

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
October 22, 2012 Session

ROBERT LAURENCE v. TOWER INSURANCE COMPANY

**Appeal from the Chancery Court for Monroe County
No. 17042 Jerri S. Bryant, Chancellor**

No. E2012-00127-WC-R3-WC-Mailed-December 3, 2012/Filed-January 3, 2013

The employee, a satellite dish installer, injured his head while installing equipment at the residence of a customer of the employer. When the employer denied workers' compensation benefits for permanent partial disability, the employee filed suit. The trial court awarded temporary total disability benefits and a 70% permanent partial disability to the body as a whole. The employer appealed. Pursuant to Tennessee Supreme Court Rule 51, this appeal has been referred to a special workers' compensation appeals panel for a hearing and a report of findings of fact and conclusions of law. Because an employee is entitled to temporary total disability benefits only until he is able to return to work or reaches his maximum recovery, the trial court erred by awarding an additional fifty weeks of temporary total disability benefits. Otherwise, the judgment is affirmed.

**Tenn. Code Ann. § 50-6-225(e) (2008) Appeal as of Right; Judgment of the Trial
Court Reversed in Part and Affirmed in Part**

GARY R. WADE, C.J., delivered the opinion of the Court, in which E. RILEY ANDERSON, SP. J., and J. S. "STEVE" DANIEL, SP. J., joined.

Roger A. Miller, Knoxville, Tennessee, for the appellant, Tower Insurance Company.

Joseph R. Ford, Loudon, Tennessee, for the appellee, Robert Laurence.

**MEMORANDUM OPINION
I. Facts and Procedural Background**

In 2006, Robert Laurence (the "Employee") of Sweetwater was hired by Dish Network to install satellite dishes. In May of 2009, Dish Network sold the Monroe County office, where the Employee worked, to Up Dish Services, LLC (the "Employer"). Tower

Insurance Company (the “insurance company”) provided workers’ compensation coverage to the Employer.

On December 3, 2009, the Employee, while installing equipment at the residence of a customer of the Employer, injured his head as he walked through an interior doorway. He was able to complete the installation before driving home. When he arrived at his residence, he went “straight to bed” and remained there with a headache over the weekend. On December 6, he was treated at the emergency room of a hospital in Sweetwater. While there, he was given a computerized tomography scan and instructed to consult with his primary care physician. On the following day, the Employee informed the Employer of his injury and selected Dr. Jack Scariano, a neurologist, from a panel provided by the Employer.

The Employee first saw Dr. Scariano on February 10, 2010, some two months after the initial injury. Magnetic resonance imaging (“MRI”) indicated a “small ventricle,” an abnormality consisting of an increase in pressure around the brain typically resulting from trauma, which can cause headaches and dizziness. When a spinal tap conducted to check for pressure came back normal, however, Dr. Scariano changed his diagnosis to an inner ear problem caused by a build up of salt in the body, not as a result of physical trauma. The Employee continued to experience the same symptoms during the course of his treatment by Dr. Scariano, who last examined him on June 22, 2010. At that time, Dr. Scariano assigned a 5% permanent anatomical impairment.

On August 15, 2010, the Employee was returned to work on a light-duty basis, performing data entry, paperwork, and filing for the Employer. In October, Dr. Scariano was presented with a written surveillance report of the Employee, arranged by either the Employer or the insurance company.¹ Without a follow-up examination of the Employee and without watching any of the video accompanying the report, Dr. Scariano revised his opinion to indicate no permanent anatomical impairment. At the same time, the Employee was directed to return to his previous job. When the Employee protested that he was not physically capable of performing the work at that time and asked permission to be further examined by Dr. Scariano, the Employer denied the request. Afterward, the Employee was terminated.

On May 31, 2011, after an unsuccessful mediation with the Department of Labor and Workforce Development, the Employee filed suit seeking workers’ compensation benefits. The insurance company denied coverage, contending that the Employee did not suffer any permanent injury and that the claim by the Employee was not compensable. In addition, the

¹ The surveillance, which appears to have extended periodically over the course of nine months, included twenty separate days and as much as 150 hours of video.

