

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
April 24, 2017 Session

ANGELA EVANS v. ALLIANCE HEALTHCARE SERVICES

**Appeal from the Chancery Court for Shelby County
No. CH-13-1852-3 James R. Newsom, Chancellor**

No. W2016-00653-SC-WCM-WC – Mailed June 30, 2017; Filed September 26, 2017

Angela Evans (“Employee”) was employed by Alliance Healthcare Services¹ (“Employer”) as a bus driver. On December 16, 2009, she witnessed the shooting of a coworker by a patient. She received mental health care through workers’ compensation. She did not return to work for Employer or any other entity. After exhausting the Benefit Review process, she filed this action in the Chancery Court for Shelby County, alleging that she was permanently and totally disabled by Post-Traumatic Stress Disorder (“PTSD”) caused by witnessing the shooting. Employer acknowledged the incident but asserted that Employee’s continuing mental health problems were caused by other events and stressors. Employer further asserted that Employee was not permanently and totally disabled. The trial court held that Employee was permanently and totally disabled and that the December 16, 2009 incident was the cause of her disability. Benefits were awarded accordingly. Employer has timely appealed. The appeal has been referred to the Special Workers’ Compensation Appeals Panel (“Panel”) for a hearing and a report of findings of fact and conclusions of law pursuant to Tennessee Supreme Court Rule 51. We affirm the judgment.

Tenn. Code Ann. § 50-6-225(e) (2014) (applicable to injuries occurring prior to July 1, 2014) Appeal as of Right; Judgment of the Chancery Court Affirmed

ROGER A. PAGE, J., delivered the opinion of the court, in which WILLIAM B. ACREE, and PAUL G. SUMMERS, SR. JJ., joined.

David J. Deming and Laurenn S. Disspayne, Nashville, Tennessee, for the appellant,

¹ Alliance Healthcare Services is a successor to Southeast Tennessee Mental Health Services.

OPINION

Factual and Procedural Background

Employee was forty-one years old when the trial occurred on January 28, 2016. She graduated from high school with honors in 1993. She had no additional education. However, she had obtained a commercial driver's license ("CDL") in 2001. She began working for Employer as a bus driver in February 2009. Previously, she had worked as an assistant house manager at a facility that provided care to mentally disabled adults. Her duties in that job included bathing residents, grocery shopping, transporting residents to medical appointments, and some clerical tasks. She then went to work for the Memphis Area Transit Authority where she provided transportation to persons with mental and physical disabilities. She was unable to continue in that job because of back problems. Employee worked for a short time as a parking garage attendant before changing employment and moving to Employer for better benefits and work scheduling. There, her job consisted primarily of transporting patients or counselors to and from appointments.

Employee was able to work full-time, had no restrictions or limitations, and was able to perform all aspects of her job. After she began working for Employer, Employee decided to have gastric bypass surgery. As a prerequisite to that procedure, she underwent a psychological evaluation by Dr. Edward Amos, a psychologist, on July 2, 2009. Dr. Amos cleared Employee for the surgery and found that she had no psychiatric history. The shooting incident occurred before the surgery.

On December 16, 2009, Employee was transporting a counselor, Joe Cheshire, to a patient's home in response to a call from the patient's brother. When they reached the residence, the patient ran to the door carrying a gun. As Mr. Cheshire and Employee entered the house, the patient shot Mr. Cheshire. The patient's brother got the gun away from the patient and called 9-1-1. Mr. Cheshire was taken to a hospital and survived the attack.

Shortly after the incident, Debra Dillon, a program manager for Employer, visited Employee twice at her home to see how she was doing and to inquire if she wanted counseling. Employee told Ms. Dillon that she was already seeing a counselor. She also reported having flashbacks of the shooting. After the December 16, 2009 incident, Employee was exposed to two additional shootings. Approximately two weeks after

December 16, her landlord was shot in front of her home. She did not witness the shooting, but she found her landlord in front of her house after the shooting. She attempted to perform CPR, but he eventually died. Her attorney suggested that she witnessed a third shooting some years later, but Employee did not discuss that event in her testimony.

