

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

September 18, 2017 Session

MICHAEL MAYURIC v. HUFF & PUFF TRUCKING, INC., ET AL.

**Appeal from the Circuit Court for Coffee County
No. 42577 L. Craig Johnson, Judge**

**No. M2017-00102-SC-R3-WC – Mailed November 30, 2017
Filed January 4, 2018**

Michael Mayuric (“Employee”) was employed by Huff & Puff Trucking, Inc. (“Employer”) as an over-the-road truck driver. While driving through Minnesota, his truck slid off the road. He developed post-traumatic stress disorder (“PTSD”) after the accident. He brought this action, alleging that he was permanently and totally disabled as a result of the accident. Employer denied that Employee was totally disabled. The trial court found that Employee had sustained 80% permanent partial disability from the incident. Employer has appealed. The 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 pursuant to Tennessee Supreme Court Rule 51. We affirm the judgment.

**Tenn. Code Ann. § 50-6-225(a) (2014) Appeal as of Right;
Judgment of the Circuit Court Affirmed**

ROBERT E. LEE DAVIES, SR. J., delivered the opinion of the court, in which JEFFREY S. BIVINS, C. J. and DON ASH, SR. J., joined.

Michael W. Jones and Fred J. Bissinger, Nashville, Tennessee, for the appellants, Huff & Puff Trucking, Inc., and Praetorian Insurance Company

Larry R. McElhaney, II, and Steven C. Fifield, Nashville, Tennessee, for the appellee, Michael Mayuric

OPINION

Factual and Procedural Background

Employee filed his complaint on December 9, 2015, in the Circuit Court for Coffee County, Tennessee. The case was tried on September 1, 2016. The trial court took the case under advisement and on October 31, 2016, issued its written opinion. A final judgment was entered December 8, 2016, from which employer properly perfected its appeal.

Michael Mayuric was employed as an over the road truck driver for Huff and Puff Trucking, Inc. At the time of trial, he was thirty-four years old. He attended high school through the eleventh grade but never obtained a GED. His prior employment history included operating a tow motor, supervising a lightning rod insulation crew, shipping supervisor, and working as a cook at a Red Lobster restaurant. In 2011, Mr. Mayuric obtained his commercial driver's license and began working for Employer.

On the night of December 3, 2013, Mr. Mayuric was driving his rig through Minnesota when he ran into a severe snow storm. At one point, he came upon another tractor trailer, which had jack-knifed and blocked the road. Mr. Mayuric waited while the state troopers cleared the wreck and eventually was allowed to proceed down the interstate. However, shortly after passing the wreck, his trailer started to swing to his right. When Mr. Mayuric applied his emergency brakes, the trailer swung in the opposite direction, and he lost control. His entire rig spun one hundred and eighty degrees and collided with the safety cables along the side of the interstate. At that point Mr. Mayuric lost consciousness until he was revived by another driver. He was seen by an emergency medical technician and was released. Mr. Mayuric spent two additional days in Minnesota while waiting for repairs to be made to his truck, after which Employer instructed him to drive the truck back to Tennessee. Although Mr. Mayuric followed Employer's directions, he described the trip as "terrifying", and the trip took two days. Once Mr. Mayuric arrived, Employer suspended him for three days. He was then assigned a run to Dallas, Texas, which took him longer than usual to complete. After Dallas, he was sent to Birmingham and Nashville. Again, he was late as his nerves were causing him to drive slower and to stop frequently. His dispatcher offered Mr. Mayuric a run to Minnesota, but he declined because of snow. Finally, after he was assigned a trip to North Carolina, Mr. Mayuric told his supervisor that he was having problems passing other vehicles; that his hands were shaking; and that he was missing gears as he shifted. At that point Employer told him to go home, and Mr. Mayuric never drove again.

Employer agreed to Mr. Mayuric's request to see a psychiatrist, and in February 2014, Mr. Mayuric began treating with Dr. John Griffin, one of the three physicians from a panel offered by Employer. Dr. Griffin treated Mr. Mayuric from February 2014 through June 2014. Dr. Griffin's initial diagnosis was post-traumatic stress disorder. He prescribed Zoloft, an antidepressant, and a planned course of treatment including medication and talk therapy. Mr. Mayuric experienced unpleasant side effects to various medications, and others were not effective. He continued to be very anxious about driving or even riding in a motor vehicle. Dr. Griffin suggested that Mr. Mayuric attempt to drive or ride in a vehicle for short distances, and he encouraged Mr. Mayuric to increase his level of physical activity. Although Dr. Griffin reported some short term improvement, over all, Mr. Mayuric continued to experience depression, anxiety and social avoidance. He even reported occasional suicidal thoughts. Dr. Griffin considered all of these symptoms to be related to the trauma from the accident.

Mr. Mayuric's last appointment with Dr. Griffin occurred on June 17, 2014. At that time Dr. Griffin found Mr. Mayuric to be at maximum medical improvement, which Dr. Griffin described as a condition that was unlikely to change over the next six to twelve months. Although he believed Mr. Mayuric had some impairment, he thought it would be better for another physician to calculate it. Dr. Griffin also told Mr. Mayuric that he had nothing else to offer him. He released Mr. Mayuric without any formal activity restrictions.

After being released, no one from Huff and Puff ever contacted Mr. Mayuric again. Mr. Mayuric continued to be frustrated and angry; he withdrew from his family and stayed in his room for long periods of time. A few months later, with the help of the Tennessee Department of Labor, Mr. Mayuric was able to obtain the services of another psychiatrist, Greg Kyser, who became Mr. Mayuric's authorized treating physician. Dr. Kyser began seeing Mr. Mayuric in October 2014, and he was still treating Mr. Mayuric as of the date of trial. Dr. Kyser also opined that Mr. Mayuric suffered from PTSD as a result of the accident. He found Mr. Mayuric to have reached maximum medical improvement as of October 28, 2015. Dr. Kyser assessed Mr. Mayuric with a twenty percent permanent impairment rating using the AMA Guidelines (6th Ed.), and he gave Mr. Mayuric a permanent restriction of no commercial driving. Although Mr. Mayuric had attempted suicide from an overdose of Seroquel in January of 2016, Dr. Kyser believed Mr. Mayuric's mental health had significantly improved. Dr. Kyser did not believe Mr. Mayuric was incapable of any type of work and supported some type of future employment.

On June 2, 2016, Employer's attorney hired Dr. Griffin to conduct a medical evaluation of Mr. Mayuric. Dr. Griffin was provided with Mr. Mayuric's deposition and Dr. Kyser's deposition and medical records. Dr. Griffin saw Mr. Mayuric on one last

occasion on June 8, 2016, approximately two years after he had last treated Mr. Mayuric. At his deposition on September 1, 2016, Dr. Griffin completely changed his opinions. He reversed course and withdrew his opinion that Mr. Mayuric was suffering from PTSD. Instead, Dr. Griffin opined Mr. Mayuric's symptoms were more consistent with a personality disorder. He found Mr. Mayuric had no psychiatric impairment and no permanent restrictions as a result of the accident in 2013. Finally, Dr. Griffin questioned Mr. Mayuric's motivation in attempting to address his mental issues.

Michael Galloway, a vocational consultant testified on behalf of Employee. His testing indicated that Mr. Mayuric was able to read at a tenth grade level, comprehend sentences at a seventh grade level and perform math at a second grade level. Mr. Galloway relied on Dr. Kyser's deposition and suggested Mr. Mayuric would be required to have a support person provide him transportation to work. Although he agreed the only formal restriction imposed by Dr. Kyser was to avoid commercial driving, he conceded his opinion for a support person was not something which Dr. Kyser actually found was needed for Mr. Mayuric to obtain employment. Mr. Galloway opined that Mr. Mayuric was one hundred percent vocationally disabled.

Huff and Puff called Dr. Rodney Caldwell as its vocational consultant. Dr. Caldwell's testing indicated Mr. Mayuric was able to read at an eight grade level and perform math at a fifth grade level. Using Dr. Kyser's restriction against commercial driving, Dr. Caldwell opined Mr. Mayuric retained a forty percent vocational disability as a result of his work injury.

The trial court took the case under advisement and issued its findings of fact and conclusions of law in a written opinion. The court agreed with Dr. Kyser's opinion that Mr. Mayuric suffered a work related mental injury and post-traumatic stress disorder that resulted from the wreck in December 2013. The trial court specifically discounted Dr. Griffin's opinions. It noted Dr. Griffin's changing diagnosis, and his attitude towards the care of Mr. Mayuric, finding that Dr. Griffin abruptly discharged Mr. Mayuric without real cause and without making an impairment assessment. Instead, the court found Dr. Kyser's opinions to be much more credible because of his long term treatment and the improvement made by Mr. Mayuric while under his care. The trial court adopted Dr. Kyser's impairment rating of twenty percent to the body as a whole.

With regard to the vocational experts, the trial court discounted Mr. Galloway's testimony due to the inconsistencies in his report verses the testimony he gave at trial. The court specifically rejected Mr. Galloway's opinion that Mr. Mayuric would need a support person. The trial court found Dr. Caldwell to be the more credible of the vocational experts. The court agreed with Dr. Caldwell that Mr. Mayuric is able to perform some type of job and that he is not one hundred percent disabled. However, the

trial court disagreed with Dr. Caldwell's assessment of forty percent and instead found Mr. Mayuric to have an eighty percent vocational disability.

Standard of Review

In workers' compensation cases, appellate courts "review the trial court's findings of fact de novo accompanied by a presumption of correctness unless the evidence preponderates otherwise." Wilhelm v. Krogers, 235 S.W.3d 122, 126 (Tenn. 2007). While the reviewing court must conduct an in depth examination of the trial court's factual findings and conclusions, Id. (Citing Galloway v. Memphis Drum Service, 822 S.W.2d 584, 586 (Tenn. 1991)), considerable deference must be afforded to the trial court's factual findings. Tryon v. Saturn Corp., 254 S.W.3d 321, 327 (Tenn. 2008). No similar deference need be accorded to the trial court's findings based on documentary evidence such as depositions. Glisson v. Mohon Intern., Inc./Campbell Ray, 185 S.W.3d 348, 353 (Tenn. 2006). Likewise, there is no presumption of correctness to a trial court's conclusions of law. Seiber v. Reeves Logging, 284 S.W.3d 294, 298 (Tenn. 2009).