Employer filed a counter-complaint alleging fraud on the part of the Employee for malingering and grossly exaggerating the extent of his injury.

At trial, the Employee, then thirty-seven years of age, testified that he was six feet, six inches tall and, at the time of the accident, weighed between 270 and 280 pounds. Married with three children at the time of trial, the Employee testified that he had graduated from high school and received two and one-half years of study at Longwood College in Farmville, Virginia. He had previously been employed as an assistant manager at an automobile supply company, as a telephony engineer² with Gannett Publishing Company, and as a store manager for a company called Movie Gallery. Later, he worked for the U.S. Postal Service and then held a job in security at the Dulles Airport before moving to Tennessee and working for a few months at Lowe's Hardware. In 2006, the Employee was hired by Dish Network to install satellite dishes. The nature of his employment required the Employee to work on ladders, under houses, on roofs, and in attics and crawl spaces.

On the date of his injury, the Employee recalled that he had completed the outside installation at a Madisonville residence and was working inside when he ran into a "chin-up bar between [a] door to [a] hall and [a] bedroom, striking the crown of his head." The Employee stated that he was able to complete the job even though he was "dizzy and groggy." He testified that when he returned to his residence, however, he experienced "a really bad headache" and stayed in bed for three days before his wife insisted that he seek treatment at an emergency room. At the hospital in Sweetwater, the Employee underwent testing, was given a note for his Employer for the rest of the week, and was referred to his family doctor.

The following day, he notified the Employer of his injury and several weeks later was examined by Dr. Scariano, who prescribed medication and vestibular therapy in an effort to improve his balance. During the course of his treatment, the Employee complained of being unable to walk in a straight line and continued to have headaches. On July 15, 2010, almost one month after he had last seen Dr. Scariano, the Employee underwent a functional capacity evaluation ("FCE") at the request of the insurance company, unaware that the purpose of the testing was to determine whether he was malingering. According to the Employee, he was able to do a couple of the exercises but when asked to pull back on a bar "as hard as [he] could for like thirty to forty seconds . . . , [he] fell and grabbed the machine" when instructed to let go. At that point, the individual conducting the test terminated the evaluation for safety reasons. One month later, the Employee was contacted by the insurance company and directed to return to light duty. The Employee was not made aware of any restrictions on his

² Describing his work as a telephony engineer, the Employee testified that he "set up a call routing system, basically banking phones . . . [and] routing phone wire to get [businesses'] offices up and running."

activities. During his time on light duty, he did not drive to or from work, and was asked to “shuffl[e] paperwork,” place files in order, and process data on a computer. He continued to experience vertigo and headaches. On one occasion, he attempted to sweep the Employer’s parking lot, and he “almost passed out.” Two other employees placed him in a chair, telephoned his wife, and asked her to drive him home.

In October, Jeff Coleman, the manager for the Employer, instructed the Employee to contact a member of the Employer’s human resources department, Mr. Dauscha. The Employee testified that he informed Mr. Dauscha that he still walked with a cane, could not climb a ladder, and was unable to drive, all requirements for satellite dish installation. According to the Employee, Mr. Dauscha asked the Employee to send a letter explaining why he could not do his previous job. The Employee’s October 13, 2010 letter provided, in pertinent part, as follows:

I understand the doctor has released me to full duty, but in my current condition I do not have the ability to do full duty work. I still deal with daily headaches that are extremely incapacitating. I walk with a cane because my balance is constantly off center. I am unable to drive a distance without becoming dizzy. I cannot walk a distance without having to stop and sit down due to the feeling of dizziness. I have set up an appointment with my primary care doctor to look for a different neurologist to get a second opinion of my condition.

