers v. Shaw, 813 S.W.2d 397, 399 (Tenn. 1991).

The issue in this case is whether Mr. Woods's death was causally related to the Naprosyn he was prescribed following his back injury. In all but "the most obvious, simple and routine cases," a workers' compensation claimant must establish the causal relationship between the alleged injury and the claimant's employment activity by a preponderance of expert medical evidence, as supplemented by lay testimony. Excel Polymers, LLC v. Broyles, 302 S.W.3d 268, 274 (Tenn. 2009). In endeavoring to meet such burden of proof, the claimant is to be granted the benefit of all reasonable doubts. Id.

While absolute certainty is not required, proof of causation cannot be based on speculation or conjecture. Reeser v. Yellow Freight Sys. Inc., 938 S.W.2d 690, 692 (Tenn. 1997). "It is elementary that an award cannot be predicated solely upon the testimony of medical experts who are not willing to go any further than to say that it 'is possible' or 'could be' that there is a causal connection between the accident and the injury for which compensation is sought." Lynch v. La Rue, 278 S.W.2d 85, 86 (Tenn. 1955). An award, however, may be based upon such equivocal medical testimony when there is other evidence "from which it reasonably may be inferred that the incident *was in fact* the cause of the injury." Reeser, 938 S.W.2d at 692 (emphasis added); see also Long v. Tri-Con Indus., Ltd., 996 S.W.2d 173, 177 (Tenn. 1999); Singleton v. Procon Prod., 788 S.W.2d 809, 811 (Tenn. 1990); P & L Constr. Co. v. Lankford, 559 S.W.2d 793, 794 (Tenn. 1978); Williams v. United Parcel Serv., 328 S.W.3d 497, 504 (Tenn. Sp. Workers' Comp. Panel 2010); GAF Bldg. Materials v. George, 47 S.W.3d 430, 433 (Tenn. Sp. Workers' Comp. Panel 2001).

It is undisputed that the immediate cause of Mr. Woods's death was hypovolemic shock due to gastrointestinal bleeding. Mrs. Woods, through the testimony of Dr. Anderson, contended that the internal bleeding was the result of peptic ulcer disease caused by the Naprosyn prescribed by Dr. Vondreau on May 3, 2007, to treat Mr. Woods's April 13, 2007 work injury. Marine Accessories, through the testimony of Drs. Chobanian and Koenig, contended that the internal bleeding was the result of esophageal varices caused by Mr. Woods's alcoholic cirrhosis. Presented with those two theories, the trial court was necessarily compelled to examine the evidence to determine which was the more likely explanation for Mr. Woods's death. By doing so, it did not place any burden upon Mrs. Woods apart from that of showing by a preponderance of the evidence that her husband's death was causally related to his work injury.

The evidence in support of Mrs. Woods's theory showed that Naprosyn was prescribed for her husband's work injury and that he took the medication as prescribed from May 3, 2007 until the date of his death, May 21, 2007. All of the medical witnesses agreed that Naprosyn can cause peptic ulcer disease and gastrointestinal bleeding. Dr. Anderson opined that the most likely cause of death was, therefore, peptic ulcer disease caused by Naprosyn. Dr. Anderson opined that Mr. Woods's March 2007 hospitalization for

gastrointestinal bleeding was not directly related to the esophageal varices caused by alcoholic cirrhosis. He testified that the severity of Mr. Woods's esophageal varices appeared to improve between July 2006 and March 2007. In reaching his conclusions, Dr. Anderson discounted Mr. Woods's 2003 statement that he had an episode of variceal bleeding in 1990. He also surmised that the drop in Mr. Woods's hematocrit level noted when he was hospitalized in March 2007 had not occurred suddenly, but gradually over the preceding ten months. He did not think that the hematemesis and hematochezia that occurred in the days before the March 2007 hospital admission had caused a large blood loss.

The evidence in support of Marine Accessories's theory showed that Mr. Woods had esophageal varices due to alcoholic cirrhosis. All of the medical witnesses agreed that severe internal bleeding is a known potential consequence of esophageal varices. Also, Dr. Anderson's notes from 2006 and 2007 indicate that Mr. Woods continued to drink alcohol in spite of repeated advice to stop. Before his work injury in March 2007, Mr. Woods had an episode of internal bleeding severe enough to require hospitalization. At that time, according to Dr. Anderson, Mr. Woods did not have peptic ulcer disease. In reaching his opinion that esophageal varices caused the bleeding that led to Mr. Woods's death, Dr. Chobanian accepted as true Mr. Woods's 2003 statement that he had an episode of variceal bleeding in 1990. He also surmised that the drop in Mr. Woods's hematocrit level in March 2007 was the result of the hematemesis and hematochezia reported to have occurred shortly before he was hospitalized.

Mr. Woods died from severe internal bleeding. It is undisputed that Mr. Woods had esophageal varices and that severe internal bleeding is a known consequence of that condition, though the severity of his condition and the attendant risk were disputed. It is undisputed that Mr. Woods had been taking Naprosyn for approximately three weeks before his death and that Naprosyn can cause peptic ulcer disease, which, in turn, can cause internal bleeding. The trial court found that the condition known to exist, esophageal varices, was a more likely cause of death than the condition which may have existed, peptic ulcer. In making that finding, it was within the trial court's discretion to accept the opinion of one expert over another. Fritts v. Safety Nat. Corp., 163 S.W.3d 673, 679 (Tenn. 2005) (citing Hinson v. Wal-Mart Stores, Inc., 654 S.W.2d 675,676-77 (Tenn. 1983)).

Upon our careful independent review of the record, we agree that Mrs. Woods failed to satisfy her burden of proof. While Mrs. Woods's expert witness, Dr. Anderson, opined that Mr. Woods's use of Naprosyn "precipitated the [peptic] ulcer and contributed to the bleeding," he did not testify otherwise that there was a causal link between Mr. Woods's use of Naprosyn and his death. The evidence does not preponderate against the finding of the trial court that Mr. Woods's fatal gastrointestinal bleed was caused by esophageal varices that were the result of alcoholic cirrhosis of the liver.

Mrs. Woods asserts that Naprosyn caused or contributed to her husband's death regardless of whether his bleeding resulted from a peptic ulcer or esophageal varicies. We have reviewed the record and do not agree that the proof preponderates in favor of that conclusion. Although the medical evidence in this case shows that it is possible that Mr. Woods's use of Naprosyn may have made it to some degree more difficult to stop his bleeding and that Naprosyn could have contributed to Mr. Woods's death, all such evidence was equivocal; no evidence was presented from which it could reasonably be inferred that Naprosyn was in fact a cause of Mr. Woods's death. As we have noted, an award may be based upon equivocal medical testimony only when there is other evidence "from which it reasonably may be inferred that the incident *was in fact* the cause of the injury." Reeser, 938 S.W.2d at 692 (emphasis added). Thus, even if the evidence is deemed adequate to support the inference that Naprosyn contributed to Mr. Woods's gastrointestinal bleed, there must also be evidence that Naprosyn exacerbated the bleeding to such a degree that it might be reasonably inferred that Naprosyn was in fact a cause of Mr. Woods's death. "An inference is reasonable and legitimate only when the evidence makes the existence of the fact to be inferred more probable than the nonexistence of the fact." Underwood v. HCA Health Serv. of Tenn., Inc., 892 S.W.2d 423, 426 (Tenn. Ct. App. 1994). We find no such evidence in this record.

Mrs. Woods raised other issues in this appeal. Each of these additional issues has been rendered moot by our independent de novo review of the evidence and our application of the proper standard of review regarding causation. Although Mr. Woods's death was unfortunate and untimely, we must approve the trial court's denial of his widow's claim for benefits.

Conclusion

The judgment is affirmed. Costs are taxed to Edwina Woods and her surety, for which execution may issue if necessary.

SHARON G. LEE, JUSTICE

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JUDGMENT

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appeals to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs of this appeal are taxed to Edwina Woods and her surety, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM