IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
December 2, 2015 Session

DEMETRIUS D. WALTON v. COLONIAL FREIGHT SYSTEMS, INC.

Appeal from the Chancery Court for Knox County
No. 1814233 Michael W. Moyers, Chancellor

No. E2015-00088-SC-R3-WC-MAILED-FEBRUARY 16, 2016
FILED-MAY 6, 2016

The workers' compensation claimant was an independent contractor for the defendant, a common carrier engaged in interstate commerce. The claimant and the defendant agreed that the defendant would provide workers' compensation coverage to the claimant based on Tennessee Code Annotated section 50-6-106(1)(B) (2012). The claimant was injured while driving a tractor trailer for the defendant. The claimant's claim for benefits was denied, and he sued for workers' compensation benefits. The defendant moved for summary judgment, asserting that the claimant's employment agreement was void because of alleged material misrepresentations made by the claimant regarding his physical condition during his pre-employment medical examination. The trial court granted the defendant's motion, based on its finding that the claim was barred by claimant's pre-employment material misrepresentations and Tennessee Code Annotated section 56-7-103 (2012). This 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 under Tennessee Supreme Court Rule 51. We vacate the grant of summary judgment and remand to the trial court for further proceedings.

Tenn. Code Ann. § 50-6-225(a)(2) (2012) Appeal as of Right; Judgment of the Chancery Court Vacated and Remanded

SHARON G. LEE, C.J., delivered the opinion of the Court, in which DON R. ASH, SR. J., and KRISTI M. DAVIS, SP. J., joined.

Edward L. Summers, Knoxville, Tennessee, for the appellant, Demetrius D. Walton.

Richard L. Hollow, Knoxville, Tennessee, for the appellee, Colonial Freight Systems, Inc.

OPINION

Factual and Procedural History

On June 10, 2011, Demetrius D. Walton and Colonial Freight Systems, Inc. ("Colonial") entered into a contract wherein Mr. Walton, as an independent contractor, agreed to transport goods for Colonial, and Colonial agreed to compensate Mr. Walton based on the mileage of the transports, less certain enumerated expenses, including workers' compensation insurance. On the same day, Colonial and Mr. Walton entered into a Workers' Compensation Contractual Agreement, wherein Colonial agreed to provide workers' compensation insurance coverage to Mr. Walton. As required by Tennessee Code Annotated section 50-6-106(1)(B), the parties signed and filed a Form I-14 with the Tennessee Department of Labor and Workforce Development, noting Mr. Walton's election to come under the Tennessee Workers' Compensation Act.

On June 14, 2011, while driving a tractor trailer for Colonial, Mr. Walton was injured in a wreck.[1] Colonial denied his claim for workers' compensation benefits. After Mr. Walton exhausted the benefit review process, he sued Colonial for workers' compensation benefits in the Chancery Court for Knox County.[2]

Colonial moved for summary judgment, asserting that Mr. Walton made material misrepresentations regarding his physical condition during his pre-employment medical assessment, which induced Colonial to enter into its contractual relationship with Mr. Walton. Colonial argued that the contractual relationship on which Mr. Walton's workers' compensation complaint is based was rendered void ab initio, and therefore, Mr. Walton was not entitled to receive workers' compensation benefits. In his response, Mr. Walton denied making any material misrepresentations and asserted that factual issues existed as to whether he knowingly and willfully misrepresented his physical condition to Colonial, whether Colonial's reliance upon his alleged misrepresentations was a substantial factor in his hiring, and whether there was a causal connection between his injuries and the physical conditions he allegedly misrepresented.

Following a hearing, the trial court granted Colonial's motion, stating that Mr. Walton had "obtained employment by fraudulent means by not disclosing [his medical] conditions which he fully knew he had, . . . admitted that he had, and knew that he had

[1] Hospital records from Renown Regional Medical Center in Nevada indicate that Mr. Walton suffered, among other injuries, a pneumothorax (punctured/collapsed lung), broken arm, lacerated leg, and trauma to his liver, spleen, and right kidney.

