IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
January 16, 2004 Session

EVA D. BROWN v. PURODENSO COMPANY

Direct Appeal from the Circuit Court for Madison County
No. C-00-359 Donald H. Allen, Judge

No. W2003-01181-WC-R3-CV - Mailed May 27, 2004; Filed June 30, 2004

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with *Tennessee Code Annotated* § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The employee tripped and fell on both knees while at work. The trial court dismissed the complaint after finding that the employee failed to prove by a preponderance of the evidence the injuries to both knees resulted in any permanent physical impairment or that her physical condition was caused or aggravated by her fall at work. The employee contends that the trial court erred in finding: 1) that her injuries were not caused by her work injury; 2) that she did not suffer permanent disability; and 3) that the employer complied with workers' compensation law since the employer failed to pay for necessary surgery and for her permanent disability.

Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Circuit Court Affirmed

JAMES L. WEATHERFORD, SR.J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and JOE H. WALKER, III, SP.J., joined.

Ruby R. Wharton and Cynthia A. Pensoneau, Memphis, Tennessee, for the appellant, Eva D. Brown.

John D. Burleson and John D. Stevens, Jackson, Tennessee, for the appellee, Purodenso Company.

MEMORANDUM OPINION

Ms. Eva Brown was 45 years old at the time of trial. She has worked in factories since graduating from high school in 1975. She is divorced and the mother of 2 children over the age of 18. In October of 1996 she began working for Purodenso Company, a manufacturer of automobile air filters. Ms. Brown worked as a "panel pleater" operating a machine that folds the paper product used to make air filters.

On January 4, 1999, while working at Purodenso, she tripped over a bin and fell onto the bare concrete floor landing on her hands and knees. After being helped up by another employee, she reported her injury. Later that same day she saw Dr. Gilbert Woodall, the company doctor, complaining of pain and swelling in both knees. He prescribed medication and a knee brace for her right knee. She returned to work and finished her shift. The next day she worked a regular shift doing light duty work.

When she continued to complain of knee pain, Dr. Woodall referred her to Dr. Michael Cobb, board certified orthopedic surgeon. On February 3, 1999, Dr. Cobb diagnosed Ms. Brown as having a bruised right knee. He noted that Mrs. Brown reported diffuse tenderness during his exam: "She is tender everywhere." He found no effusion or swelling and no "localized tenderness to the joint lines that would indicate a cartilage problem." He prescribed exercises and released her. On February 24, 1999, Ms. Brown returned to Dr. Cobb complaining of right knee pain. He found "fine crepitance... [a] roughness feeling in her kneecap joint, but that was also present in her left knee." In his opinion, this common condition "had been there before" because it was present in both knees and was not caused by trauma or injury. He diagnosed a bruised knee with kneecap pain and gave her a cortisone injection.

On March 10, 1999, Ms. Brown saw Dr. James T. Craig, Jr., board certified orthopedic surgeon, upon referral of her personal physician. She reported pain and grinding in both knees but the most pain in her right knee. He noted that "she did not have any swelling or any fluid in either one of her knees." He found that she did have "crepitation or grinding under the kneecaps on both knees when she flexed or extended her knees." He diagnosed early degenerative arthritis in both knees and chondromalacia of the patellae, a wearing of the cartilage behind the kneecap. He gave her a cortisone injection and recommended anti-inflammatories.

On March 18, 1999, she returned to Dr. Cobb's office complaining of "diffuse ill-defined" right knee pain. Dr. Cobb found: "[N]o sign whatsoever of any fluid on the knee. She again was tender wherever I touched, not more so at the joint lines or other important landmarks. She had full range of motion. All ligaments again were stable. I again noted the kneecap crepitance."

He reported: "I cannot correlate any of her subjective complaints of pain with any physical findings." He testified: "[W]hen they're tender everywhere [instead of more so at the source of the injury], that affects their credibility to me." Dr. Cobb found no sign of impairment or serious injury and did not assign permanent restrictions. In his opinion, it was possible but unlikely, that chondromalacia could be accelerated by a fall, but in Ms. Brown's case "she had no signs whatsoever that she had an injury in her kneecap area when I saw her on three visits."

Ms. Brown then returned to Dr. Craig who found that an MRI did not reveal any cartilage tears, ligament or meniscal injury. Because of her continued complaints of pain, Dr. Craig recommended arthroscopic surgery. On October 12, 2000, Dr. Craig performed an arthroscopy and found damage to the cartilage behind the knee cap called chrondromalacia. He performed a chrondoplasty to smooth the area down. He found she reached maximum medical improvement on

October 30, 2000.[1]

When Dr. Craig last saw her on October 24, 2001, she complained of tenderness in both her kneecaps, but he found no fluid in the knee. His final diagnosis was "chondromalacia of the patellae, wearing out of the cartilage behind the kneecaps." He did not assign a permanent impairment rating and released her without restriction. He did state that squatting and climbing steps would be painful and she should avoid these activities. He did not think she was a malingerer.

Dr. Craig testified: [C]hondromalacia usually is a wearing-type process. It doesn't usually happen with a one-time accident. It usually occurs over a period of time." When asked whether he could state with any reasonable degree of certainty as to the cause of her condition, he replied: "[N]ot with any real certainty whether it was just normal wear and tear or whether it was an injury. He could not tell from the surgery whether this condition developed over a period of months or years. Dr. Craig did acknowledge that if Ms. Brown had chrondomalacia prior to the fall that it was "quite possible" the fall aggravated her condition by causing it to "start hurting."

On March 16, 2000, Dr. John R. Janovich, orthopedic surgeon,[2] examined Ms. Brown who complained of right knee pain. He found a "trace of effusion" and pain in her medial joint line and tenderness. He did not examine the left knee. He diagnosed presumptive tear of the medial meniscus, which was later ruled out during her arthroscopic procedure. Dr. Janovich saw her again on April 10, 2001, and found that she was unable to squat due to pain on the right side. He found mild swelling in the left knee, and mild degenerative arthritis in both knees.

He diagnosed "mild post traumatic arthrosis of the patellofemoral compartment, bilateral knees, symptomatic." He found that she had sustained a 5% anatomical impairment rating to both lower extremities as the result of her work injury. He recommended lifting no more than 25 pounds frequently, and avoiding work duties that require squatting, or getting down on her knees.

Ms. Brown stated that she has had pain and swelling in both knees since her fall. She never had any problems with her knees before the fall. She no longer plays softball, walks track, or kneels at church due to knee pain and swelling. She uses ice packs every afternoon and takes over the counter medication for her knees. Her ex-husband testified that she keeps her leg outstretched when she is sitting down after work and tries to avoid climbing stairs. Her sons testified that she is not as mobile as before the accident and that they now do most of the household chores. Her 26 year old son testified that her knees get "real swollen. It looks like they're plastic they're so swollen. It's like they're stretching the skin."

---

[1] On December 27, 2000, Dr. Craig saw Ms. Brown for non-work-related injuries she suffered from a fall on some ice. His records indicate she twisted her right knee but did not strike the ice. She had significant pain, swelling, and difficulty walking. She had bleeding in the joint and Dr. Craig removed some fluid from the knee and gave her an injection.

[2] Dr. Janovich has been an orthopedic surgeon since 1973. He is board eligible but not board certified.

She did not miss work from January 4, 1999, until October 12, 2000, the day of the arthroscopic procedure. After recuperating from surgery she did not miss work from October 30, 2000, until the time of trial. Ms. Brown worked an average of 31.5 hours per month of voluntary overtime in 2002. She worked total (both voluntary and required) overtime hours per month averaging 45.5 in 1999, 48.3 in 2000, 52.6 in 2001, and 53.0 in 2002. Mr. Jeff Franks, her supervisor, testified Ms. Brown was an honest employee who had exceptional job performance and had never complained to him about physical difficulties.

The trial court found that Ms. Brown failed to prove by a preponderance of the evidence the injuries to both knees resulted in any permanent physical impairment or that her physical condition was caused or aggravated by her fall at work.

ANALYSIS

Review of findings of fact by the trial court shall be *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise. *Tenn. Code Ann.* § 50-6-225(e)(2). *Stone v. City of McMinnville*, 896 S.W.2d 548, 550 (Tenn. 1995). The application of this standard requires this Court to weigh in more depth the factual findings and conclusions of the trial courts in workers' compensation cases. *Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988).

Where the trial judge has seen and heard witnesses, especially where issues of credibility and weight of oral testimony are involved, on review considerable deference must still be accorded to those circumstances. *Humphrey v. David Witherspoon, Inc.*, 734 S.W.2d 315 (Tenn. 1987).