On October 15, 2010, the Employee was terminated with the following written explanation:

Mr. Laurence was released for full duty on October 11, 2010 by Dr. Jack Scariano. He was working light-duty as provided Laurence provided a statement indicating he didn’t think he could return to work at this time because he said he gets dizzy, has daily headaches, walks with a cane and cannot walk distances without becoming dizzy. Up Dish Services does not have any other work available at this time other than the satellite technician position

Several days later, the Employee hired an attorney, who, some two weeks after the Employee’s termination, sent a letter to the Employer, complaining that Dr. Scariano had released the Employee to return to work without actually conducting an examination to determine what restrictions might be appropriate. In the letter, the Employee’s attorney also asked the Employer to either arrange for another appointment with Dr. Scariano or provide a panel of three other neurologists for additional treatment. Later, when the Employee tried

to make an appointment with Dr. Scariano, he learned that “they weren’t allowed to see [him].” The Employee’s attorney then referred him to Dr. Peter G. Stimpson, a family physician. Later, the Employee was treated by Dr. Francisco Moreno.

The Employee claimed that since the injury he had been unable to work except for one occasion, when he acted as a mystery shopper at a location “in town,” only a short drive away from his residence. He contended that he had continued to try to find on-line jobs but so far had not been able to find employment within his physical limitations.

Laura Laurence, who had been married to the Employee for fifteen and one-half years by the time of trial, described the Employee as in “great condition” at the time that he was injured while working for the Employer. She testified in some detail about the difficulty he had with his balance and confirmed his limited activities, also commenting that he had gained a significant amount of weight since the injury because of his inactivity. Mrs. Laurence explained that the Employee was encouraged by his therapist to try to walk without his cane when at or around their residence. She corroborated the Employee’s testimony that she was required to drive him to work when he was on light duty with the Employer.

Eldridge Laurence, Jr., the Employee’s father, testified that he often drove the Employee to therapy and contended that the Employee always did his best during sessions. Because the Employee had undergone gastric bypass surgery several years earlier, he further expressed concern about the Employee’s weight gain, which he believed to be associated with his inactivity because of the injury. Mr. Laurence testified that the Employee’s wife typically drove him to his doctor appointments, asserting that the Employee was limited to driving “in town.” He recalled that he had to “rescue him” on one occasion when the Employee experienced a severe headache after driving fourteen miles. Mr. Laurence stated that he and the Employee’s daughter were required to mow the Employee’s yard because the Employee was unable to do so. He further asserted that he had encouraged the Employee to use a cane, especially in public, because, otherwise, he “look[ed] like he’s drunk at times” when walking without assistance.

On February 3, 2010, either the Employer or the insurance company arranged for a surveillance investigation by GlobalOptions Fraud and SIU Services of Mount Laurel, New Jersey. From that time through October 19, GlobalOptions periodically followed the Employee and made video recordings and written reports, both of which were made exhibits at trial. The surveillance report and the video were largely unremarkable, except that the video tends to corroborate the Employee’s injury. The video shows the Employee’s wife driving the Employee to the doctor’s office and the Employee accompanying her as she shops, goes to a movie, and then to a fast food restaurant. It shows the Employee walking to and from his car, sometimes with a cane or helped by another individual and sometimes

on his own. In his gait, he appears to swing his right foot wider than normal. One portion of the video shows the Employee teaching his oldest child how to drive a riding lawnmower, an activity the Employee contended he could no longer perform. Another portion of the video shows him driving his vehicle to pick up his children at school, an activity his physical therapist permitted so long as it was a short distance. Much of the report indicated no activity outside of the residence of the Employee. In summary, the report indicated some driving on the part of the Employee, walking to and from his vehicle, and, for approximately five minutes, riding on a lawnmower. Perhaps the most telling part of the surveillance video, however, occurs when the Employee almost falls and stumbles for ten or so feet as he tries to climb down from a trailer after parking the lawnmower. This exertion appears to take a toll on the Employee, because when the Employee walks back to his house, he loses his balance and stumbles before finally steadying himself on a fence post.

The medical testimony was given by deposition. Dr. Scariano, a board certified neurologist for over thirty-four years, testified that he first saw the Employee in February of 2010. After reviewing an MRI made at the request of the Employee's primary care physician, Dr. Scariano discovered an abnormality he described as a "small ventricle," typically caused by trauma and resulting in headaches and dizziness. Concerned about pressure buildup inside the head, he ordered a special test, which yielded normal results. Dr. Scariano prescribed a variety of medications and physical therapy over a period of time, but the Employee continued to complain of headaches and dizziness. Dr. Scariano changed his diagnosis to an inner ear problem resulting from something other than trauma, but agreed with a medical article indicating that vertigo in individuals less than fifty years old was typically caused by trauma. Dr. Scariano last treated the Employee on June 22, 2010, at which time he found the Employee to be at maximum medical improvement. He assigned 5% permanent anatomical impairment. Four months later, after reviewing the surveillance report, but without looking at the video evidence provided by GlobalOptions, Dr. Scariano concluded that the Employee was either malingering or exaggerating his complaints and, therefore, had no permanent anatomical impairment.

Dr. Stimpson, a family practitioner for over thirty-seven years, first saw the Employee on November 11, 2010. Dr. Stimpson diagnosed the Employee with "post-traumatic headache and post-traumatic vertigo," resulting from the head injury. He observed an abnormality in a videonystagmography test, designed to check the balance system, and concluded that the Employee's vertigo and inner ear problems were the result of a "jostling of his brain." During the course of his treatment, Dr. Stimpson prescribed several medications, but the Employee did not improve. When asked when the Employee had reached his maximum medical improvement, Dr. Stimpson replied, "I don't know that he's had any improvement. . . . I think part of the reason I was unable to accomplish [any improvement] was that [the Employee] just didn't have any resources." This statement was

in contrast to a letter dated November 4, 2011, in which he stated that the Employee's date of maximum medical improvement was September 29, 2011. Dr. Stimpson concluded that the Employee had a 23% permanent anatomical impairment based upon vestibular disorders, according to the 6th Edition of the AMA Guides. He recommended that the Employee avoid jobs that required balance, "where falling would be dangerous . . . [and to] avoid moving machinery, things like that." In Dr. Stimpson's opinion, the Employee was trustworthy and not malingering.

After taking the matter under advisement, the trial court concluded that the Employee was entitled to a weekly compensation rate of \$477.94 and that the Employee had received temporary total disability benefits from the date of the injury until August 15, 2010. The trial court described the Employee as "credible and sincere" and further found that "the surveillance video stipulated as evidence . . . did not show behavior of the [Employee] as described by the investigator" in the report. The trial court held that the video corroborated Dr. Stimpson's observation that the Employee had "a slow and careful gait," and also noted that Dr. Scariano, after finding abnormalities in the images of the MRI, indicated a "valid effort" on the FCE. The trial court further observed that Dr. Scariano expressed an unfamiliarity with AMA Guides on vertigo but did point out that he reviewed tests done by Dr. Moreno, acknowledging that "the test [performed by Dr. Moreno] indicated an inner ear problem and the test could not be faked." The trial court concluded that Dr. Scariano had "improperly relied upon the statements of the private investigator rather than the contents of the video surveillance and inappropriately changed his opinion as to permanent anatomical impairment." After crediting Dr. Stimpson's testimony that the Employee was not malingering and that the vertigo and headaches were causally connected to the December 3, 2009 injury, the trial court assessed the anatomical impairment at 23%, declined to apply the cap of 1.5 times the impairment rating for a meaningful return to work, and found the vocational disability award to the body as a whole to be 70%, or 280 weeks of benefits at the compensation rate of \$477.94 per week. The trial court also awarded \$1355 in medical expenses for Dr. Moreno and Dr. Stimpson and fifty weeks of temporary total disability benefits from October 15, 2010 until September 29, 2011. In addition, the trial court dismissed the counter-complaint alleging fraud on the part of the Employee.

II. Standard of Review

Initially, the trial court's findings of fact are subject to "de novo [review] 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(e)(2) (2008). "This standard of review requires us to examine, in depth, a trial court's factual findings and conclusions." Williamson v. Baptist Hosp. of Cocke Cnty., Inc., 361 S.W.3d 483, 487 (Tenn. 2012) (quoting Galloway v. Memphis Drum Serv., 822 S.W.2d 584, 586 (Tenn. 1991)). When the trial court has seen and heard the witnesses, considerable deference must be

afforded to the trial court's findings of credibility and the weight that it assessed to those witnesses' testimony. Tryon v. Saturn Corp., 254 S.W.3d 321, 327 (Tenn. 2008) (citing Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 167 (Tenn. 2002)). The same deference need not be extended to findings based on documentary evidence such as depositions. Glisson v. Mohon Int'l, Inc./Campbell Ray, 185 S.W.3d 348, 353 (Tenn. 2006). Indeed, where medical expert testimony is presented by deposition, we may independently assess the content of that proof in order to determine where the preponderance of the evidence lies. Williamson, 361 S.W.3d at 487 (quoting Trosper v. Armstrong Wood Prods., Inc., 273 S.W.3d 598, 604 (Tenn. 2008)). On questions of law, our standard of review is de novo with no presumption of correctness. Wilhelm v. Krogers, 235 S.W.3d 122, 126 (Tenn. 2007) (citing Perrin v. Gaylord Entm't Co., 120 S.W.3d 823, 826 (Tenn. 2003)).

III. Analysis

The employee bears the burden of proving each element of his cause of action in a workers' compensation case. Elmore v. Travelers Ins. Co., 824 S.W.2d 541, 543 (Tenn. 1992). "Although workers' compensation law must be construed liberally in favor of an injured employee, it is the employee's burden to prove causation by a preponderance of the evidence." Crew v. First Source Furniture Grp., 259 S.W.3d 656, 664 (Tenn. 2008). A trial court must resolve any "reasonable doubt" as to causation in favor of the employee. Phillips v. A&H Constr. Co., 134 S.W.3d 145, 150 (Tenn. 2004).

Any employee seeking to recover workers' compensation benefits must prove that the injury both arose out of and occurred in the course of the employment. See Tenn. Code Ann. § 50-6-102(12). "The phrase 'arising out of' refers to the cause or origin of the injury and the phrase 'in the course of' refers to the time, place, and circumstances of the injury." Crew, 259 S.W.3d at 664. An injury arises out of employment when there is a causal connection between the conditions under which the work is required to be performed and the resulting injury. Trosper, 273 S.W.3d at 604; Fritts v. Safety Nat'l Cas. Corp., 163 S.W.3d 673, 678 (Tenn. 2005). Except in the most obvious cases, causation must be established by expert medical evidence. Glisson, 185 S.W.3d at 354. Although evidence of causation may not be speculative or conjectural, "absolute medical certainty is not required, and reasonable doubt must be resolved in favor of the employee." Id. Accordingly, "benefits may be properly awarded to an employee who presents medical evidence showing that the employment could or might have been the cause of his or her injury when lay testimony reasonably suggests causation." Id.; see also Fitzgerald v. BTR Sealing Sys. N. Am. – Tenn. Operations, 205 S.W.3d 400, 404 (Tenn. 2006).

A. Temporary Total Disability Benefits

The Employer first contends that the trial court erred by awarding an additional fifty weeks of temporary total disability benefits beginning on October 15, 2010, the date Dr.

Scariano released the Employee from his care, until September 29, 2011, the date the Employee last saw Dr. Stimpson. In its memorandum opinion, after observing that Dr. Scariano had arbitrarily established maximum medical improvement in October of 2010 when he had last treated the Employee on June 22, 2010, the trial court adopted September 29, 2011 as the date of maximum medical improvement.

Dr. Stimpson set out the date of maximum medical improvement adopted by the trial court in his November 4, 2011 letter, which is attached as an exhibit to his deposition. During his deposition testimony, however, Dr. Stimpson specifically declined to set a date of maximum medical improvement. Furthermore, Dr. Stimpson indicated that the Employee's medical condition did not change between his first examination on November 11, 2010, and his final examination on September 29, 2011. In addition, Dr. Stimpson's testimony did not indicate that the Employee was completely unable to work during that period of time.

“Temporary total disability benefits are terminated either by the ability to return to work or attainment of maximum recovery.” Foreman v. Automatic Sys., Inc., 272 S.W.3d 560, 575 (Tenn. 2008) (quoting Simpson v. Satterfield, 564 S.W.2d 953, 955 (Tenn. 1978)). In our view, the evidence, primarily that offered by Dr. Stimpson, establishes that the Employee reached maximum recovery prior to his initial examination by Dr. Stimpson on November 11, 2010. Because the evidence preponderates against the findings of the trial court, the award of fifty weeks of additional temporary total disability benefits must be set aside.