Employee received authorized psychiatric treatment from Dr. Randall Moskowitz from February 23, 2010, until March 28, 2012. Dr. Moskowitz's initial diagnoses were acute stress disorder and PTSD. He prescribed medications and referred her to an outpatient treatment program at Lakeside Hospital. She was discharged from Lakeside on March 20, 2010. Thereafter, she received counseling from Amy Klyman, a therapist associated with Dr. Moskowitz and continued to be followed by Dr. Moskowitz himself.

Employee's course of treatment thereafter was lengthy. Employee underwent gastric bypass surgery in January 2010. She was hospitalized in December 2010 due to an interaction between an over-the counter cold medication and her psychiatric medications. She was seen at an emergency room for similar reasons on January 14, 2011. By 2012, she had lost a substantial amount of weight as a result of her gastric bypass surgery. As a result, she was admitted to Methodist Hospital for excess skin removal. After that procedure, she experienced auditory hallucinations and attempted to pull out her surgical stitches. In February 2012, Employee was hospitalized at Lakeside because of suicidal ideations. She was then readmitted to Methodist Hospital because she was neither eating nor drinking and was unresponsive. After being discharged by Dr. Moskowitz, she began treatment at Frayser Counseling Center and continued to receive treatment from that facility until the trial in this case. On September 30, 2012, she drank nail polish and was experiencing hallucinations. She was involuntarily committed to Memphis Mental Health Institute on October 1, 2012, and was discharged on October 9 with diagnoses of major depressive disorder and PTSD. Employee was also hospitalized at the Regional Medical Center in Memphis because of drug overdoses in April and September 2012.

Dr. Moskowitz performed an independent medical examination of Employee on October 4, 2013. Employee reported that she continued to have flashbacks and nightmares of the December 2009 incident and that she experienced severe depression. She also had difficulty sleeping, impaired attention and concentration, and intrusive memories of the shooting. She stated that she had attempted to find employment, but she was unable to leave her house. Her adult daughter drove her to and from her medical appointments. Dr. Moskowitz stated that Employee scored fourteen of a possible fifteen on a "depression inventory." His diagnoses were chronic PTSD and major depression with psychotic episodes. He testified that she had reached maximum medical improvement and assigned a permanent impairment of 40% based on the Sixth Edition of the American Medical Association Guidelines ("AMA Guides"). Dr. Moskowitz opined

that the December 2009 shooting incident was the cause of Employee's mental conditions. He stated that he did not "think she's able to work at all" and has not been able to work since the December 2009 shooting.

During cross-examination, Dr. Moskovitz agreed that Employee had given him a history of no previous psychiatric treatment, no previous mental health symptoms, and no history of drug abuse. He also agreed that discharge summaries from the Regional Medical Center in Memphis for April and September 2012 referred to a 1996 hospitalization at Methodist Hospital arising from a suicide attempt and an extensive family history of mental illness. Dr. Moskovitz stated that he had accessed records of Methodist Hospital and found no evidence of Employee's being hospitalized for a suicide attempt during 1996. He had previously observed that he did not give a great deal of weight to statements made by Employee while she was suffering acute psychotic episodes, such as during admission for mental health care treatment.

Dr. Moskovitz also agreed that many of Ms. Klyman's notes referred to family problems, financial issues, and similar stressors. He viewed these as typical PTSD problems, illustrating that Employee was unable to cope with the type of problems she had been able to cope with before the traumatic incident.

Dr. Jack Morgan, a psychiatrist, examined Employee on October 20, 2011, and August 14, 2014. He interviewed Employee and arranged for psychological testing by a colleague. He testified that the results of that testing indicated that Employee's answers to the test questions were unreliable. Dr. Morgan testified that Employee had symptoms consistent with PTSD and depression. However, he stated that over time Employee reported numerous family and relationship stresses to Ms. Klyman and focused less frequently on the December 2009 shooting. He stated that the causes of Employee's set of medical problems could not be apportioned between the initial incident and her later personal problems. He opined that the bulk of Employee's mental health issues as of August 2014 were not work-related. Dr. Morgan stated that Employee denied having any psychiatric or mental health problems before December 2009. He also testified that there was "no doubt" that Employee had a significant mental illness and that the December 2009 incident could have had an impact on her condition. In addition, he opined that Employee was not able to work at the time he last saw her.

Dr. Morgan clarified that Employee was admitted to the Regional Medical Center for drug overdoses on two occasions in 2012. A drug screen conducted at one of those admissions was positive for substances that could contribute to her mental illness. He opined that there was no indication in the records of those admissions that Employee's mental state was related to the December 2009 incident. Rather, they were due to stressful events occurring near the time of the admissions. Dr. Morgan further opined that Employee's symptoms immediately after the shooting were attributable to PTSD but

that over time her personal problems and pre-existing mental issues became the cause of most of her symptoms. During cross-examination, he agreed that there were no contemporaneous records of any psychiatric or psychological problems prior to the shooting in the available medical records. He relied on an admission or discharge note prepared by a Dr. Minirth at Employee's April 2012 admission to the Regional Medical Center to support his opinion that Employee had been having drug abuse problems and suicidal ideations prior to 2009.

Employee applied for Social Security Disability Benefits in late 2012. A psychological evaluation was conducted on January 3, 2013, in connection with that application. The report of the evaluation appears to have been generated by Teresa O'Toole, a licensed psychological examiner; Pam Coleman, described as an examiner; and Dr. David Goldstein, a clinical psychologist. Dr. Goldstein signed the report. The report concludes that Employee had PTSD and major depressive disorder. It further stated that because of her anxiety and depression, Employee has "severe limitations" in sustaining concentration and persistence on a task due to her anxiety; in interacting with others; and in adapting to changes from requirements.

Employee testified that prior to December 2009, she enjoyed going out to eat, shopping, bowling, watching movies, and taking trips to Hot Springs, Arkansas, with her friend, Michelle. She testified that since the incident, she has confusion, diminished coordination, anxiety, and suicidal thoughts. She reported continuing flashbacks, replaying the day of the shooting. Her family did not allow her to go anywhere outside the house by herself. Employee did not feel capable of taking care of herself. She did not feel safe in public. She denied having any of those problems before December 2009.

Dr. Gregory Cates, a disability evaluator, testified on behalf of Employee. He interviewed Employee on February 26, 2014. He interviewed her concerning her work history and current symptoms. He also reviewed medical records from Frayser Family Counseling and Dr. Moskovitz. In particular, he noted that Dr. Moskovitz had assessed Employee's Global Assessment of Function ("GAF") at thirty-five. Dr. Cates described this score as reflecting "impairment in reality testing," communication, and logic. He opined that Employee was unable to work and that as long as her symptoms persisted, she was unlikely to be able to work in the foreseeable future. On cross-examination, Dr. Cates testified that he had not reviewed Dr. Moskovitz's two depositions or Dr. Morgan's deposition. He did not perform any aptitude or psychological testing.

David Stewart, a life care planner and rehabilitation specialist, performed a vocational evaluation of Employee on December 18, 2015. Like Dr. Cates, he interviewed Employee concerning her medical treatment and her educational and work history. He also reviewed records of the physicians and clinics that had provided care to her. He concluded that Employee retained several transferrable skills in clerical,

numerical, and verbal areas. He had several aptitude and vocational tests performed by his colleague, Dr. Turner. Mr. Stewart opined that employee had 100% vocational disability based on Dr. Moskowitz's report. Based on Dr. Morgan's report, which attributed Employee's symptoms to factors unrelated to her work, Mr. Stewart opined that Employee would retain a 10% vocational disability. That impairment was not based on any restriction or limitation of Employee's abilities but was because of the difficulty of reentering the workforce after six years of unemployment. He added that collaboration between her medical providers and a vocational rehabilitation provider would be necessary for a return to work to be successful.

During cross-examination, Mr. Stewart agreed that both Dr. Moskowitz and Dr. Morgan had stated that Employee was not capable of working at the time of their examinations. He also reaffirmed an earlier statement that he did not consider GAF grades to be particularly useful in assessing vocational disability.

After hearing this evidence, the trial court took the case under advisement and later issued its findings from the bench. The court summarized Employee's testimony, reviewed medical records, and compared the qualifications and opinions of Dr. Moskowitz and Dr. Morgan. Based on that information, it found that Employee's psychiatric impairment arose from the incident of December 16, 2009. The court further found that Employee was incapable of holding meaningful employment and therefore was permanently and totally disabled. The court went on to find that medical treatments and hospitalizations for specified dates were compensable under the workers' compensation law. A judgment was entered in accordance with those findings. Employer timely appealed, and the appeal has been referred to this Panel. We affirm the judgment of the trial court.

