

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

February 1, 2016 Session

MEMPHIS LIGHT GAS AND WATER v. CHESTER EVANS

**Appeal from the Chancery Court for Shelby County
No. CH1400411 Walter L. Evans, Chancellor**

No. W2015-01541-SC-WCM-WC – Mailed June 7, 2016; Filed August 19, 2016

The appellant employee in this workers' compensation appeal worked for a municipal public utility as work crew leader. He filed suit against employer, alleging that he had sustained a gradual aggravation of pre-existing arthritis in his right knee, caused by the physical demands of his job. The employer denied the claim. The trial court found that the employee had not sustained his burden of proof that the aggravation was primarily caused by his work activities, as required by Tennessee Code Annotated section 50-6-102(12) (Supp. 2011). Judgment was entered in favor of the employer, and the employee appealed. The appeal was referred to the Special Workers' Compensation Appeals Panel pursuant to Tennessee Supreme Court Rule 51. Discerning no error, we affirm.

**Tenn. Code Ann. 50-6-225(a)(2) (2014) Appeal as of Right; Judgment of the
Chancery Court Affirmed**

HOLLY KIRBY, J., delivered the opinion of the Court, in which RHYNETTE N. HURD, J., and JAMES F. RUSSELL, J., joined.

Steve Taylor, Memphis, Tennessee, for the appellant, Chester Evans.

Sean Antone Hunt, Memphis, Tennessee, for the appellee, Memphis Light, Gas and Water.

OPINION

FACTUAL AND PROCEDURAL BACKGROUND

The employee appellant in this workers' compensation appeal, Chester Evans ("Employee"), was employed by the appellee municipal public utility, Memphis Light Gas and Water ("Employer"). Employee asserts that his work activities for the Employer aggravated or accelerated pre-existing arthritis in his right knee, resulting in a separate compensable injury.¹

In the fall of 2012, the pain in the Employee's right knee became more intense, and in January 2013 he underwent right knee replacement surgery. The orthopaedic surgeon who performed the surgery wrote a letter on the Employee's behalf opining that the Employee's work-related repetitive activities were most likely the cause for his right knee replacement.²

On April 9, 2013, the Employee filed a Request for Benefit Review Conference with the Tennessee Department of Labor and Workforce Development, seeking benefits for an alleged gradual injury to his knee. The parties did not resolve the issues at the Benefit Review Conference.

On January 9, 2014, the Employer filed a "Complaint for Determination of Workers' Compensation Benefits" in the Chancery Court of Shelby County, Tennessee. The Employee's answer and counterclaim asserted that the disability resulting from his knee injury is permanent and requested temporary total disability payments and medical payments.

The case was tried on April 9, 2015. Below we set forth the evidence submitted at trial.

Employee worked for Employer for fifteen years before resigning in May 2013. Prior

¹ As discussed more fully below, prior to the alleged injury that is the subject of this appeal, Employee had multiple injuries and surgeries to his knee. The medical records do not give a complete picture of Employee's medical history and treatment. It appears that Employee sustained a left knee injury in 2009. Employee was treated for another work related injury in 2010, which ultimately resulted in surgery in 2010 on his left knee and some treatment to his right knee, due to pain. That case was settled. It appears that he had surgery on his left knee again in 2011. Concurrent to these injuries, Employee was also treated for pain to his right knee. Medical records indicate that he had significant arthritis dating back to 2006.

² The letter incorrectly states that Employee had left knee replacement, but a subsequent letter from the surgeon corrected the error.

to his resignation, his job title was working crew leader, a position that required frequent bending, squatting, stooping, lifting and climbing. He “worked with every area of Light, Gas & Water, with the plumbers, with heavy equipment, [and] bucket trucks.” He installed manholes and ran pipes between manholes. Employee described his work as “very physically demanding.” It was often necessary for him to carry bags of concrete weighing eighty pounds or more. Employee is a college graduate and has an Associate’s degree in business, a Bachelor’s degree in theology, and, at the time of trial, he was working on obtaining a Master’s degree in theology. He has also been a pastor for thirty years, and he has been at his present church serving as a bishop and a pastor for twelve years. His current church has congregations in Memphis and in Brazil. He travels to and preaches at all locations.

