

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
May 22, 2017 Session

JOSEPH KOLBY WILLIS v. ALL STAFF, ET AL.

**Appeal from the Court of Workers' Compensation Claims
No. 2014-05-0005 Joshua Baker, Judge**

**No. M2016-01143-SC-R3-WC – Mailed June 29, 2017
Filed August 3, 2017**

Joseph Kolby Willis (“Employee”) alleges that he sustained a compensable injury to his left knee while working for All Staff (“Employer”). After his petition for interlocutory relief was denied, discovery was taken, and a compensation hearing was held. The court of workers’ compensation claims (“trial court”) bifurcated the issues of compensability and relief. After the hearing, the trial court issued a compensation order finding the injury was compensable. Employer appealed to the Workers’ Compensation Appeals Board (“Board”) pursuant to Tennessee Code Annotated section 50-6-217 (2014). The Board reversed the trial court’s order, finding that Employee had failed to establish causation, and remanded the case to the trial court for entry of an order dismissing the claim. After the order was entered, Employee appealed to the Supreme Court. Employee’s appeal has been referred to this 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 of dismissal.

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

PAUL G. SUMMERS, SR. J., delivered the opinion of the court, in which CORNELIA A. CLARK, J. and ROBERT E. LEE DAVIES, SR. J., joined.

Gene Hallworth, Columbia, Tennessee, for the appellant, Joseph Kolby Willis.

B. Duane Willis, Nashville, Tennessee, for the appellees, All Staff, and Riverport Insurance Company.

OPINION

Factual and Procedural Background¹

Joseph Willis (“Employee”), a twenty-three-year-old resident of Lewis County, Tennessee, worked for All Staff (“Employer”), a staffing agency, and Employer assigned him to work third shift at a textile plant in Columbia, Tennessee. His duties at the plant included moving rolls of scrap fabric to a baler, described in the record as a large trash compactor, and threading wire through ports on the outside of the baler, which compacted the fabric into bales. Employee tied the wire approximately one foot from the floor, and this task required him to bend or squat down.

On July 30, 2014, Employee turned off the baler to ensure it did not engage while he tied the wire. He squatted in a tight space behind the machine as he tied the wire. He stood from the squatting position, twisting as he stood, to flip a switch to activate the machine. As he did so, he experienced pain in his left leg and saw that his kneecap was displaced. He manipulated his kneecap back into place, and his supervisor took him to an emergency room, where he was treated and released.

Employee had pre-existing bilateral knee problems and had undergone surgeries in 2005 and 2006 to correct instability in his knees. He also had been diagnosed with “patella alta,” a condition that pre-disposed him to kneecap dislocation. After the July 30, 2014 work incident, Employee sought treatment on August 5, 2014, from Dr. David Moore, the orthopedic surgeon who performed his prior knee surgeries. Dr. Moore noted in his records that Employee had been doing well with his knees until he twisted while rising from a squatting position on July 30, 2014. Dr. Moore documented his initial belief that Employee’s injury was work-related based on his history of not having problems since the prior surgeries. Dr. Moore ordered an MRI, and it revealed an acute tear of the medial patellofemoral ligament in Employee’s left knee.

Over the ensuing weeks, Employee returned to Dr. Moore, who diagnosed him with knee pain and recurrent patella dislocation, ordered physical therapy, and allowed Employee to return to work with restrictions. Dr. Moore indicated in his notes that Employee would probably need a medial patellofemoral ligament reconstruction. In correspondence dated August 21, 2014, Dr. Moore stated that his initial “impression” was that Employee’s “fall at work did directly cause his most recent patellar dislocation.”

¹We have carefully reviewed the record and the briefs of the parties and have concluded that the comprehensive decision of the Board accurately and eloquently conveys the factual and procedural background of this case. This section reproduces, almost verbatim, the statement of facts and procedure contained in the Board’s decision. See Ware v. Meharry Med. College, 898 S.W.2d 181, 182 (Tenn. 1995) (adopting and quoting the opinion of the dissenting judge of the Court of Appeals as the opinion of the Court).

Employee filed a petition seeking medical and temporary disability benefits and requested that the trial court render a decision based on the record alone. See Tenn. Code Ann. § 50-6-239(d)(1) (2014). Dr. Moore had not been deposed at this time.

The trial court concluded that no additional information was needed, id. § 50-6-239(d)(2), and filed an expedited hearing order on November 10, 2014, finding that the “employment did not contribute at least 50% in causing the injury.” The trial court explained that “[t]he fact that the injury occurred while Employee was at work does not convert it into a workers’ compensation injury,” and that “Employee is unlikely to succeed at a hearing on the merits.” The trial court also determined that Employee’s knee injury was idiopathic in nature, that no special hazard or condition of his work contributed to the injury, and that he “simply stood up, twisted the wrong way, and his kneecap dislocated.” Accordingly, the court declined to award any benefits. No appeal of that order was filed, and Employer subsequently filed a motion to dismiss the claim pursuant to Tennessee Code Annotated section 50-6-239(d)(4) (2014). Although a hearing was held on Employer’s motion, the trial court took no further action on the motion.

On May 22, 2015, some six months after the trial court concluded that Employee’s employment had not contributed at least 50% in causing his injury, the parties deposed Dr. Moore. Dr. Moore testified that Employee informed him he had been doing well since his previous surgeries and that his kneecap dislocated at work when he was rising from a squatting position. When asked whether moving rolls of scrap fabric across the floor could have contributed to the patellar dislocation, Dr. Moore testified that it was “possible” if the activity had caused Employee’s legs to become fatigued, stating that such fatigue “would have helped contribute to his injury.” Dr. Moore further testified that it would be “speculation” for him to render an opinion on the question because Employee had not provided a history of having fatigue in his legs. Dr. Moore also testified that Employee had “patella alta,” which pre-disposed him to kneecap dislocation. Further, Dr. Moore testified that Employee’s injury could have occurred while rising from a squatting to a standing position, regardless of where Employee was at the time. Dr. Moore also stated that Employee’s body weight and mechanics could have caused his knee to dislocate as he was standing up, “tight space or not.” Dr. Moore’s deposition testimony was the only medical expert testimony presented.

At a bifurcated trial on July 20, 2015, Employee, the only witness to testify in person, stated that his job involved recycling rolls of scrap material by placing the material in the baler. According to Employee, the rolls ranged in weight from eighty pounds to more than seven hundred pounds, and he was required to drag the rolls forty to fifty feet across the floor. Employee stated that his legs had been hurting for approximately a week before the kneecap dislocation. Employee acknowledged that he was not lifting anything when the incident occurred and agreed that the floor where he was working was level and free of hazards.

Employee attributed his prior knee problems to “several years of football.” Other than experiencing occasional pain, Employee denied having problems with his knees since his surgeries in 2005 and 2006 until the July 30, 2014 work incident. At the time of trial, Employee described his left knee as “fine” and stated that he could “work on it,” despite experiencing occasional pain and “a little bit of instability.”

In a compensation order filed August 25, 2015, the trial court determined that Employee’s knee injury was causally related to the work incident of July 30, 2014. The trial court explained that the work environment involved a special hazard, specifically that it required Employee to squat in a confined area while tying the wire, and that this hazard “contributed more than fifty percent in causing his injury.” The trial court also found that medical proof of causation was unnecessary because Employee had suffered an obvious injury. In the alternative, the trial court ruled that Dr. Moore’s testimony satisfied the medical causation standard. Accordingly, the trial court ordered Employer to provide medical treatment, pay past medical expenses related to the injury, and pay past temporary disability benefits.

Employer appealed to the Workers’ Compensation Appeals Board, pursuant to Tennessee Code Annotated § 50-6-217(a) (2014). The Board reviewed the trial court’s decision, affording to the trial court’s findings and conclusions a presumption of correctness, unless the preponderance of the evidence is otherwise. *Id.* § 50-6-239(c)(7). Furthermore, the Board explained that the trial court’s decision would be upheld unless the rights of a party

have been prejudiced because findings, inferences, conclusions, or decisions of a workers’ compensation judge:

- (A) Violate constitutional or statutory provisions;
- (B) Exceed the statutory authority of the workers’ compensation judge;
- (C) Do not comply with lawful procedure;
- (D) Are arbitrary, capricious, characterized by abuse of discretion, or clearly an unwarranted exercise of discretion; or
- (E) Are not supported by evidence that is both substantial and material in the light of the entire record.

Tenn. Code Ann. § 50-6-217(a)(3) (2014 & Supp. 2016). Applying these standards, the Board concluded that the proof preponderated against the trial court’s finding that “the employment contributed more than fifty percent (50%) in causing the injury, considering all causes.” Tenn. Code Ann. § 50-6-102(13)(B) (2014); *see also* Tenn. Code Ann. § 50-6-102(14)(B) (Supp. 2016). As a result, the Board reversed the trial court’s finding of compensability and remanded the case to the trial court for entry of an order dismissing the claim. The trial court entered such an order, and Employee appealed to the Supreme Court pursuant to Tennessee Code Annotated section 50-6-225(a) (2014).

The appeal has been assigned to this Panel pursuant to Tennessee Supreme Court Rule 51. After careful review of the record, we agree with the Board and therefore affirm the trial court's dismissal of the claim as ordered by the Board. Our review of the trial court's findings of fact is de novo upon the record, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(a)(2) (2014 & Supp. 2016).

Analysis

We agree with the trial court's initial observation that the dispositive issue in this case is medical causation. The statutory standards applicable to injuries occurring after July 1, 2014 state, in pertinent part:

“Injury” and “personal injury” mean an injury by accident, a mental injury, occupational disease including diseases of the heart, lung and hypertension, or cumulative trauma conditions including hearing loss, carpal tunnel syndrome or any other repetitive motion conditions, *arising primarily out of and in the course and scope of employment*, that causes death, disablement or the need for medical treatment of the employee; provided, that;

(A) An injury is “accidental” only if the injury is caused by a specific incident, or set of incidents, *arising primarily out of and in the course and scope of employment*, and is identifiable by time and place of occurrence, and shall not include the aggravation of a preexisting disease, condition or ailment unless it can be shown to a reasonable degree of medical certainty that the aggravation arose *primarily* out of and in the course and scope of employment;

(B) An injury “arises primarily out of and 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*;

(C) An injury causes death, disablement or the need for medical treatment only if it has been shown to a reasonable degree of medical certainty that *it contributed more than fifty percent (50%) in causing the death, disablement or need for medical treatment, considering all causes*;

(D) “Shown to a reasonable degree of medical certainty” means that, in the opinion of the physician, it is *more likely than not considering all causes, as opposed to speculation or possibility*.

Tenn. Code Ann. § 50-6-102(13) (2014) (emphasis supplied). The foregoing statutory standards have replaced those that previously applied, including the standard necessary to establish causation, which permitted a trial court to “award benefits based upon medical testimony that the employment ‘could or might have been the cause’ of the employee’s injury when there is also lay testimony supporting a reasonable inference of causation.” Excel Polymers, LLC v. Broyles, 302 S.W.3d 268, 274 -275 (Tenn. 2009) (citing Fritts v. Safety Nat’l Cas. Corp., 163 S.W.3d 673, 678 (Tenn. 2005)). In addition, Tennessee Code Annotated section 50-6-116, which previously required a liberal construction of the workers’ compensation law, has been amended to now provide that the workers’ compensation statutes “shall not be remedially or liberally construed but shall be construed fairly, impartially, and in accordance with basic principles of statutory construction[,] and this chapter shall not be construed in a manner favoring either the employee or the employer.” Tenn. Code Ann. § 50-6-116 (2014).

Employee’s argument, based on Phillips v. A & H Constr. Co., 134 S.W.3d 145, 150 (Tenn. 2004), and decisions preceding and following it, that all reasonable doubts concerning causation should be construed in his favor, is without merit. As already explained, the statutory language at issue in Phillips and other decisions enunciating this principal has been replaced by the statutory language quoted above.

Applying the statutory standards that now apply, we conclude, as did the Board, that the evidence preponderates against the trial court’s finding that Employee’s employment contributed more than 50% in causing his patellar dislocation. Dr. Moore was unable to state with any reasonable degree of medical certainty that dragging heavy rolls of material contributed to the injury in any way. When asked whether it could have done so, he opined that it possibly could have if Employee’s legs were fatigued, but he declined to offer an opinion on that issue, stating that doing so would be speculation because Employee had not reported leg fatigue. It is true that Dr. Moore had stated in an August 21, 2014 letter to the Bureau of Workers’ Compensation “[his] impression [was] that [Employee’s] fall at work did directly cause his most recent patellar dislocation.” Nevertheless, Dr. Moore testified that Employee had “patella alta,” a condition that pre-disposed Employee to patellar dislocations. Dr. Moore stated that the motion of rising from a squatting position while twisting could cause patellar dislocation on a flat surface anywhere, not just at Employee’s work place, and he stated that Employee’s weight and body type caused the dislocation.

Furthermore, we agree with the Board’s reversal of the trial court’s finding that Employee’s injury was so “obvious” that no expert medical evidence was required to prove causation. See Orman v. Williams Sonoma, Inc., 803 S.W.2d 672, 676 (Tenn. 1991). As the Board aptly explained:

Although the injury itself—the displaced kneecap—may arguably be characterized as obvious, its relationship to Employee’s work activities is not. Again, it is uncontroverted that Employee had pre-existing knee

problems that required multiple surgeries. It is also uncontroverted that he suffered from an underlying condition [that] pre-disposed him to kneecap dislocation. And Dr. Moore, referring to the area where Employee was tying the wire behind the baler, stated that Employee's knee dislocated "tight space or not." Whether standing up from a squatting position would be sufficient to dislocate a kneecap is not "the most obvious, simple and routine" case even assuming this pre-reform principle survive[d] the adoption of §§ 50-6-102(13)(B) and 50-6-102(13)(C).

Dr. Moore did not testify that the dislocation was primarily caused by the work task Employee was performing when it occurred. Rather, he offered several alternative explanations, including Employee's preexisting condition and his weight and body type. Dr. Moore did not testify that, considering all possibilities, the employment contributed more than 50% in causing Employee's injury, nor did he testify that his opinion was stated with a reasonable degree of medical certainty. Based on these facts, we agree with the Board's conclusion that the evidence preponderates against the trial court's finding that Employee's knee injury arose primarily out of his employment.

Although Employee suffered a kneecap dislocation, Dr. Moore testified only that Employee's work activities on July 30, 2014, "could have" contributed to the injury or were a "possible" cause of the injury, "in theory." While this testimony may have been sufficient to establish causation under prior law, it is insufficient under the statutes applicable to this appeal, which state that an injury arises out 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." Tenn. Code Ann. § 50-6-102(13)(B) (2014). In the face of proof showing that Employee had prior knee problems, had undergone prior knee surgeries, and had an underlying condition that pre-disposed him to patellar dislocation, Dr. Moore's testimony falls short of establishing, by a preponderance of the evidence, that the employment contributed more than 50% in causing the patellar dislocation.

Conclusion

The trial court's judgment of dismissal is affirmed. Costs are taxed to John Kolby Willis and his surety, for which execution may issue if necessary.

PAUL G. SUMMERS, SENIOR JUDGE