Analysis

Employer sets out five issues in its brief: (1) "Whether the trial court erred in finding that [Employee] sustained a compensable psychiatric injury which resulted in permanent and total disability, solely as the result of an injury on December 16, 2009, and whether such award was excessive"; (2) Whether the trial court erred in not applying the doctrine of independent intervening injury"; (3) Whether [Employer] is liable for medical expenses for certain hospitalizations of [Employee]"; (4) "Whether the trial court erred in placing greater weight on the testimony of Dr. Moskowitz, rather than Dr. Morgan, when determining the degree of [Employee's] permanent impairment"; and (5) "Whether [Employee] is 100% vocationally disabled." In our view, the first, second, and fourth issues are closely interrelated, and we will address them together. The third and fifth issues will be addressed separately.

Our review of decisions in workers' compensation cases is governed by Tennessee Code Annotated section 50-6-225(e)(2) (2014) (applicable to injuries occurring prior to July 1, 2014), which provides that appellate courts must "[r]eview . . . the trial court's findings of fact . . . 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." As the Supreme Court has observed many times, reviewing courts must conduct an in-depth examination of the trial court's factual findings and conclusions. *Wilhelm v. Krogers*, 235 S.W.3d 122, 126 (Tenn. 2007) (quoting *Galloway v. Memphis Drum Serv.*, 822 S.W.2d 584, 586 (Tenn. 1991)). When the trial court has seen and heard the witnesses, considerable deference must be afforded the trial court's factual findings. *Tryon v. Saturn Corp.*, 254 S.W.3d 321, 327 (Tenn. 2008) (citing *Whirlpool Corp. v. Nakhoneinh*, 69 S.W.3d 164, 167 (Tenn. 2002)). No similar deference need be afforded the trial court's findings based upon documentary evidence such as depositions. *Glisson v. Mohon Int'l, Inc./Campbell Ray*, 185 S.W.3d 348, 353 (Tenn. 2006). Similarly, "we review questions of law de novo 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)).

Causation, Independent Intervening Cause, and Weight of Expert Testimony

The positions of the parties concerning these issues are based on the medical opinions of Dr. Moskovitz and Dr. Morgan, respectively. Relying on the testimony of Dr. Moskovitz, Employee's position is that before the December 16 shooting, she was functioning normally with no known psychiatric or psychological problems. The shooting on December 16, 2009, was a specific, acute, sudden, unexpected, and stressful event that caused Employee to develop PTSD; therefore, her mental injury is compensable. *See Beck v. State*, 779 S.W.2d 367, 370 (Tenn. 1989) ("The Court held that the confrontation, although not involving physical injury or exertion, was stress of such an acute, sudden, and unexpected nature to constitute an "accident" within the meaning of Workers' Compensation Laws."). Citing the testimony of Dr. Morgan, Employer's position is that the shooting may have initially caused Employee to have PTSD, but as the years went by, the major causes of her mental difficulties were pre-existing conditions and numerous stressful events in her personal life.

In evaluating conflicting expert testimony, a court may "consider the qualifications of the experts, the circumstances of their examination, the information available to them, and the evaluation of the importance of that information by other experts." *Orman v. Williams Sonoma, Inc.*, 803 S.W.2d 672, 676 (Tenn. 1991). In this case, Dr. Moskovitz and Dr. Morgan are experienced psychiatrists. However, Dr. Moskovitz is board-certified, and Dr. Morgan is not. Dr. Moskovitz, as a treating physician, examined Employee on numerous occasions during a two-year period and

conducted an independent evaluation at a later time. Dr. Morgan examined Employee on two occasions, approximately three years apart. Dr. Morgan's last examination was closer in time to the trial than Dr. Moskovitz's examination. The trial court found that both doctors had complete information available to them, and we agree with that conclusion. Dr. Morgan's opinion that Employee suffered from pre-existing mental disorders was based in large part on an admission note from Employee's hospitalization in April 2012 for suicidal ideations. He agreed, however, that there were no contemporaneous medical records of any mental disorder prior to 2009. Dr. Moskovitz chose not to rely on the April 2012 record because it was generated at a time when Employee was suffering a psychotic episode.