In November 2010, Employee got stuck in the mud, his co-workers pulled him out, and then he slipped and fell on concrete, injuring both knees.³ On December 20, 2010, Employee met with his then-treating orthopaedic surgeon, Dr. Timothy Krahn, who had performed arthroscopic surgery on Employee’s left knee in 2007 and treated him post-operatively. Dr. Krahn ordered an x-ray, which showed that Employee had patellofemoral arthritis in the right knee between the kneecap and femur. Dr. Krahn testified that the x-ray showed “bone-on-bone” in the right knee joint with no lining cartilage, which he stated was “by definition advanced arthritis.” He testified that Employee was not interested in knee replacement surgery at that time. Instead, he gave Employee a cortisone injection, which is an anti-inflammatory treatment.

Subsequently, Dr. Apurva Dalal, also an orthopaedic surgeon, began treating Employee in February 2011. At that time, Employee told Dr. Dalal that he had pain in both knees. Dr. Dalal performed arthroscopic surgery to repair a torn left meniscus on March 21, 2011. Employee continued to see Dr. Dalal, who performed a total knee replacement surgery on January 10, 2013. On March 26, 2013, Employee’s attorney sent a letter to Dr. Dalal inquiring whether “[i]n your opinion, to a reasonable degree of medical certainty, are

³ Ultimately, the injuries arising from the November 2010 fall were settled, as reflected in a settlement agreement dated September 23, 2013. At trial in the present case, Employee testified that he considered that settlement to cover only his left knee. However, he agreed that the settlement document referred specifically to his left knee but also mentioned both knees.

The settlement document is not contained in the record. However, it was reviewed by the trial court, and the following portion was incorporated into its “Findings of Fact and Conclusions of Law” which states that “[Employee] signed a settlement agreement which essentially contains general release language that releases [Employer] from ‘any and all further liability and further claims for Workers’ Compensation benefits of the Employee which have been, or could have been raised in this claim and action or in connection with the injuries which are the subject of this agreement.’”

Mr. Evans's work activities [of] bending, stooping, squatting, and lifting repetitively and occasionally climbing ladders the most likely cause of his need for knee replacement surgery under your care or did his work activities most likely aggravate or accelerate any pre-existing degenerative problems Mr. Evans may have had in his left knee to the point that knee surgery was made necessary under your care?" Dr. Dalal replied on April 9, 2013, stating, "To make it clear, in my opinion to a reasonable degree of medical certainty, Mr. Evan's [*sic*] work activities most likely aggravated or accelerated his pre-existing degenerative problems to the point that left knee replacement surgery was made necessary." On April 17, 2013, Employee requested workers' compensation benefits by submitting a letter to Employer's personnel department with a copy of Dr. Dalal's letter attached. Employee read his request into the trial record. That document states:

To the personnel department, I, Chester Evans, Employee Number 00946, tried for workers' compensation for my right knee. I had been having problems with the knee for a long time. Eventually, the pain got -- got too great that I had to have total knee replacement for it . . . on it.

I have attached a letter from the orthopaedic surgeon who performed a knee surgery. He has on the form that it's my left knee, but it was actually my right. Dr. Dalal of Tri-State Orthopaedics says that the job which requires me to bend, stood, [*sic*] squat, and climb repetitively could have caused the problem with my knee.

I want to go through -- go to workers' compensation on this matter and choose from a panel of doctors that the company has for further assistance of this problem. Thank you, Chester Evans.

Employer denied Employee's claim for workers' compensation benefits. Employee returned to his previous job but resigned on May 4, 2013.

Dr. Dalal testified by deposition on behalf of Employee. On direct examination, he agreed that Employee's "work activities of bending, stooping, squatting, and lifting repetitively, and . . . climbing [ladders]," were "the most likely cause" of Employee's need for a knee replacement in 2013. He also agreed that those activities "most likely" aggravated or accelerated Employee's pre-existing degenerative problems in his right knee. He testified that Employee sustained a permanent impairment rating of thirty-seven percent to the right leg which converts to fifteen percent impairment to the body as a whole. He also assigned restrictions against running or lifting weight in excess of twenty pounds. Dr. Dalal added that a 2011 MRI showed advanced arthritis of the knee, but that Employee did not need a knee replacement at that time.

During cross-examination, Dr. Dalal stated that Employee reported pain in both knees at the time of their first encounter in February 2011. Through May 2011, Employee complained of significant pain in his right knee. A June 2011 MRI showed degenerative changes in both knees. Dr. Dalal testified that Employee's right knee was painful at that time. However, the left knee was more painful. In July 2011, Dr. Dalal gave two injections of "orthovisc" to Employee's right knee. Dr. Dalal agreed that Employee had "significant" arthritis in his right knee prior to his November 10, 2010 work injury. He also agreed that Employee would have required a knee replacement at some point even if the November 2010 injury had not happened. Dr. Dalal then stated that the knee replacement surgery was related to Employee's work, which may have aggravated the pre-existing arthritis. Dr. Dalal then restated his opinion that Employee did not need knee replacement surgery in 2011. He stated that there were two causes for Employee's condition: his work activities and his pre-existing degenerative changes. Asked to state the extent to which each cause contributed to the need for surgery, Dr. Dalal answered that he could not "state that 50/50 or 40/40 or 80/20 or 10/20 with a reasonable degree." He also stated Employee's arthritis worsened, and that "anatomically the joint width became much narrower from 2011 to 2013, his patellofemoral arthritis got worse, and that's why I did a total knee replacement."

Next, Dr. David Strauser, a vocational consultant, testified. He opined that, based on the activity restrictions assigned by Dr. Dalal, Employee had sustained a vocational disability of 65% as a result of the knee replacement surgery. He further opined that Employee lost access to all of the heavy and medium type work that was available to him prior to his injury.

Dr. Krahn testified by video deposition on Employer's behalf. He testified that he performs approximately two hundred knee replacements per year. He treated Employee in 2007 for an on-the-job injury to the left knee. Dr. Krahn performed surgeries to repair meniscal tears in the left knee in 2007 and 2010. The first time he specifically treated Employee's right knee was in December 2010. X-rays taken at that time showed severe arthritis between the right kneecap and femur, characterized as "advanced patellofemoral arthritis with complete bone to bone obliteration and even actual erosion into the patella." Dr. Krahn testified that Employee "had basically completely worn the tread behind his kneecap and femur." He stated that he observed "bone on bone" contact in the right knee. He gave Employee a cortisone injection and recommended lifestyle changes to make Employee's pain tolerable. He opined that a patient with arthritis as advanced as Employee's was likely to need a knee replacement "sooner or later." Dr. Krahn stated that Employee "at that point wasn't interested in any type of surgery."

Dr. Krahn testified that Employee returned to him in October 2012, complaining of intermittent right knee pain "for a couple of years." X-rays taken at that time showed

“erosions,” which signaled that the pre-existing arthritis had worsened. He recommended knee replacement surgery at that time. Dr. Krahn had reviewed Dr. Dalal’s x-rays from November 2012. He testified that they were no different than his own x-rays from October. He further stated that it was “inevitable” that Employee would need a total knee replacement. Dr. Krahn repeated that Employee already had advanced arthritis in 2010. He did not attribute Employee’s need for knee replacement surgery to his work, stating: “Arthritis just occurs with age, time, and activity.”

During cross-examination, Dr. Krahn stated that Employee’s knee was bone to bone in 2010 and remained so in 2012. He testified that there was a “possibility” that a manual worker might be more likely to aggravate pre-existing arthritis than a sedentary worker. He observed that, if that was the case with Employee, it would be expected that both knees would have arthritis behind the kneecap because both had been subjected to the same stresses over the years. However, Employee did not have arthritis behind his left kneecap. Dr. Krahn also stated that a family history of arthritis is the most significant factor for development of serious arthritic problems. Being overweight was also a recognized contributor to the disease. In contrast, people with healthy lifestyles are less likely to develop arthritis. Dr. Krahn was also provided with Dr. Dalal’s opinion, as expressed in his deposition, about the connection between Employee’s specific work activities and his need for a right knee replacement. In response, he acknowledged that “everyone has their own opinion,” and he noted that he performed knee replacement surgeries on persons from all walks of life. Ninety-eight percent of those procedures were not work-related. On redirect examination, Dr. Krahn stated that work activity was not the primary cause of Employee’s need for a knee replacement. He acknowledged that if Employee had retired in 2010, he might have been able to postpone the knee replacement a little longer; however, he stated that “even if [Employee] never worked another day in his life after 2010 when I saw him in December, he would have ultimately needed a knee replacement.