When the medical testimony is presented by deposition, as it was in this case, this Court is able to make its own independent assessment of the medical proof to determine where the preponderance of the evidence lies. *Cooper v. Insurance Co. of North America*, 884 S.W.2d 446, 451 (Tenn. 1994).

Ms. Brown contends that the trial court erred in finding that she failed to prove that she suffered permanent disability caused by her work-related injuries. We shall address the issues of causation and permanency together.

In order to be eligible for workers' compensation benefits, an employee must suffer "an injury by accident arising out of and in the course of employment which causes either disablement or death." *Tenn. Code Ann.* § 50-6-102(12). The phrase "arising out of" refers to causation. The causation requirement is satisfied if the injury has a rational, causal connection to the work. *Reeser v. Yellow Freight Sys., Inc.*, 938 S.W.2d 690, 692 (Tenn. 1997).

Although causation cannot be based upon merely speculative or conjectural proof, absolute certainty is not required. *Id.* Any reasonable doubt in this regard is to be construed in favor of the

employee. *Id.* We have thus 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. *Id.* Except where permanent disability is obvious to a layman, a finding of permanency must be based on competent medical evidence that there is a medical probability of permanency or that permanency is reasonably certain to be permanent. *Kellerman v. Food Lion, Inc.*, 929 S.W.2d 333, 335-36 (Tenn. 1996).

If a work injury aggravates a pre-existing condition merely by increasing pain, but does not otherwise "injure or advance the severity"of the employee's condition, the claimant did not sustain an injury by accident within the meaning of the Workers' Compensation Act and is not entitled to compensation. *Cunningham v. Goodyear Tire and Rubber Co.*, 811 S.W.2d 888, 891 (Tenn. 1991).

Dr. Cobb found no impairment and questioned Ms. Brown's crediblity because he could not correlate her pain with physical findings. He found that the chrondomalacia existed before the fall since it was present in both knees and that the fall did not aggravate her condition since he found no evidence of a kneecap injury during any of his examinations. Dr. Craig found no impairment and could not state "with any real certainty" whether her chrondomalacia was caused by wear and tear or an injury. He did acknowledge that if the chrondomalacia was a pre-existing condition the fall possibly aggravated it by causing it to hurt. Dr. Janovich assigned a 5% impairment rating to both lower extremities as a result of her work injury and assigned restrictions. He found that her chrondomalacia condition was consistent with the injury she sustained at Purodenso.

The trial court issued a 6 page memorandum reviewing the facts of this case. He found Dr. Cobb's and Dr. Craig's testimony to be credible. The trial court found Dr. Janovich's testimony with respect to the causation, aggravation and permanency of Ms. Brown's injuries to be not credible. The trial court found that while Dr. Janovich stated that patient history was important, the record did not demonstrate that he had any knowledge of her fall on the ice which occurred a little over 3 months prior to his last examination. The trial court also: 1) found that there was no proof that Dr. Janovich based impairment rating upon appropriate medical publications; and 2) questioned the validity of giving the same impairment rating for both knees when Ms. Brown's complaints of pain were not the same for each knee.

When medical testimony differs, the trial court has the discretion to determine which medical testimony to accept. *Kellerman v. Food Lion, Inc.*, 929 S.W.2d at 335. In doing so, a court should consider, among other things, "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 v. Williams-Sonoma, Inc.*, 803 S.W.2d 672, 676 (Tenn. 1991).

The trial court found that Ms. Brown's testimony that both her knees remained in severe pain and were continuously swollen since 1999 to be contraindicated by the medical testimony and her work schedule since the fall. Dr. Cobb found no swelling in 3 office visits soon after the fall. She saw Dr. Craig 8 times but he only reported swelling on the office visit after her fall on the ice. Ms.

Brown worked substantial amounts of overtime and did not miss work since the injury except to undergo arthroscopic surgery. The trial court was in the best position to judge the credibility of the witnesses.

After reviewing the record in this case, we find that the evidence does not preponderate against the trial court's finding that Ms. Brown did not suffer permanent impairment and that her condition was not caused or aggravated by her work injury.

CONCLUSION

The judgment of the trial court is affirmed. Costs are taxed to the appellant.

_____

JAMES L. WEATHERFORD, SR.J.

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
January 16, 2004 Session

EVA D. BROWN v. PURODENSO COMPANY

Circuit Court for Madison County
No. C-00-359

No. W2003-01181-WC-R3-CV - Filed June 30, 2004

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 Memorandum 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 Memorandum 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 on appeal are taxed to the Appellant, Eva D. Brown, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM