

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
April 26, 2010 Session

JOHN FREEMAN v. GENERAL MOTORS CORPORATION

**Appeal from the Circuit Court for Maury County
No. 12527 Robert L. Holloway, Jr., Judge**

**No. M2009-02338-WC-R3-WC - Mailed - July 16, 2010
Filed - August 18, 2010**

The trial court granted the employee's post-judgment motion to compel his employer to provide certain medical treatment. The employer has appealed, contending that the trial court erred by finding that the proposed treatment was related to the work injury. We affirm the judgment.¹

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

DONALD P. HARRIS, SR. J., delivered the opinion of the Court, in which CORNELIA A. CLARK, J., and WALTER C. KURTZ, SR. J., joined.

Kent E. Krause and Benjamin J. Miller, Nashville, Tennessee, for the appellant, General Motors Corporation.

Jonathan Williams, Nashville, Tennessee, for the appellee, John Freeman.

MEMORANDUM OPINION

Factual and Procedural Background

John Freeman alleged that he suffered compensable injuries to both knees in June 2006. The case went to trial in February 2009. The trial court issued a written decision in

¹Pursuant 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.

March 2009 holding that the right knee injury, a torn meniscus, was work-related, but the alleged left knee injury was not. That decision was not appealed.

Dr. James Wiesman, an orthopaedic surgeon, was designated as the authorized treating physician by the trial court. In May 2009, he recommended that Mr. Freeman receive a series of injections of a viscosupplementation medication called "Supartz." Dr. Wiesman had treated Mr. Freeman with Supartz previously, but those treatments occurred during the time Mr. Freeman's workers' compensation claim was disputed and were apparently paid for by Mr. Freeman's health insurance. In light of the trial court's ruling, Mr. Freeman requested that the injections be provided through workers' compensation. His employer, General Motors, submitted the proposed treatment to its claims management services provider who determined that the treatment was not related to the work injury.

Mr. Freeman filed a motion to compel medical treatment. An evidentiary deposition of Dr. Wiesman was taken and submitted in support of the motion. General Motors submitted the deposition of Dr. Glenn Smith, the reviewing physician for the claims management service. An earlier deposition of Dr. Wiesman, and a deposition of another orthopaedic surgeon, Dr. Lee Hunter, were also presented to the trial court.

Dr. Wiesman described the proposed treatment as a series of three to five injections administered so that "the medication gets into the metabolic enzymatic pathways of the knee and stimulates new cartilage growth and decreases the amount of inflammation due to the . . . osteoarthritic defect that's present." He stated that the injections were "totally directly causally related to his workman's comp injury." Dr. Wiesman explained the connection between the work injury and the osteoarthritic defect as follows: "[T]he meniscus tear rubs a hole and starts a degenerative process in the femoral condyle in the tibial plateau. And when you get the chondral defect, you get osteoarthritis, you get raw bone, and therefore you have developed osteoarthritis."

Dr. Smith, an osteopathic physician and also an orthopaedic surgeon, testified that he had conducted a utilization review at the request of an entity called National Medical Reviews by examining the medical records of Dr. Wiesman, other medical records, and the depositions of Dr. Wiesman and Dr. Hunter. He testified that the proposed injections were an appropriate treatment for osteoarthritis, but Mr. Freeman's arthritis was neither caused nor advanced by the work-related meniscus tear. He based that opinion primarily upon Dr. Wiesman's April 2007 operative report, which stated that stage four chondromalacia was present at the time of the surgery. Dr. Smith explained that "[t]he disease process was so advanced at [that] point it just does not appear that it would have been advanced much from the type of injury described, because the patient did not really fall, he only twisted the knee[.]" On cross examination, Dr. Smith admitted that he had not examined Mr. Freeman

and his opinion was based solely upon a review of the medical records and depositions. He acknowledged that a meniscus tear could cause osteoarthritis in the knee but was of the opinion it did not in this case because of the advanced stage of the disease at the time of Dr. Wiesman's surgery. He also testified that he had reviewed a report of an MRI scan of Mr. Freeman's knee, but had not seen the actual images upon which the report was based.

The trial court took the case under advisement and issued a written decision. It found that the proposed injections were "a necessary medical treatment for the right knee which Mr. Freeman injured when he tripped in the course of his employment" and ordered General Motors to pay for them. General Motors has appealed, asserting that the trial court erred by finding that the proposed medical treatment was made necessary by Mr. Freeman's work-related injury.

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. 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); Krick v. City of Lawrenceburg, 945 S.W.2d 709, 712 (Tenn. 1997); Elmore v. Travelers Ins. Co., 824 S.W.2d 541, 544 (Tenn. 1992). A trial court's conclusions of law are reviewed de novo upon the record with no presumption of correctness. Perrin v. Gaylord Entm't Co., 120 S.W.3d 823, 826 (Tenn. 2003); Ganzevoort v. Russell, 949 S.W.2d 293, 296 (Tenn. 1997).