Dr. Morgan also based his opinions on the notes of Ms. Klyman, Employee's therapist, in which the December 16, 2009 shooting were mentioned less frequently over time, while other personal issues of Employee were mentioned more often. Dr. Moskovitz explained that because of the trauma and symptoms caused by the shooting, Employee's ability to cope with the stresses of everyday life was compromised. Employee testified that flashbacks of the shooting continued as of the date of trial. Employee's supervisor, Ms. Dillon, testified that Employee was reporting flashbacks within a few days of the shooting. Dr. Goldstein's report states that flashbacks and nightmares continued as of 2013. There is no evidence contradicting these assertions. It is undisputed that Employee witnessed the aftermath of another shooting in front of her home shortly after December 16, 2009. There are also references to another shooting at a McDonald's restaurant some years later. However, based on the contents of the medical records, Employee did not dwell on either of those events during her treatment.

After reviewing the depositions of the two doctors de novo, we agree with the trial court's decision to give greater weight to the testimony of Dr. Moskovitz. It follows that Employee's continuing symptoms were caused by the December 2009 shooting and that the subsequent shootings witnessed by Employee and her ongoing difficulties with family and other relationships did not constitute an independent intervening cause of her symptoms.

Permanent Total Disability

Employer argues that the trial court erred by finding Employee to be permanently and totally disabled as a result of her compensable mental injury. Employer points to the testimony of Dr. Morgan that Employee's responses to psychological tests were inconsistent and unreliable. It further relies on the testimony of Mr. Stewart that based on the opinions of Dr. Morgan, Employee had only a 10% vocational impairment and was capable of returning to work with counseling and vocational rehabilitation. However, Mr. Stewart also testified that Employee was permanently and totally disabled based on the opinions of Dr. Moskovitz. Dr. Morgan and Dr. Moskovitz both testified

that Employee was unable to work when each last examined her. Employee herself testified that she did not believe she could hold a job because she was afraid to leave her residence alone. A “claimant’s own assessment of [her] physical condition and resulting disabilities is competent testimony and cannot be disregarded.” *Tom Still Transfer Co., Inc. v. Way*, 482 S.W.2d 775, 777 (Tenn. 1972). We conclude that the evidence does not preponderate against the trial court’s finding that Employee is permanently and totally disabled.

Payment of Medical Expenses

The trial court ordered Employer to be responsible for \$196,461.39 of medical expenses. These expenses were associated with various hospitalizations of Employee at Methodist Medical Center, Lakeside Hospital, the Regional Medical Center at Memphis, and Memphis Mental Health Institute. Employer states that the hospitalizations were made necessary by “suicide attempts, [an] attempt to jump out of a moving vehicle and her feelings of not ‘being herself.’” Citing Dr. Morgan’s opinions, Employer asserts that these events were caused by “psychotic issues arising from her long-term drug use [and] [Employee] not feeling like ‘herself’ after the surgical procedures concerning weight loss issues which arose long before [sic] December 16, 2009.”

Four of the hospitalizations listed occurred after Employee had surgery to remove loose skin after losing weight due to her gastric bypass surgery. Dr. Moskovitz testified that these events occurred when Employee “was hallucinating and trying to take her stitches out until she bled and hurt herself. And she was -- thought she had done bad stuff to people and was very psychotic.” He affirmatively testified that all of these episodes and treatment were causally related to the original traumatic event. We have previously agreed with the trial court’s decision to give greater weight to the testimony of Dr. Moskovitz over the testimony of Dr. Morgan. In light of that conclusion, we find that the trial court did not err by ordering Employer to be responsible for these medical expenses.

Conclusion

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

ROGER A. PAGE, JUSTICE

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

ANGELA EVANS v. ALLIANCE HEALTHCARE SERVICES

**Chancery Court for Shelby County
No. CH-13-1852-3**

No. W2016-00653-SC-WCM-WC – Filed September 26, 2017

JUDGMENT ORDER

This case is before the Court upon the motion for review filed by Alliance Healthcare Services pursuant to Tennessee Code Annotated section 50-6-225(e)(5)(A)(ii), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Opinion setting forth its findings of fact and conclusions of law.

It appears to the Court that the motion for review is not well taken and is, therefore, denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to Alliance Healthcare Services for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

Page, Roger A., J., not participating