The trial court took the case under advisement. On June 8, 2015, the trial court issued findings of fact and conclusions of law. After reviewing the evidence, it concluded that Employee had failed to satisfy his burden of proof that his alleged gradual injury “arose primarily out of and in the course and scope of employment,” as required by Tennessee Code Annotated section 50-6-102(12)(c)(ii) (Supp. 2011). In the alternative, it concluded that Employee had failed to sustain his burden that his alleged gradual injury caused more than a mere increase in pain. The trial court further found that Employee’s alleged injury was consistent with a pre-existing injury and was barred by the terms of his settlement of January 8, 2013. The case was dismissed with prejudice on June 29, 2015.

Employee filed a timely notice of appeal on July 21, 2015. The appeal was referred to this Panel pursuant to Tennessee Supreme Court Rule 51.

ANALYSIS

In his brief, the Employee raises the following six issues:

1. Did [Employee] give timely notice of his work injury to his employer?
2. Are [Employee's] injuries to his right knee replacement barred by a previous settlement?
3. Can [Employee] be compensated under the Workers' Compensation Law of the State of Tennessee for an aggravation of a pre-existing condition?
4. Did the testimony of [Employee's] treating physician and surgeon, Dr. Dalal, as to the cause of [Employee's] right knee replacement meet the standard set forth in T.C.A. § 50-6-102(12)?
5. What is the extent of [Employee's] anatomical impairment due to [Employee's] work injuries in this cause?
6. What is the extent of [Employee's] vocational impairment due to [Employee's] work injuries in this cause?

In this appeal, causation appears to be the dispositive issue. We consider whether the evidence preponderates against the trial court's finding that Employee did not sustain his burden of proof on causation.

We are required by law to review the trial court's factual findings "*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 and Supp. 2012) (now codified as Tenn. Code Ann. § 50-6-225(a)(2) (Supp. 2015)). We must "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 give considerable deference to the trial court when the trial judge has the opportunity to observe the witness' demeanor and to hear in-court testimony. Padilla v. Twin City Fire Ins. Co., 324 S.W.3d 507, 511 (Tenn. 2010); Madden v. Holland Group of Tenn., 277 S.W.3d 896, 900 (Tenn. 2009). When 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. Foreman v. Automatic Sys., Inc., 272 S.W.3d 560, 571 (Tenn. 2008) (citing Orrick v. Bestway Trucking, Inc., 184 S.W.3d 211, 216 (Tenn. 2006)). We review conclusions of law *de novo* with no presumption of correctness. Seiber v. Reeves Logging, 284 S.W.3d 294, 298 (Tenn. 2009).

Until recently, the standard of proof of causation in workers' compensation cases remained the same for many years. All reasonable doubts as to the causation of an injury and whether the injury arose out of the employment were to be resolved in favor of the Employee. Phillips v. A. & H Constr. Co., 134 S.W.3d 145, 150 (Tenn. 2004); Reeser v. Yellow Freight Sys., Inc., 938 S.W.2d 690, 692 (Tenn. 1997). Our Courts "consistently held that an award may properly be based upon medical testimony to the effect that a given incident 'could be' the cause of the employee's injury, when there is also lay testimony 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; accord, Long v. Tri-Con Indus., Ltd., 996 S.W.2d 173, 177 (Tenn. 1999); P & L Constr. Co. v. Lankford, 559 S. W.2d 793, 794 (Tenn. 1978); GAF Bldg. Materials v. George, 47 S.W.3d 430, 433 (Tenn. Workers' Comp. Panel 2001). The element of causation was satisfied where the "injury has a rational, causal connection to the work." Braden v. Sears, Roebuck & Co., 833 S.W.2d 496, 498 (Tenn. 1992).

However, for gradual injuries occurring after June 6, 2011, the General Assembly changed that standard when it amended Tennessee Code Annotated section 50-6-102(12). Employees alleging gradual injuries have to show more than just an aggravation of a pre-existing condition. Under this statute, an employee must show that his injuries arose "primarily" out of and in the course and scope of employment:

(12) "Injury" and "personal injury":

(A) Mean an injury by accident, arising out of and in the course of employment, that causes either disablement or death of the employee; provided, that:

(i) An injury is "accidental" only if the injury is caused by a specific incident, or set of incidents, arising out of and in the course of employment, and is identifiable by time and place of occurrence; and . . .

(C) Do not include: . . .