Analysis

General Motors's argument² is based, in large part, upon the trial court's March 3, 2009 decision after the trial of the compensability issue. It contends that the trial court

²We note that, in its brief in this Court, and in statements made to the trial court, General Motors is contesting this relatively minor issue because "[b]y not contesting these injections at this juncture, [General Motors] opens itself up to later having waived objection to being responsible for a [potential] total knee replacement."

implicitly found at that time that the degenerative condition in Mr. Freeman's right knee was not work-related. This position is based upon inferences drawn from the trial court's memorandum and other items that are in the record. Specifically, General Motors points out that Dr. Wiesman assigned a total of 12% permanent impairment to the leg for Mr. Freeman's right knee injury, attributing 10% of the amount to the meniscus tear and an additional 2% to degenerative changes in the knee. In its memorandum decision, the trial court found that Mr. Freeman had sustained a 10% impairment, and awarded 12.5% permanent partial disability. General Motors argues that the decision to disregard that additional 2% impairment effectively constitutes a finding that Mr. Freeman's arthritic condition was not aggravated or advanced by his work injury. We disagree.

The injury in this case occurred on June 15, 2006. In his earlier deposition testimony, Dr. Wiesman stated that an MRI done on November 15, 2006, revealed a medial meniscus tear in the right knee. He performed surgery on the knee on April 26, 2007. He testified that the "problem with torn meniscal cartilages is that when they're torn, they injure the highland cartilage. If you have a loose piece of cartilage drifting around, it can actually injure the articular cartilage and set up degeneration and chondromalacia of the highland cartilage, which is surface cartilage." Dr. Wiesman's postoperative diagnosis included:

- (1) Tear of medial meniscus right knee.
- (2) Inner border degeneration tear lateral meniscus right knee.
- (3) Chondromalacia of the medial compartment right knee.
- (4) Early degenerative osteoarthritis medial compartment right knee.
- (5) Severe chondromalacia, fibrillation, fronding and flapping of the patellofemoral joint right knee.

The March 3, 2009 memorandum of the trial court discussed Dr. Wiesman's testimony concerning his impairment rating as follows: "He assigned permanent physical impairment for the right knee of ten (10%) percent of the lower extremity . . . He also included an additional two (2%) for chondromalacia, a condition he says is not included in the AMA Guidelines." It is clear to this panel that the chondromalacia referred to by Dr. Wiesman and the court was degenerative changes caused by the meniscus tear. Dr. Wiesman assigned an impairment to that condition because "that's the thing that's going to get him in the end." What is not clear is why the trial court failed to include the 2 % in its impairment finding. It may have been omitted because it was not included in the AMA Guidelines. It may have been omitted because the damage was not certain. The trial court noted in its March 3, 2009 memorandum that Dr. Wiesman "was still treating Mr. Freeman as of the deposition date, giving him injections to help grow cartilage." The trial court's October 2009 memorandum addresses the issue as follows:

The court finds Dr. Wiesman in a better position than Dr. Smith to know what condition Mr. Freeman was in before his work related injury, whether the work related injury exacerbated his pre-existing condition, and how advanced his preexisting condition was at the time he was injured. Dr. Wiesman operated on Mr. Freeman's right knee, and he treated Mr. Freeman both before and after surgery. Dr. Wiesman's opinion is bolstered by the fact that Mr. Freeman exhibited no prior right knee problem before he tripped at work.

The court finds that Supartz injections or viscosupplementation is a necessary medical treatment for the right knee which Mr. Freeman injured when he tripped in the course of his employment at GM.

In our view, the two depositions of Dr. Wiesman support the conclusion that the medial meniscus tear was caused by the work injury that occurred on June 15, 2006. There is no evidence this tear pre-existed that injury. According to Dr. Wiesman, the meniscus tear caused the chondromalacia which in turn caused the osteoarthritis. This analysis was made by the same court which heard and decided the issue of compensability only a few months earlier. In our view, its language does not conflict with the earlier decision. It is consistent with that decision, and incompatible with General Motors's suggested interpretation of it. We therefore conclude that the trial court did not err by ordering General Motors to provide the medical treatment at issue.

Conclusion

The judgment of the trial court is affirmed. Costs are taxed to General Motors Corporation, and its surety, for which execution may issue if necessary.

DONALD P. HARRIS, SENIOR JUDGE

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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 appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

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

Costs will be paid by General Motors Corporation and its surety, for which execution may issue if necessary.

PER CURIAM