Analysis

Impairment

Employer raises two issues on appeal. It contends the trial court erred in accepting the opinion of Dr. Kyser over that of Dr. Griffin and that the trial court erred in awarding Employee a vocational disability in excess of the rating of Dr. Caldwell, whom the court found more credible. In this case, the trial court was faced with conflicting testimony by two treating physicians, both whom testified by deposition. Dr. Griffin was one of the three psychiatrists proposed by Employer who was selected by Mr. Mayuric. Dr. Griffin treated Mr. Mayuric from February through June, 2014. During this period of time, Dr. Griffin diagnosed Mr. Mayuric with PTSD which he related to the accident in December 2013. According to Mr. Mayuric, in June, Dr. Griffin informed him he needed to get a lawyer and that he was placing Mr. Mayuric at MMI, and if he needed any additional help, to go see somebody else where he could get free treatment.

In October 2014, Mr. Mayuric began seeing Dr. Kyser, who was still treating Mr. Mayuric at the time of trial on September 1, 2016. Dr. Kyser has a master's degree in clinical psychology in addition to being a board certified psychiatrist. Dr. Kyser diagnosed Mr. Mayuric with PTSD and restricted him permanently from any type of commercial driving. Dr. Kyser placed Mr. Mayuric at maximum medical improvement as of October 28, 2015, and he assigned a permanent impairment of twenty percent to the body as a whole which he found was caused by Mr. Mayuric work related injury. Using the protocol of the AMA Guidelines (6th Ed.), Dr. Kyser performed a global assessment of function ("GAF") and assigned a rating of forty-one to fifty, which reflects serious

problems. Dr. Kyser did not believe Mr. Mayuric was able to return to work at the time he released him.

In its memorandum opinion, the trial court accredited the testimony of Dr. Kyser over that of Dr. Griffin. The Court noted that Dr. Griffin changed his diagnosis as a result of his independent medical examination which he performed two years after discharging Mr. Mayuric in June 2014. The trial court was clearly troubled that Dr. Griffin changed his diagnosis after he was rehired by Employer. Likewise, the trial court noted Dr. Griffin's indifferent attitude toward his patient. Specifically, the trial court found:

The Court finds that Dr. Griffin's opinion should be discounted because of his changing diagnosis and his attitude toward the care of the Employee in this case. The Court finds it strange how he changed his diagnosis and abruptly discharged Mr. Mayuric without real cause or impairment assessment. Dr. Kyser's diagnosis and opinion are much more credible because of his long-term treatment and the improvement shown by the Employee while under his care.

"When medical testimony differs, it is within the discretion of the trial judge to determine which expert testimony to accept." Kellerman v. Food Lion, Inc., 929 S.W.2d 333, 335 (Tenn. 1996) (citing Hinson v. Wal-Mart Stores, Inc., 654 S.W. 2d 675 (Tenn. 1983)). After reviewing the testimony of both physicians in this case, we find the record more than supports the trial court's assessment of Dr. Griffin's lack of credibility when compared to that of Dr. Kyser.

Permanent Partial Disability

Employer also asserts that, having rejected Mr. Galloway's opinion that Mr. Mayuric was one hundred percent disabled, the trial court was obligated to accept Dr. Caldwell's finding of forty percent vocational disability. A trial court is not required to accept or reject in its entirety the testimony of any particular expert. Reeves v. Olsen, 691 S.W. 2d 527, 231 (Tenn. 1985); Sutton v. McKinney Drilling Co., 2013 W.L. 209152 (Tenn. Workers' Comp. Panel 2013). A trial court has the discretion to make an independent examination of the evidence, and is not bound to accept any expert's opinion regarding vocational disability. Williams v. Tecumseh Prod. Co., 978 S.W.2d 932, 936 (Tenn. 1998).

Mr. Mayuric testified that he rarely leaves his home, is uncomfortable in social situations, and has had suicidal ideations. His wife testified that his behavior changed dramatically after the accident. Prior to the accident, she described her husband as calm,

outgoing, and very supportive of her and his step-daughters. However, since the accident, Mr. Mayuric has become very irritable, does not handle stress well, and has for the most part, withdrawn from his family. Taking these factors into consideration, along with Mr. Mayuric's education and work history, we conclude that the trial court's award of eighty percent permanent partial disability was appropriate.

Frivolous Appeal

Employee asserts that this appeal is frivolous and requests that this Panel assess a penalty against Employer pursuant to Tenn. Code Ann. § 50-6-225(i). Using our discretion, we decline to do so.

Conclusion

The judgment is affirmed. Costs are taxed to Huff & Puff Trucking, Inc., Praetorian Insurance Company and their surety, for which execution may issue if necessary.

Robert E. Lee Davies, Sr. Judge