B. Permanent Anatomical Impairment

The Employer next argues that the trial court erred by adopting an anatomical impairment rating of 23% to the body as a whole rather than Dr. Scariano's revised rating of 0%. The Employer maintains that because Dr. Stimpson is a family practitioner rather than a specialist, the trial court should have accepted the evaluation by Dr. Scariano, who had relied upon several diagnostic tests.

Initially, Dr. Scariano conceded that he was unfamiliar with the AMA Guides regarding equilibrium disorders such as vertigo. While he had recommended an examination by an otolaryngologist, he did not make a referral until the Employee had been examined by Dr. Stimpson and referred to Dr. Moreno. Further, Dr. Scariano agreed that the tests administered by Dr. Moreno produced objective results indicating that the Employee had experienced an inner ear disturbance, a potential cause of vertigo. Despite observing an abnormality in the MRI, which he described as a “small ventricle,” and the test administered by Dr. Moreno, Dr. Scariano nevertheless concluded that the Employee was a malingerer. Finally, Dr. Scariano changed his assessment of anatomical disability based upon a written

surveillance report without either reviewing the video evidence, as did the trial judge, or performing an additional examination on the Employee, which had an adverse effect upon the credibility of his testimony. In contrast, the testimony of Dr. Stimpson, who had treated chronic headaches and vertigo previously and had based his assessment of anatomical disability upon personal observations of the Employee and objective tests and had concluded without qualification that the Employee was not malingering, was entitled to considerable credibility. When there is a conflict of expert opinions, the trial court generally has the discretion to choose which expert to accredit. Johnson v. Midwesco, Inc., 801 S.W.2d 804, 806 (Tenn. 1990); Kellerman v. Food Lion, Inc., 929 S.W.2d 333, 335 (Tenn. Workers' Comp. Panel 1996). In summary, we find no basis to conclude that the trial court abused its discretion by giving greater weight to Dr. Stimpson's testimony, which resulted in the finding of a 23% anatomical impairment rating and a 70% permanent partial disability to the body as a whole.

C. Remaining Issues

In addition to the previously discussed issues pertaining to temporary total disability benefits and permanent impairment, the Employer has presented several additional claims related to permanent partial disability benefits, medical expenses, and its counter-complaint against the Employee. We find each of these claims to be without merit.

First, the Employer asserts that the trial court's failure to properly find a date of maximum medical improvement precludes any award of permanent partial disability benefits. In support of this assertion, the Employer relies exclusively upon Coleman v. Lumbermens Mutual Casualty Co., W2000-01168-WC-R3-CV, 2001 WL 285209, at *7 (Tenn. Workers' Comp. Panel Mar. 15, 2001), in which an appeals panel found that the lack of proof of the employee's maximum medical improvement date for a psychological injury precluded assessment of the employee's permanent disability. In Coleman, the panel remanded with an instruction for the trial court to determine the date of maximum medical improvement before making a determination as to the percentage of permanent partial disability to the body as a whole. Id. In contrast to Coleman, in which the employee had not reached maximum medical improvement by the time of trial, the evidence here establishes that the Employee reached maximum recovery prior to November 11, 2010, the date he was first seen by Dr. Stimpson. Moreover, while Dr. Stimpson indicated the Employee had not undergone significant improvement under his treatment, he testified that, given the "significant period of time" the Employee spent under his care after the injury, he was "in a position to give [the Employee] a permanent impairment rating." Accordingly, the reasoning of Coleman does not apply. In consequence, the trial court's error with regard to the date of maximum medical improvement did not preclude assessment of the Employee's permanent disability.

The Employer next asserts that the evidence preponderates against the trial court's award of permanent partial disability benefits. In particular, the Employer points out that the Employee had previously held jobs that did not require physically demanding work; that he graduated high school and took some college courses; that two of his witnesses may have been biased because they were relatives; and that the surveillance videos "depict him doing activities only a healthy person could do." Because the trial court saw and heard the witnesses at trial, "[w]e give considerable deference in reviewing the trial court's findings of credibility and assessment of the weight to be given to that testimony." Crew, 259 S.W.3d at 664. The trial court accredited the testimony of the Employee, as well as that of his wife and his father, and also made its own findings after watching the surveillance video submitted by the Employer. This Panel has observed the content of the video and finds no basis for discrediting the testimony offered by the witnesses for the Employee. The evidence does not preponderate against the findings of the trial court.

The Employer also argues that the trial court erred by directing payment of the Employee's medical expenses resulting from his treatment by Dr. Stimpson and Dr. Moreno. The record establishes that the Employee asked repeatedly to be allowed to return to Dr. Scariano for treatment. Those requests were denied by the Employer. Dr. Scariano referred the Employee to an otolaryngologist, but no such treatment took place. An employer refusing to provide medical care for a compensable injury may be found liable for reasonable and necessary medical expenses obtained by the injured employee on his own. See Lindsey v. Strohs Cos., 830 S.W.2d 899, 903 (Tenn. 1992). In this instance, the trial court properly imposed liability for the medical expenses incurred by the Employee in obtaining treatment from Dr. Stimpson and Dr. Moreno following the Employer's refusal to allow him to return to Dr. Scariano.

The Employer further argues that the trial court erred by finding that the Employee did not have a meaningful return to work, thereby declining to cap benefits at 1.5 times the impairment rating pursuant to Tennessee Code Annotated section 50-6-241(d)(1)(A). According to the Employer, the Employee made a voluntary choice not to return to work at his regular job after his period of light duty ended. Courts utilize the concept of "meaningful return to work" as a standard for evaluating cases, such as this, in which an employee suffers a workplace injury and returns to work for the pre-injury employer but does not remain employed. Tryon, 254 S.W.3d at 328. "When determining whether a particular employee had a meaningful return to work, the courts must assess the reasonableness of the employer in attempting to return the employee to work and the reasonableness of the employee in failing to either return to or remain at work." Id. The evidence in this instance establishes that the satellite dish installer position required climbing ladders, working on roofs, and maneuvering in crawl spaces. All of these activities would be difficult or dangerous for a person with the physical limitations of the Employee. As previously discussed, the objective

medical tests performed by Dr. Moreno confirmed the existence of inner ear dysfunction. Further, the Employee was cleared to work by Dr. Scariano on October 11, 2010. Two days later, the Employee informed the Employer in writing that he could not meet the physical demands of the dish installer position. In response, the Employer terminated the Employee on October 15. In our view, the evidence does not preponderate against the trial court's findings that the Employer did not act reasonably in attempting to return the Employee to work, that the Employee's decision not to return to work was reasonable, and, therefore, that the Employee did not have a meaningful return to work. See id.; see also Howell v. Nissan N. Am., Inc., 346 S.W.3d 467, 472-73 (Tenn. 2011).

Finally, the Employer argues that the trial court erred by dismissing its counter-complaint alleging that the Employee had engaged in fraud by malingering and grossly exaggerating the extent of his injury. In light of our prior determination that the evidence does not preponderate against the trial court's finding that the Employee was credible, we conclude that the trial court properly dismissed the counter-complaint.

IV. Conclusion

The judgment of the trial court is reversed in part and affirmed in part. The judgment of the award of fifty weeks of additional temporary total disability benefits is set aside. Otherwise, the judgment is affirmed in all respects. Costs are assessed against Tower Insurance Company and its surety, for which execution may issue if necessary.

GARY R. WADE, CHIEF JUSTICE

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE, TENNESSEE
October 22, 2012 Session

ROBERT LAURENCE V. TOWER INSURANCE COMPANY
Monroe County Chancery Court
No. 17042

No. E2012- 00127-WC-R3-WC

JUDGMENT

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 facts and conclusions of law are adopted and affirmed and the decision of the Panel is made the Judgment of the Court.

The costs on appeal are taxed to the appellant, Tower Insurance Company and its surety, for which execution may issue if necessary.