[2] Mr. Walton is a resident of Illinois, and the accident occurred in Nevada. The Workers' Compensation Contractual Agreement required that any suit regarding workers' compensation benefits be filed in Knox County Chancery Court.

throughout the discovery in this process, although he's tried [to] minimize . . . those matters." The trial court noted that the doctor who conducted Mr. Walton's pre-employment physical examination stated in an affidavit that he would not have certified Mr. Walton to drive had he known about his undisclosed medical conditions. The trial court observed that Mr. Walton had produced no evidence to contradict the doctor's statement. In addition, the trial court, sua sponte, relied on Tennessee Code Annotated section 56-7-103, which provides that misrepresentations made by an insured in applying for a policy of insurance "shall [not] be deemed material or defeat or void the policy or prevent its attaching, unless the misrepresentation or warranty is made with actual intent to deceive, or unless the matter represented increases the risk of loss." The trial court concluded that this statutory provision applied and that Mr. Walton knew of his medical conditions, failed to disclose them, and those medical conditions increased the risk to Colonial. On that basis, the trial court found that Mr. Walton was not entitled to any benefits.

Mr. Walton has appealed, contending that the trial court erred by granting Colonial's motion for summary judgment based on Mr. Walton's alleged material misrepresentations and applying Tennessee Code Annotated section 56-7-103.

Analysis

A motion for summary judgment should be granted only when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Rye v. Women's Care Ctr. of Memphis*, __ S.W.3d __, 2015 WL 6457768, at *12 (Tenn. Oct. 26, 2015) (quoting Tenn. R. Civ. P. 56.04). The appellate court must review the evidence in a light most favorable to the non-moving party and draw all reasonable inferences in favor of the non-moving party. *Staples v. CBL & Assocs., Inc.*, 15 S.W.3d 83, 89 (Tenn. 2000) (citing *Robinson v. Omer*, 952 S.W.2d 423, 426 (Tenn. 1997); *Byrd v. Hall*, 847 S.W.2d 208, 210-11 (Tenn. 1993)). The standard of review is de novo with no presumption of correctness attached to the trial court's conclusions. *Teter v. Republic Parking Sys., Inc.*, 181 S.W.3d 330, 337 (Tenn. 2005) (citing *Mooney v. Sneed*, 30 S.W.3d 304, 306 (Tenn. 2000); *Carvell v. Bottoms*, 900 S.W.2d 23, 26 (Tenn. 1995)). Because of the remedial nature of the Tennessee Workers' Compensation Act and the importance of medical opinion testimony, "summary judgment motions should be entered with caution in workers' compensation cases." *Downen v. Allstate Ins. Co.*, 811 S.W.2d 523, 524 (Tenn. 1991); *see also Berry v. Consol. Sys., Inc.*, 804 S.W.2d 445, 446 (Tenn. 1991) ("[S]ummary judgment is almost never an option in a contested workers' compensation action.").

Tennessee employers are statutorily obligated to provide their employees with workers' compensation coverage unless specifically exempted from the Tennessee Workers' Compensation Act. *Perkins v. Enter. Truck Lines, Inc.*, 896 S.W.2d 123, 125

(Tenn. 1995) (citing Tenn. Code Ann. § 50-6-106 (1991 & Supp. 1994)). Tennessee Code Annotated section 50-6-106(1)(A) exempts from the Act "[a]ny common carrier doing an interstate business while engaged in interstate commerce." Tenn. Code Ann. § 50-6-106(1)(A); *see also Long v. Stateline Sys., Inc.*, 738 S.W.2d 622, 623 (Tenn. 1985). Although a common carrier under this section is not deemed to be the employer of a leased-operator or owner-operator of a motor vehicle, *see* Tenn. Code Ann. § 50-6-106(1)(A), Tennessee Code Annotated section 50-6-106(1)(B) provides that leased operators or leased owner/operators of motor vehicles under contract to common carriers may elect to receive workers' compensation coverage. Tennessee Code Annotated section 50-6-106(1)(B) states:

> [A] leased operator or a leased owner/operator of a motor vehicle under contract to a common carrier may elect to be covered under any policy of workers' compensation insurance insuring the common carrier upon written agreement of the common carrier, by filing written notice of the contract, on a form prescribed by the commissioner, with the division[.]

Tenn. Code Ann. § 50-6-106(1)(B); *see also* 20 Tenn. Workers' Comp. Prac. & Proc. Appendix C Form I-14 ("Form I-14").

Mr. Walton elected to receive workers' compensation insurance coverage from Colonial. The parties executed an agreement to that effect and filed a Form I-14. Mr. Walton was required to obtain a medical certificate from a medical examiner under federal motor carrier safety regulations before he could drive a truck for Colonial. *See* 49 C.F.R. § 391.41 (2010). On May 31, 2011, Dr. John McElligott conducted a Department of Transportation ("DOT") physical examination of Mr. Walton. Dr. McElligott did not certify Mr. Walton to drive because Mr. Walton had a blood pressure reading of 180/120, which was over the allowable limits. On June 6, 2011, Mr. Walton returned to Dr. McElligott for a follow-up examination. His blood pressure was improved, and Dr. McElligott gave him a three-month certification. On June 10, 2011, Mr. Walton and Colonial entered into an employment agreement and an agreement for workers' compensation coverage.

In its motion for summary judgment, Colonial asserted that Mr. Walton made three knowing and willful false representations of his physical condition in his responses to questionnaires completed during his May 31 and June 6, 2011 medical examinations with Dr. McElligott. The first alleged misrepresentation concerned Mr. Walton's history of hypertension. At the May 31 examination, in a section of the questionnaire titled, "Health History," Mr. Walton did not respond to a question about whether he had high blood pressure, and if so, whether he took medication for the condition. After Dr. McElligott measured Mr. Walton's blood pressure at 180/120, he did not issue Mr. Walton a certification. Dr. McElligott noted on the May 31 examination report that Mr. Walton had no history of hypertension. In an affidavit submitted in support of Colonial's motion for

summary judgment, Dr. McElligott stated, "I asked [Mr. Walton] if he had ever been diagnosed with high blood pressure[,] and he told me that he had no history of hypertension, which is the reason that I noted 'NO HX OF HTN' on my report." Dr. McElligott said that after examining Mr. Walton on May 31, he advised Mr. Walton to see his family physician and get his blood pressure under control. Dr. McElligott stated that when Mr. Walton returned to his office on June 6 for a follow-up examination, his blood pressure had dropped considerably. He gave Mr. Walton a three-month certification and advised him that he needed more aggressive therapy. In November 2012, Dr. McElligott reviewed a number of Mr. Walton's medical records and prepared a review of records report.[3] Referencing this report in his affidavit, Dr. McElligott said it was his opinion that "Mr. Walton ha[d] a long history of hypertension, dating at least to 2001[,]" and that it was apparent he had "a history of neglecting to manage his hypertension."[4] Dr. McElligott stated, "Had I known that Mr. Walton had a history of neglecting to manage his hypertension, I would not have certified him at all."

In his response to Colonial's statement of undisputed material facts, Mr. Walton admitted that his medical records documented a history of hypertension dating to 2001[5] and that he did not respond to the question in the Health History section of the May 31 questionnaire regarding high blood pressure and medication. Mr. Walton denied that he told Dr. McElligott during his May 31 examination that he had no history of hypertension. In a June 11, 2013 affidavit submitted in response to Colonial's statement of undisputed material facts, Mr. Walton explained that when Dr. McElligott asked him about high blood pressure during his May 31 examination, he told Dr. McElligott he had a prescription for blood pressure medication, but had not taken it in a while. Mr. Walton said that Dr.

[3] According to his report, Dr. McElligott reviewed the following medical records: (1) a First Disability Report/Impairment Rating by Dr. Dale Blaise—Mr. Walton's treating physician—dated June 12, 2012; (2) a Second Disability Report/Impairment Rating by Dr. Blaise dated October 12, 2012; (3) the deposition testimony of Dr. Blaise taken August 2, 2012; (4) a June 8, 2012 medical report from Dr. Blaise; (5) a March 13, 2012 medical report and DOT physical examination report by Amanda Sailliez, P.A.C.; (6) a March 5, 2012 release to return to work with no restrictions by Dr. Blaise; (7) "[o]ther [m]edical [r]ecords from Dr. Dale Blaise ranging from February 7, 2001[,] to February 22, 2012"; (8) MRI reports of Mr. Walton's right and left shoulders dated September 28, 2011; (9) two sets of Chiropractic records from 2007 and 2012 from Girado Chiropractic Center in Illinois; (10) radiology reports of Mr. Walton's right and left shoulders dated September 14, 2012; (11) a December 11, 2009 DOT examination performed by Amanda Sailliez; (12) a December 13, 2010 DOT examination performed by Dr. Angel Rivera; (13) the May 31 and June 6, 2011 DOT examinations performed by Dr. McElligott; (14) a March 13, 2012 DOT examination performed by Amanda Sailliez; and (15) unspecified medical records from St. Joseph Hospital in Illinois and Southern Illinois Orthopedic Center.

[4] Dr. McElligott cited a notation on a 2007 medical record from St. Joseph Hospital in Illinois, stating that Mr. Walton had been diagnosed with hypertension, but that he had not taken his blood pressure medication in about one year.

[5] Mr. Walton stated during his June 19, 2012 deposition that the first time he was diagnosed with hypertension was in 2006 or 2007.

McElligott told him to go home, see his doctor, get back on his medication, and that he could come back and be reexamined. Mr. Walton said he resumed taking his medication and returned to Dr. McElligott's office six days later. He explained that during his June 6 examination, he indicated his high blood pressure in the Health History section of the questionnaire and listed his prescribed medication. He said that his blood pressure had improved substantially, and that Dr. McElligott, reporting it to be a "good drop," certified him as meeting DOT standards, with periodic monitoring required every three months.

The second alleged misrepresentation was in the Health History section of the questionnaire. On his May 31 and June 6 questionnaires, Mr. Walton checked "No" next to the category titled "Muscular Disease." Colonial supported its motion for summary judgment with a number of medical records indicating Mr. Walton's history with polymyositis/dermatomyositis. Colonial produced a readmission summary from the medical records of St. Joseph Hospital in Illinois that noted "[r]esidual polymyositis" in 1987 and "diffuse polymyositis under remission" in 1988; a 2012 medical report from Dr. Treg Brown noting Mr. Walton's dermatomyositis and "chronic, severe fatty degeneration of the bilateral rotator cuff musculature likely related to the dermatomyositis"; and a September 2007 medical report from Girado Chiropractic Center in Illinois that included the word "Polymyo[s]itis" handwritten at the top of the page. In his affidavit, Dr. McElligott described polymyositis as "a persistent inflammatory muscle disease that causes weakness of the skeletal muscles, which control movement" and "is classified as a chronic inflammatory myopathy." He explained that there is no known cure for polymyositis, but that treatment can improve muscle strength and function. Dr. McElligott said that Mr. Walton did not disclose his prior diagnosis of this condition during either his May 31 or June 6 medical examinations. He stated, "Had Mr. Walton informed me that he had been diagnosed with either [polymyositis or dermatomyositis], I would not have certified him to operate a commercial motor vehicle without further appropriate testing to ensure that his muscle strength was not impaired." Further supporting its motion for summary judgment, Colonial filed Mr. Walton's June 19, 2012 deposition, wherein he testified that before his June 2011 accident, he had had no problems with his left or right shoulder. Colonial also filed a December 13, 2010 DOT Medical Examination Report prepared by Dr. Angel Rivera at Concentra Medical Center, which referred to weakness of the right shoulder and indicated that Mr. Walton was advised to see an orthopedic specialist .

In a responsive affidavit dated April 4, 2013, Mr. Walton admitted that he was diagnosed with polymyositis/dermatomyositis in 1981 when he was sixteen years old. He said he received treatment for the disease, and after a regimen of prednisone and physical therapy, he was told he was in remission and believed he was cured of the condition. He said he has not consulted with a doctor or been treated for polymyositis since he was sixteen years old. Mr. Walton explained that he had been a truck driver since 1994 and had experienced no symptoms of polymyositis. He said he could perform all required tasks, including carrying up to seventy-five pounds. Because he had experienced no

symptoms of the condition since he was sixteen years old, he believed he had fully recovered and therefore had no reason to note the condition on the May 31 or June 6 medical questionnaires. Regarding the St. Joseph Hospital records that noted "[r]esidual polymyositis" in 1987 and "diffuse polymyositis under remission" in 1988, Mr. Walton explained that while he was admitted to St. Joseph Hospital, he was not treated for polymyositis during either visit. He said the references to polymyositis on the St. Joseph Hospital records were merely his doctor repeating the 1981 diagnosis and pointed out that the reference to "diffuse polymyositis under remission" confirmed that the condition was in remission.

Regarding the medical report from Dr. Brown referencing Mr. Walton's dermatomyositis, Mr. Walton explained that he sought treatment from Dr. Brown in 2012 because of pain and discomfort he was experiencing from his June 2011 accident. He said that after visiting Dr. Brown, he completed physical therapy within three or four months and did not believe a follow-up visit was necessary. Mr. Walton produced an affidavit from Dr. Brown, which echoed the findings of his 2012 report. In his affidavit, Dr. Brown stated that "an MRI . . . revealed fatty degeneration of the rotator cuff muscles, which [he] felt was likely related to dermatomyositis." He said that "[i]t did not appear to be acute in nature, and it was [his] opinion that, with a rotator cuff periscapular strength[en]ing and conditioning program [Mr. Walton] may likely have an excellent outcome." Dr. Brown referred Mr. Walton to physical therapy, which was intended to progress into a home exercise program, and scheduled him for a follow-up visit three to four months later. He told Mr. Walton, however, that if he was doing well, he could cancel his follow-up appointment. Mr. Walton canceled the appointment, and Dr. Brown did not see a need to further treat Mr. Walton's dermatomyositis. Dr. Brown also noted Mr. Walton's belief that he had been cured of his polymyositis. In Dr. Brown's opinion:

> [Mr. Walton] having gone for over thirty . . . years having no symptoms or medical treatment for the condition, it would not be unusual for [Mr. Walton] to deem his condition to be normal. It is consistent with the condition for which he had been diagnosed, that [Mr. Walton] could go forward with his life assuming that he was normal, and free from any lasting effects of the condition which had been in remission for many years.

Dr. Brown also opined that the June 2011 accident "most likely exacerbated any previously existing condition to Mr. Walton's shoulders."

As to the medical examination report from Dr. Rivera, Mr. Walton acknowledged in his June 11, 2013 affidavit that when he was examined by Dr. Rivera on December 13, 2010, Dr. Rivera told him that "perhaps [he] should see an orthopedic doctor about the range of motion in [his] shoulders." Mr. Walton did not seek treatment, as he felt his range of motion was normal. Mr. Walton stated that Dr. Rivera never mentioned shoulder weakness to him during the December 13, 2010 examination. He also pointed out that he

passed his medical examination on that date and was given a certification.

Mr. Walton's third alleged misrepresentation was also in the Health History section of the questionnaire. In both his May 31 and June 6 questionnaires, he responded "No" to the question of whether he had "[a]ny illness or injury in the last 5 years[.]" Colonial supported its motion for summary judgment with emergency room records from St. Joseph Hospital showing that Mr. Walton was treated on August 20, 2007, after being involved in an automobile accident, and indicating that Mr. Walton complained of neck and bilateral shoulder pain. The emergency room records contained a notation of "muscle inflammation." Colonial further supported its motion with medical reports from Girado Chiropractic Center, showing that Mr. Walton sought treatment on August 28, 2007, complaining of lower back pain and left shoulder/neck pain, and that he underwent therapy for these issues several times between August 28 and October 9, 2007. During that time, Mr. Walton continued to complain of headaches and pain in his lower back, upper back, and neck area.

In his June 11, 2013 affidavit, Mr. Walton responded that he had been in a minor automobile accident in August 2007. He said he did not think he had been injured in the accident, but went to the emergency room on the advice of a police officer. He said he later received approximately one month of chiropractic treatment because he was "a little sore in [the] neck and lower back." Mr. Walton further explained that at the time of the accident, he was an owner-operator for TransX Ltd. and was reimbursed for downtime pay while his truck was being repaired after the accident. Mr. Walton produced a receipt from TransX Ltd. for downtime pay and an email message from the Risk Management Supervisor of TransX Ltd. indicating that Mr. Walton reported no injury to TransX Ltd. and that he inquired the day following the accident as to his options for returning to work while his truck was being repaired. In his June 11 affidavit, Mr. Walton explained that he did not consider his responses to the May 31 and June 6 questionnaires to be misrepresentations because he did not believe he had been injured in the wreck, his ability to drive a truck had not been affected, and he thought the wreck had occurred over four years earlier.

Colonial contends that Mr. Walton was granted a medical certification based on the misrepresentations he made to Dr. McElligott about his physical history and condition. Colonial argues that it contracted with Mr. Walton based on these misrepresentations, and therefore, under contract law principals, the contract between Colonial and Mr. Walton is void ab initio. *See generally* 1 Williston on Contracts § 1:20 (4th ed. updated May 2015) ("A bargain that is void ab initio is a nullity because it is based on a promise for breach of which law neither gives a remedy nor otherwise recognizes any duty of performance by the promisor."). Colonial contends that Mr. Walton is not entitled to any benefits of the contract, including workers' compensation coverage. Mr. Walton argues that his election to receive workers' compensation benefits, his contract with Colonial to provide those benefits, and the filing of the Form I-14 with the Department of Labor and Workforce Development brought him, as an independent contractor, under the Tennessee Workers'

Compensation Act to the same extent as an employee. He contends that his case should, therefore, be interpreted under the workers' compensation statutes, rules, and regulations, and all judicial authorities interpreting them.

Colonial voluntarily extended workers' compensation coverage to Mr. Walton, and the parties agreed to be bound by the workers' compensation laws of Tennessee. We have found no authority for the proposition that the Tennessee Workers' Compensation Act is not applicable when an independent contractor, who receives workers' compensation coverage by way of contract, is alleged to have misrepresented his or her physical condition in the employment agreement. *But see Shaw's Supermarket, Inc. v. Delgiacco*, 575 N.E.2d 1115, 1117 (Mass. 1991) (noting that misrepresentation in the workers' compensation context generally is not analyzed on the ground that the employment contract was void ab initio, but whether, despite the misrepresentation, the employee is entitled to receive benefits). A number of cases have held that the Act becomes applicable, along with its provisions, when an entity otherwise exempted from the Act voluntarily agrees to be bound by the workers' compensation laws. In *Lanius v. Nashville Electric Service*, 181 S.W.3d 661, 665 (Tenn. 2005), the Tennessee Supreme Court held that a municipal government employer, generally exempt from the Act, was bound by the Act's venue provisions because it had voluntarily subjected itself to the requirements of the workers' compensation system. The Court reasoned that while governmental entities are generally exempt from the Tennessee Workers' Compensation Act, *see* Tenn. Code Ann. § 50-6-106(5) (1999), the statute allows those entities to extend coverage to their employees if they choose. *Lanius*, 181 S.W.3d at 664. The Court held that because Nashville Electric Service had elected to extend benefits to its employees and accept the provisions of the Act, it had waived its sovereign immunity and voluntarily submitted to the Act's venue provisions. *Id.*; *see also Seiber v. Reeves Logging*, 284 S.W.3d 294, 296-97 (Tenn. 2009) (noting that an employer of less than five employees, generally exempt from the Act, was bound by the Act's provisions because, in obtaining workers' compensation liability coverage, the employer had "voluntarily elected to be subject to the Workers' Compensation Law"). This same reasoning supports the conclusion that the Act, along with its rules and procedures, applies in this case. By choosing to extend workers' compensation benefits to Mr. Walton, Colonial voluntarily subjected itself to the rules and procedures of the workers' compensation system.

Colonial may assert misrepresentation of physical condition at the time of hiring as a defense in a workers' compensation action. *See Raines v. Shelby Williams Indus., Inc.*, 814 S.W.2d 346, 350 (Tenn. 1991). In asserting this defense, the employer must prove by a preponderance of the evidence all three of the following elements:

> (1) that the employee knowingly and willfully made a false representation of his physical condition; (2) that the employer relied upon the misrepresentation in making the decision to hire; and (3) that the misrepresentation was material, that is, that there was a causal relationship

> between the subject matter of the false representation and the injuries later sustained by the employee.

Berry, 804 S.W.2d at 446 (citing *Shelton v. Clevepak Container Corp.*, 752 S.W.2d 508, 509 (Tenn. 1988)); *see also, e.g.*, *Raines*, 814 S.W.2d at 350; *Beasley v. United States Fid. & Guar. Co.*, 699 S.W.2d 143, 144 (Tenn. 1985); *Pickett v. Chattanooga Convalescent & Nursing Home, Inc.*, 627 S.W.2d 941 (Tenn. 1982); *Anderson v. Chattanooga Gen. Servs. Co.*, 631 S.W.2d 380, 384 (Tenn. 1981); *Quaker Oats Co. v. Smith*, 574 S.W.2d 45, 48-49 (Tenn. 1978).

Colonial failed to show that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law. As to the third element—that there was a causal relationship between the subject matter of the alleged false representation and the work-related injuries—Colonial offered no proof. The trial court erred in granting summary judgment to Colonial.

In granting summary judgment to Colonial, the trial court also held, sua sponte, that Tennessee Code Annotated section 56-7-103 applied to the facts of this case. Tennessee Code Annotated section 56-7-103 provides:

> No written or oral misrepresentation or warranty made in the negotiations of a contract or policy of insurance, or in the application for contract or policy of insurance, by the insured or in the insured's behalf, shall be deemed material or defeat or void the policy or prevent its attaching, unless the misrepresentation or warranty is made with actual intent to deceive, or unless the matter represented increases the risk of loss.

Tenn. Code Ann. § 56-7-103. The trial court cited *Lane v. American General Life & Accident Insurance Co.*, 252 S.W.3d 289 (Tenn. Ct. App. 2007), as support for its holding. *Lane* involved a grant of summary judgment to an insurance company based on the decedent's failure to disclose recent medical treatment for heart disease and chronic obstructive pulmonary disease on his application for life insurance. *Id.* at 290-92. *Lane*, however, is factually distinguishable, as it did not involve a workers' compensation claim.

Although Colonial is self-insured for workers' compensation coverage purposes under Tennessee Code Annotated section 50-6-405 (2012), Colonial did not issue Mr. Walton a policy of insurance. Tennessee Code Annotated section 56-7-103 applies when an insurer issues a policy of insurance to a policy holder, such as life insurance, *see, e.g.*, *Morrison v. Allen*, 338 S.W.3d 417, 428 (Tenn. 2011), health and accident insurance, *see, e.g., Womack v. Blue Cross and Blue Shield of Tenn.*, 593 S.W.2d 294, 295 (Tenn. 1980), or homeowner's insurance, *see, e.g.*, *Tenn. Farmers Mut. Ins. Co. v. Farrar*, 337 S.W.3d 829, 835 (Tenn. Ct. App. 2009). We have found no authority applying Tennessee Code Annotated section 56-7-103 in the workers' compensation context. Accordingly, we hold

that the trial court erred in applying Tennessee Code Annotated section 56-7-103 to this workers' compensation case.

Conclusion

We hold that the trial court erred in granting summary judgment to Colonial. The judgment of the trial court is vacated, and the case is remanded to the trial court for further proceedings consistent with this opinion. Costs of this appeal are taxed to Colonial Freight Systems, Inc., for which execution may issue if necessary.

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SHARON G. LEE, CHIEF JUSTICE