(ii) Cumulative trauma conditions, hearing loss, carpal tunnel syndrome, or any other repetitive motion conditions unless such conditions arose *primarily*⁴ out of and in the course and scope of employment.

Tenn. Code Ann. § 50-6-102(12) (Supp. 2011) (emphasis added).

In the present case, the question presented to the trial court was whether the preponderance of the evidence established that repetitive bending, stooping, squatting, and lifting and occasionally climbing ladders at work were the *primary* cause of Employee's need for knee replacement surgery. "[T]he statute clearly permits a finding of compensability when a specific repetitive work activity *is* the primary cause of a medical condition." DeGalliford v. United Cabinet Co., LLC, No. M2013-00943-SC-WCM-WC, 2014 WL 1018170, at *7 (Tenn. Workers' Comp. Panel Mar. 17, 2014), perm. app. denied (Tenn. Mar. 17, 2014) (emphasis in original). "Except in the most obvious, simple and routine cases, the claimant in a workers' compensation action must establish by expert medical evidence the causal relationship . . . between the claimed injury (and disability) and the employment activity." Orman v. Williams Sonoma, Inc., 803 S.W.2d 672, 676 (Tenn. 1991). In this case, the issue of causation is not obvious, simple, or routine. The Employee had problems with both of his knees for many years prior to this alleged injury, so expert medical proof is necessary. The trial court compared and contrasted the testimony of Dr. Dalal and Dr. Krahn. We do the same.

Dr. Dalal began treating Employee in 2011. In summary, Dr. Dalal testified that Employee's work activities between 2011 and 2013 were the "most likely cause" of Employee's need for knee replacement surgery, or that those activities "most likely aggravated or accelerated" Employee's pre-existing arthritis. However, he did not testify that those activities were the primary cause for the knee replacement. When asked to quantify the relative contributions of the work activities and the pre-existing degenerative condition to the need for surgery, he could not do so.⁵

⁴ The 2011 amendment did not define "unless such conditions arose primarily out of and in the course and scope of employment." See Tenn. Code Ann. § 50-6-102(12)(i) (Supp. 2011). Employer urges us to consider the 2014 amendment, in which the General Assembly further amended the statute to reflect that an injury "arises primarily out of an in the course and scope of employment" only if it has been shown by a preponderance of the evidence that the employment contributed more than fifty percent (50%) in causing the injury, considering all causes." See Tenn. Code Ann. § 50-6-102 (14)(B) (Supp. 2015) (quoting section 50-6-102(14)). We note that this amendment is applicable only to injuries on or after July 1, 2014. The injury in this case occurred prior to the effective date of the 2014 amendment.

⁵ During cross examination, Dr. Dalal conceded that Employee had significant arthritic changes and degenerative changes in his right knee prior to his November 10, 2010 injury. The following exchange occurred between Employer's counsel and the surgeon:

Q. All right. So we're clear, then, Mr. Evans has significant arthritic changes and degenerative changes in his right knee prior to his November 10th, 2010, injury as well as prior to his first treatment with you, correct?

A. True.

Q. And those changes, without those arthritic changes, if we assume that he hadn't had that at all, he would not have required the knee replacement that you performed on him, isn't that true?

A. Of course. You do a knee replacement for an arthritic condition, yes.

Q. In fact, in your operative report, that's exactly what you indicate, is the diagnosis of severe degenerative arthritis of the knee, correct?

A. True.

Q. So it was that that you were treating him for, correct?

A. Correct.

...

Q. And even without this injury that he had in November of 2010, it's likely that at some point these degenerative changes would have progressed to the point where he would have needed a knee replacement; isn't that true?

A. True.

Q. But the reverse of that, his injury and his work -- if he just had that without the degenerative changes, he may not have needed a knee replacement, correct?

A. True.

Q. All right. So is it safe to say, then, just looking at the math that causally connected the two causes for his need for a knee replacement is work which may have aggravated, in your opinion, his condition and the degenerative -- pre-existing degenerative changes, correct? Those are the two causes?

A. True.

Q. And each one at best they're 50/50 as far as their connection to his need for this surgery, correct?

...

A. So as I have indicated previously for counsel, this gentleman obviously has pre-existing degenerative arthritis. He did not need knee replacement surgery in 2011. As I have

Dr. Krahn began treating Employee's left knee in 2007 and the right knee in 2010. In contrast, X-rays he ordered in 2010 showed that Employee had no cartilage remaining in the right knee; and that the kneecap and femur were in "bone to bone" contact. Dr. Krahn testified that future knee replacement surgery was inevitable, even if Employee had resigned in 2010. Dr. Krahn testified that Employee's work activities were not the primary cause of the need for knee replacement surgery. He testified unequivocally that a family history was the primary factor in onset and development of arthritis. He agreed that physical activity could possibly accelerate the degenerative process. He compared the absence of arthritis in the Employee's left versus the advanced arthritis in the right knee, which he would not expect to see if the arthritis was work-related, and he cited supporting examples from his own practice.

The trial court was presented with conflicting expert medical opinions, and both opinions were proffered by Employee's treating physicians. "When the medical testimony differs, the trial judge must obviously choose which view to believe. In doing so, he is allowed, among other things, to 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, 803 S.W.2d at 676. Ultimately, the trial court found Dr. Krahn's testimony to be more persuasive. Applying those factors to the expert testimony in this case, the trial court noted that "Dr. Krahn testified that he specializes in knee problems and performs more than 200 knee replacements per year. He has also practiced orthopedic surgery in this city for 21 years." With regard to Dr. Dalal, the trial court stated "Dr. Dalal offered no such testimony." The trial court also stated that "Dr. Krahn testified that he has treated Mr. Evans for many years including knee injuries dating all the way back to 2007." Additionally, "Dr. Krahn was the authorized treating physician and entitled to the presumption provided by Tennessee Code Annotated § 50-6-102(12)(A)(ii). [Employee] has not offered sufficient evidence to rebut that presumption."

Both of the physicians who testified in this case are qualified to do so. Dr. Krahn concluded his medical training with a fellowship in knee surgery and sports medicine and became board certified in orthopaedic surgery in 1995. In his practice, he specializes in treatment of knee injuries and conditions, and he estimated that he performs 200 knee replacements a year. Dr. Dalal concluded his medical education with a fellowship in total joint replacement and sports medicine and became board certified in orthopaedic surgery in 2003. Dr. Dalal's orthopaedic practice includes sports surgery, shoulder, hip and knee

stated, I cannot state that 50/50 or 40/40 or 80/20 or 10/20 with a reasonable degree. What I can state is that the work-related accident he had on the left knee and the kind of work which he did aggravated his pre-existing degenerative disease and caused him to have a total knee replacement on the right side.

surgery, and total joint replacement. Both physicians provided treatment to Employee -- Dr. Krahn's treatment began in 2007, and Dr. Dalal's treatment began in 2011.

Dr. Krahn clearly testified that Employee's work activities were not the primary cause for Employee's knee replacement surgery. He testified that genetics was the reason for the Employee's knee condition, and he supported his opinion with specific examples from his years of experience. Dr. Dalal opined that the Employee's repetitive work activities were the "most likely" cause of the surgery, but he was unable to quantify the relative contribution of work activities as compared to natural progression of the pre-existing arthritis. Dr. Dalal provided no specific examples to support his opinion.

We are mindful that "workers' compensation law must be construed liberally in favor of an injured employee." Crew, 259 S.W.3d at 664. However, the employee must still prove all elements of his or her case by a preponderance of the evidence. See Elmore v. Travelers Ins. Co., 824 S.W.2d 541, 543 (Tenn. 1992). In this case, we agree with the trial court's assessment of the proof, that the Employee failed to demonstrate that his repetitive work activities for Employer were the primary cause of the aggravation of the pre-existing arthritis in his right knee. See Tenn. Code Ann. § 50-6-102(12)(C)(ii). We conclude that the evidence does not preponderate against the trial court's holding that Employee failed to sustain his burden of proof that his need for knee replacement surgery was primarily caused by work activities.

This holding pretermits all remaining issues raised by Employee in this appeal.

CONCLUSION

The judgment of the trial court is affirmed. Costs on appeal are taxed against Appellant Chester Evans and his surety, for which execution may issue if necessary.

HOLLY KIRBY, JUSTICE

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

MEMPHIS LIGHT GAS AND WATER v. CHESTER EVANS

**Chancery Court for Shelby County
No. CH1400411**

No. W2015-01541-SC-WCM-WC – Filed August 19, 2016

JUDGMENT ORDER

This case is before the Court upon the motion for review filed by Chester Evans 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 Chester Evans, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

Holly Kirby, J., not participating