

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

October 21, 2019 Session

BRENDA MERRIWEATHER v. UGN, INC., ET AL.

**Appeal from the Chancery Court for Madison County
No. 74856 James F. Butler, Chancellor**

No. W2018-02094-SC-R3-WC – Mailed December 16, 2019; Filed January 28, 2020

Brenda Merriweather (“Employee”) alleged she injured her left knee in the course and scope of her employment with UGN, Inc. (“Employer”). Following the trial, the trial court determined Employee did not satisfy her burden of proving causation and therefore dismissed the case. Employee appeals. 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 trial court’s 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**

DON R. ASH, SR.J., delivered the opinion of the court, in which HOLLY KIRBY, J., and ROBERT E. LEE DAVIES, SR.J., joined.

Christopher L. Taylor, Memphis, Tennessee, for the appellant, Brenda Merriweather.

Hailey H. David, Jackson, Tennessee, for the appellees, UGN, Inc. and Travelers Indemnity Company.

OPINION

Factual and Procedural Background

Employee, age 64 at the time of trial, began working at Employer through an

employment agency in 2012 and was hired in April 2013. Her job, which involved making automobile parts, was fast-paced. According to Employee, due to oil on the floor, she would “sometimes” slip and slide and then twist or hit her knee. Her knee started to hurt from hitting it. She complained to her supervisor about the pain and visited Physician’s Quality Care where she was diagnosed with arthritis and given medication.

In January 2014, Employee determined she could no longer work due to pain. When she completed Family Medical Leave Act forms on January 29, 2014, she did not indicate her knee problem was work-related. After she had received the results of an MRI and scheduled surgery on her left knee with Dr. Alan Pechacek,¹ Employee, in February 2014, contacted Employer regarding workers’ compensation benefits. Employer asked her to delay the surgery so she could be provided with a panel of physicians per the workers’ compensation protocol. She declined to delay the surgery and never returned to Employer.

Employee received short-term disability benefits from January 31, 2014 to May 2, 2014, and long-term disability benefits thereafter until May 1, 2016. By letter dated September 28, 2016, Employer asked Employee to respond whether she wanted to return to work with reasonable accommodations. On October 14, 2016, Employer terminated Employee via letter because she had indicated her condition made her physically unable to perform the job functions of the positions offered by Employer, with or without a reasonable accommodation. Two days later, on October 16, 2014, Employee filed her workers’ compensation complaint in the Chancery Court for Madison County.

On April 27, 2016, Dr. Apurva Dalal, an orthopedic surgeon, performed an independent medical examination of Employee at her attorney’s request. Employee told him “she was constantly hitting her knee on the equipment” and reported the problem to Employer in 2013. Dr. Dalal testified Employee had “been doing this job for a very long time and over a period of years.” Employee had bone to bone in the medial compartment of her knees, which indicated osteoarthritis of both knees. Regarding causation, Dr. Dalal opined her arthritic knee became “symptomatic after her injury.” In his view, her continuing pain after the surgery and “hard time” doing the kind of job she had before were clear indications of anatomical change and injury. He determined she had a 30% impairment of the lower left extremity.

On November 21, 2017, Dr. Jeffrey Dlabach, an orthopedic surgeon, conducted an independent medical examination of Employee at the request of Employer’s insurer,

¹ Dr. Pechacek did not testify.

Travelers Indemnity Company (“Insurer”). Employee did not report to him any specific inciting event or trauma, just increasing pain and discomfort. X-rays from 2014 and the day of his examination revealed advanced arthritis. Dr. Dlabach testified “an x-ray report from 2014 . . . was consistent with degenerative arthritis and medial compartment joint space narrowing and subchondral sclerosis, which is indicative of longstanding changes.” Because of the subchondral sclerosis, Dr. Dlabach could “easily opine” the process had “probably been going on five to ten years or longer.” An MRI from 2014 “revealed the same level of advanced arthritis with degenerative meniscus tears and a parameniscal cyst.” A parameniscal cyst develops from a long-standing meniscus tear, not an acute tear, and is another finding indicative of chronic and long-standing issues. In Dr. Dlabach’s opinion, Employee’s arthritis was not caused by slipping, twisting, and banging of the knee at work. Banging the knee on a metal machine at work would cause pain, but not arthritis. He found no evidence Employee’s work activity advanced or aggravated the arthritic condition. Instead, Employee was going to experience knee pain regardless of the type of work she performed, given the advanced arthritis in her right knee as well. Slipping, twisting, and banging of the knee as described by Employee did not cause the meniscus tear that was repaired during the surgery in February 2014. Dr. Dlabach found nothing to support a claim her work activity anatomically advanced her meniscus tear or aggravated any part of her knee condition.

The case was tried on July 3, 2018. Employee, Employer’s human resources representative, and a private investigator who had been hired by counsel for Employer/Insurer testified. Exhibits included the depositions of the two medical experts and the video recording made by the private investigator when he observed Employee over several days in May 2018. In the final order filed on November 17, 2018, the trial court dismissed the case upon finding Employee did not satisfy her burden of proving causation.

Standard of Review

Review of factual issues is de novo upon the record of the trial court, accompanied by a presumption of correctness of the trial court’s factual findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). 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). When all of the medical proof is by deposition, as it is here, a reviewing court may draw its own conclusions about the weight and credibility to be given expert testimony. *Id.* We review questions of law de novo with no presumption of correctness. *Seiber v. Reeves Logging*, 284 S.W.3d 294, 298 (Tenn. 2009).

Analysis

Employee argues the trial court erred in holding she failed to satisfy the causation element of her workers' compensation claim. Employer, however, contends the evidence does not preponderate against the trial court's judgment.

“Except in the most obvious, simple and routine cases,’ a claimant must establish by expert medical evidence the causal relationship between the claimed injury and the employment activity.” *Cloyd v. Hartco Flooring Co.*, 274 S.W.3d 638, 643 (Tenn. 2008) (quoting *Orman v. Williams Sonoma, Inc.*, 803 S.W.2d 672, 676 (Tenn. 1991)). The claimant must establish causation by the preponderance of the expert medical testimony, as supplemented by the evidence of lay witnesses. *Id.* The claimant is granted the benefit of all reasonable doubts as to the causation of an injury. *Id.* An employee “does not suffer a compensable injury where the work activity aggravates the pre-existing condition merely by increasing the pain.” *Trosper v. Armstrong Wood Prods., Inc.*, 273 S.W.3d 598, 607 (Tenn. 2008). “However, if the work injury advances the severity of the pre-existing condition, or if, as a result of the pre-existing condition, the employee suffers a new, distinct injury other than increased pain, then the work injury is compensable.” *Id.*

As an initial matter, Employee challenges the trial court's statement she “did not testify about hitting her knees on machinery.” To the extent her testimony never specified what her knees hit, the trial court's statement is not incorrect. When discussing Dr. Dlabach's expert opinion, the trial court acknowledged the testimony Employee had given of “slipping, twisting, and bumping her knee on something.” We therefore reject any suggestion the trial court erred because it incorrectly understood the history of Employee's alleged injury.

The determinative question is whether the twisting and hitting of Employee's left knee from slipping and sliding on the oily floor aggravated a pre-existing arthritic condition. Employee relies on her own testimony she did not have any problem with her knee until she began her job with Employer and Dr. Dalal's testimony her arthritic condition became symptomatic as a result of her work activity. Employer responds Employee's testimony, alone, does not establish causation and Dr. Dalal's testimony is not reliable.

When presented with conflicting medical opinions, “it is within the discretion of the trial judge to conclude that the opinion of certain experts should be accepted over that of

other experts and that [the accepted opinion] contains the more probable explanation.” *Thomas v. Aetna Life & Cas. Co.*, 812 S.W.2d 278, 283 (Tenn. 1991) (quoting *Hinson v. Wal-Mart Stores, Inc.*, 654 S.W.2d 675, 676-77 (Tenn. 1983)). The trial court found Dr. Dlabach had “a better and more persuasive explanation of [Employee’s] condition and its source” than did Dr. Dalal. As the trial court noted, Dr. Dalal based his opinion on his mistaken understanding Employee had worked at her job with Employer for a long time and over a period of years. The trial court further found Dr. Dalal’s statements did “not show anatomical change has occurred, or that even if it had, that it was caused by a work related event.” We conclude the evidence does not preponderate against the trial court’s determination Employee failed to meet her burden to establish causation. Thus, we hold the trial court properly dismissed Employee’s case.²

Conclusion

The judgment of the trial court is affirmed. Costs are taxed to Brenda Merriweather, for which execution may issue if necessary.

DON R. ASH, SENIOR JUDGE

² In an additional issue, Employee argues the trial court erred when it ruled an award of permanent partial disability benefits, if made by an appellate court, should be capped at 1.5 times the 30% impairment rating given by Dr. Dalal. Having determined Employee is not entitled to any workers’ compensation benefits, this issue is pretermitted.

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

BRENDA MERRIWEATHER v. UGN INC. ET AL.

**Chancery Court for Madison County
No. 72388**

No. W2018-02094-SC-R3-WC – Filed January 28, 2020

JUDGMENT ORDER

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 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 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 are assessed to the Appellant, Brenda Merriweather, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM