IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

MARK ALLRED v. BERKLINE, LLC ET AL.

Chancery Court for Overton County
No. 62-1203

No. M2009-01236-SC-WCM-WC - Filed - June 30, 2010

JUDGMENT ORDER

This case is before the Court upon the motion for review filed by Mark Allred pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(A)(ii), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law.

It appears to the Court that the motion for review is not well-taken and is therefore denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed 3/4 to Employee, Mark Allred, and 1/4 to Employer, Berkline, LLC, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

William C. Koch, Jr., J., not participating

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
January 25, 2010 Session

MARK ALLRED v. BERKLINE, LLC, ET AL.

Appeal from the Chancery Court for Overton County
No. 62-1203 Billy Joe White, Chancellor

No. M2009-01236-WC-R3-WC - Mailed - April 1, 2010
Filed - June 30, 2010

The employee sustained gradual injuries to his arms and shoulders as a result of repetitive motion in the course of his employment. His employer denied liability based upon the affirmative defense of misrepresentation of physical condition. Employee had sustained gradual injuries to his left shoulder and arm during a previous job. He was placed under permanent activity restrictions and received a workers' compensation award as a result of those injuries. In applying for employment with appellant, he did not disclose the prior injuries. The trial court concluded that the employer did not prove the misrepresentation defense. Permanent total disability benefits were awarded. Employer has appealed, contending that the trial court erred by finding that it did not sustain its burden of proof as to the affirmative defense. Upon review, we conclude that the evidence preponderates against the trial court's findings and that the employee's misrepresentation was willful, was relied upon by the employer and was causally related to his subsequent injuries. Because we find that the employer sustained its burden of proving its affirmative defense, we reverse the awarding of benefits. Finally, we conclude that the employer is not entitled to recover the cost of retaining a consulting physician to view a surgical procedure that did not take place.[1]

Tenn. Code Ann. § 50-6-225(e) (2008) Appeal as of Right;
Judgment of the Chancery Court (Affirmed)

WALTER C. KURTZ, SR. J., delivered the opinion of the Court, in which WILLIAM C. KOCH, JR., J., and DONALD P. HARRIS, SR. J., joined.

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[1] Pursuant to Tennessee Supreme Court Rule 51, this workers' compensation 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.

Mary Dee Allen, Cookeville, Tennessee, for the appellant, Berkline, LLC.

William D. Birdwell, Cookeville, Tennessee, for the appellee, Mark Allred.

Robert E. Cooper, Jr., Attorney General & Reporter; Michael E. Moore, Solicitor General; Diane Stamey Dycus, Deputy Attorney General, for the appellee, Tennessee Department of Labor and Workforce Development, Workers' Compensation Division, Second Injury Fund.

MEMORANDUM OPINION

Factual and Procedural Background

Mark Allred ("Employee") sustained gradual injuries to his shoulders and arms while working for Berkline ("Employer"), a furniture manufacturer, from 1996 to 2003. Employer initially accepted the claim as compensable. However, it later denied the claim based upon the affirmative defense that Employee had made a material misrepresentation of his physical condition at the time he was hired.

Employee had previously worked for Employer in 1984 and 1985. He then went to work as a fork lift operator and meat cutter for Fast Food Merchandisers ("FFM"), a food processing company, from 1986 until 1994. While working for FFM, he sustained a gradual injuries to his arms, chest and left shoulder. His treating physician Dr. Barnes diagnosed overuse syndrome of the left shoulder and arm and bursitis. He placed several permanent restrictions upon Employee's activities as a result of these conditions. The restrictions included a thirty-five pound lifting limit; no overhead work; and no work at temperatures below fifty degrees. FFM was unable to accommodate those restrictions, and Employee was terminated in July 1994. Employee pursued a workers' compensation claim which was ultimately settled for 23.5% PPD to the body as a whole. That settlement was approved by the Circuit Court of Overton County in November 1995.

After leaving FFM, Employee worked for a time as a rural mail carrier. Then in 1996, Employee applied to work for Employer for a second time. This application process appears to have been done in two stages. First, on March 18, 1996, Employee filled out and submitted an employment application. Because he was able to read at only a first-grade level, Employee did not complete the application himself.[2] According to his testimony, the plant

[2] Employee's testimony is confusing, and he seems to think that the application process was all done on the same day. The dispute about whether it was all done on the same day or on different days need not (continued...)

nurse, Maudie Gore, asked him questions and wrote down the answers he gave.[3] The section of the application titled "Work Experience" lists FFM as an employer, gives the dates of his employment, his hourly wage, and a job description. Under "Reason for Leaving" the answer given is "better job."

Second, a month later on April 16, 1996, Employee's "Physical Record" was filled out by having the nurse ask questions and write in Employee's answers.[4] The top of the front page of the document contains basic information such as name, address, and birth date. The next section is headed "Family or Medical History" and consists of a list of twenty-two medical conditions, such as diabetes, tuberculosis, epilepsy and heart trouble. Other than a notation that Employee sometimes had nosebleeds, the word "no" is written across from each item. None of the twenty-two items refer to overuse syndrome, bursitis, shoulder pain, arm pain, work injuries or medical restrictions. The twenty-third item is "Other," which is also answered "no." Below the Family or Medical History on the same page is a section headed "Special History." This section contains four items: "What accidents have you had," "Vaccination History," "Blood," and "X-ray chest." The question concerning accidents is answered "none." There is a written notation concerning a tetanus vaccination, and a reference to a 1994 emergency room visit. The remainder of the front of the form is blank, except for Employee's signature and the date. The back page of the document appears to be for recording the results of a physical examination. There are handwritten notations concerning Employee's height, weight and eyesight. The remainder of the items ("skin," "ears," "nose," "throat," etc.) have been left blank. Nurse Gore's signature and the date appear at the bottom of the page.

As previously mentioned, there is conflicting testimony concerning the process by which Employer was hired. Employee testified that the entire rehiring process, including his examination by the nurse, took thirty to thirty-five minutes from the time he entered the premises until he "hit the line." In contrast, Employer's health and safety administrator Cindy Crigger testified that Employee didn't start working until the month after he filled out the job application, as reflected by different dates on the application and "Physical Record"

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[2](...continued)
be resolved, as it is irrelevant to the outcome of the case.

[3] Just why the nurse would have helped him is not clear in the record; however Employee testified that this is what happened. During health and safety administrator Cindy Crigger's testimony, it was brought up that the hiring process probably included a nurse and some other people that may have taken his interview. The first page of the employment application contains a note "1st shift" and an unrecognizable signature that is not that of nurse Gore.

[4] The "Physical Record" contains the nurse's signature, unlike the employment application.

and by the date a drug test specimen was collected. She says that, according to Employer's hiring procedure, he would not have begun working until after he filled out the "Physical Record" form on April 16, 1996, following what is referred to as a requisite "post-offer preemployment physical examination."[5]

There is also conflicting evidence concerning Employee's initial assignment. He testified that he was placed in a job upholstering chairs, a relatively light job, and that he was moved to parts handler at a later time. Ms. Crigger testified that Employee was immediately placed as a parts handler, a job which involved moving furniture parts from bins to the appropriate area of the assembly line. The parts weighed between two and eighteen pounds (occasionally 50 or 100 pounds), the bins he pushed and pulled weighed up to100 pounds, and frequent overhead work was required. She testified that material parts handler is a very demanding job - more strenuous than arm upholsterer - and one that would not have been offered to Employee if Employer had known of his previous injury and work restrictions. Ms. Crigger explained that Employer relies on the information provided by potential employees in their applications in determining whether to offer them a job or not, and this information is a substantial factor in placing a person in a position.

Employee began experiencing pain and swelling in his hands, which he reported to Employer in February 2003. Employer accepted the claim as compensable and provided medical treatment. Employee ultimately had surgery performed on his left elbow and then his right elbow and left shoulder. He developed a staph infection after the left shoulder surgery, which frightened him and also prolonged his recovery. The two latter surgeries were performed by Dr. Richard Williams. Dr. Williams did not testify. A C-32 containing his opinions was placed into evidence by Employee. His diagnosis was "complex upper extremity pain including rotator cuff tendinitis [and] lateral epicondylitis." He assigned 22% permanent anatomical impairment to the body as a whole. He placed several permanent restrictions upon Employee's activities including: a maximum lifting limit of twenty pounds; a frequent lifting limit of ten pounds; no repetitive motions of the upper extremities; no reaching away from the body; and no pushing or pulling activities.

Employee also introduced a C-32 of Dr. Scott West, a psychiatrist. Dr. West opined that Employee had a moderate psychiatric impairment under the AMA Guides and that this

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[5] Ms. Crigger testified that in March and April 1996 she was employed by Employer as a senior clerk accounts payable at its Morristown location, but she "filled in" for the nurse at the Livingston plant and was familiar with the physical examination process. She admitted that she did not have personal knowledge of the particular circumstances surrounding Employee's hiring, but she was familiar with the hiring process in general at that time. In 2000, Ms. Crigger took on workers' compensation responsibilities and eventually became the health and safety administrator.

condition was a result of the limitations caused by the injuries to his arms and shoulder. Dr. West determined this to be a permanent disability.

Employer introduced the deposition of Dr. William Gavigan, an orthopaedic surgeon, who conducted an exam on February 29, 2008, at the request of Employer's attorney. Dr. Gavigan's diagnosis was bilateral impingement syndrome of the shoulders, post radial nerve decompression right elbow, and post tendon release, left elbow.

Employer also introduced the deposition of Dr. John Griffin, a psychiatrist who conducted an exam at counsel's request. The examination took place on March 12, 2008. Dr. Griffin opined that Employee had a mild psychiatric impairment.

Julian Nadolsky, a vocational evaluator, testified on behalf of Employee. His testing indicated that Employee was able to read at a first-grade level and perform arithmetic at a fourth-grade level. He opined that, based upon the restrictions placed upon Employee by Dr. Williams, he was 100% disabled. In light of his limited reading ability and unskilled work history, the restriction against reaching was particularly significant. On cross-examination, Nadolsky testified that he was unaware of the restrictions imposed upon Employee as a result of the 1994 injury.

Michael Galloway, also a vocational evaluator, testified on behalf of Employer. The results of his tests were consistent with those of Mr. Nadolsky. He opined that, based upon Dr. Williams' restrictions, Employee had a 53% increase in vocational disability as a result of the most recent injury. However, in light of Employee's description of his then-current activities which included raising livestock and operating farm machinery, Mr. Galloway did not believe that this was an accurate reflection of Employee's ability to work. He further testified that, based upon Dr. Gavigan's testimony, Employee had little or no increase in his pre-existing disability.

Employee was forty-five years old but, as previously mentioned, his reading ability was limited. He testified that although he was a high school graduate, he was promoted through the Overton County school system primarily because of his athletic rather than academic skills. His work history, other than his jobs for Employer and FFM, consisted of construction labor and other unskilled work. He testified that he was not aware of the restrictions that Dr. Barnes had placed upon him after the 1994 injury and was not aware that he was terminated by FFM due to those restrictions.

On cross examination, Employee agreed that he had told Dr. West, the psychiatrist, and Dr. Averitt, a psychologist, that he had not suffered from depression prior to his 2003 work injury. He did not recall receiving treatment for this condition from his personal

physician in 2001, as indicated by that doctor's records. He admitted testifying in his deposition that he had raised livestock, grown crops, and operated a tractor, bush hog and hay bailer since his termination by Employer. He agreed that he owned a fishing boat, which he was able to get into and out of the water and operate.

The trial court found that Employer had not met its burden of proof as to the affirmative defense of misrepresentation. It found that Employee was permanently and totally disabled. It assigned 23.5% of the liability to the second injury fund, purportedly under Tenn. Code Ann.§ 50-6-208(b).

Employer has appealed, asserting that the trial court erred by finding that Employer did not sustain its burden of proof as to the affirmative defense of misrepresentation. In the alternative, Employer contends that the trial court erred by finding that Employee was permanently and totally disabled. Finally, Employer also contends that the trial court erred by denying its motion to recoup the expense of hiring a doctor to observe a surgical procedure which Employee subsequently cancelled.

Standard of Review

Review of the trial court's findings of fact shall be *de novo* upon the record of the trial court accompanied by a presumption of correctness of the findings, unless the preponderance of evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2008). When credibility and weight to be given testimony are involved, considerable deference is given the trial court when the trial judge had the opportunity to observe the witness' demeanor and to hear in-court testimony. *Madden v. Holland Group of Tenn.*, 277 S.W.3d 896, 900 (Tenn. 2009). When the issues involve expert medical testimony that is contained in the record by deposition, determination of the weight and credibility of the evidence necessarily must be drawn from the contents of the depositions, and the reviewing court may draw its own conclusions with regard to those issues. *Foreman v. Automatic Systems, Inc.*, 272 S.W.3d 560, 571 (Tenn. 2008). A trial court's conclusions of law are reviewed *de novo* upon the record with no presumption of correctness. *Seiber v. Reeves Logging*, 284 S.W.3d 294, 298 (Tenn. 2009).

Analysis

1. *Misrepresentation Defense*

In a long line of cases, this Court has set forth the requirements for an employee's misrepresentation to constitute a bar to recovery of benefits. This rule has its genesis in the

case of *Federal Copper & Alum. Co. v. Dickey*, 493 S.W.2d 463 (Tenn. 1973) in which the Court set out the three elements which must be satisfied for such bar:

> The following factors must be present before a false statement in an employment will bar benefits: (1) The employee must have knowingly and willfully made a false representation as to his physical condition. (2) The employer must have relied upon the false representation and this reliance must have been a substantial factor in the hiring. (3) There must have been a causal connection between the false representation and the injury.

Id. at 465 (*citing* 1A *Larson's Workmen's Compensation Law* § 47.53, p. 800).[6] The Court further explained that "the rule [on misrepresentation] is a common sense rule made up of a melange of contracts, causation, and estoppel ingredients." *Id.* at 465. *See, e. g.,* Reynolds, *Tennessee Workers' Compensation Practice and Procedure*, 22 Tennessee Practice § 12:6 (2005). It is an affirmative defense, and the burden of proof is on the employer. *Raines v. Shelby Williams Indus.,* 814 S.W.2d 346, 350 (Tenn. 1991).

The trial court found that Employer did not sustain its burden of proof as to causation, stating:

> [T]his Court would be impressed with [the misrepresentation defense] if [Employee] reinjured himself or left his employment in 30, 60, 90 days. But this man worked for Berkline for six years in a very heavy job. He obviously overcame his prior restrictions and was a good employee for six years.

Employer contends that the evidence preponderates against this finding and that it sustained its burden of proof as to all three elements of the affirmative defense. Based upon our independent review of the record, we agree and conclude that Employee made a willful misrepresentation of fact on his employment application; the misrepresentation was sufficiently related to his physical condition. We further find that the Employer relied on this misrepresentation and that a causal connection existed between his failure to comply with the permanent restrictions imposed by Dr. Barnes in 1994 and the work injuries of 2003.

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[6] *See also Beasley v. U.S. Fid. & Guar. Co.*, 699 S.W.2d 143, 145 (Tenn. 1985) (all three factors must be present to bar an injured employee's recovery); *Pickett v. Chattanooga Convalescent & Nursing Home, Inc.*, 627 S.W.2d 941 (Tenn. 1982); and *Anderson v. Chattanooga General Services Co.,* 631 S.W.2d 380, 385 (Tenn. 1981) ("[i]t goes without saying that half-truths can be just as misleading and deceitful as outright lies").

A. Willful Misrepresentation

As outlined above, Employee's March 1996 job application contained detailed information concerning his prior employment at FFM, including the dates of employment, his hourly rate of pay, and the name of his immediate supervisor. Similar information is provided for other prior employers. Although the information was apparently written on the application form by someone else, there is no plausible source for those details other than Employee, particularly with regard to the purported reason for his leaving FFM for a "better job." There is no question that this statement was factually incorrect. It is undisputed that Employee was terminated because FFM was unable to accommodate the restrictions prescribed by Dr. Barnes. That fact is demonstrated by the separation notice issued by FFM at the time, by Employee's sworn interrogatory responses from his workers' compensation action against FFM, and by the terms of the settlement of that action.[7]

The evidence supports the conclusion that this misstatement of fact was willful. At trial, Employee did not make any effort to claim that he voluntarily left FFM for a better job or that he held a reasonable belief to that effect. During cross examination, Employee initially agreed that FFM had "let me go" but stated that he did not know the reason. Later he changed this explanation slightly, stating that "I don't know that I was terminated. I just -- I lost my job." This testimony directly conflicts with the aforementioned interrogatory responses from his workers' compensation lawsuit against FFM, which include the following statements:

> I was not allowed to return to work at FFM because FFM said there was no work I could do with the limitations Dr. Barnes gave.

. . . .

> Dr. Barnes gave me restrictions of no overhead work, no work in temperature of less than 50 degrees, and no lifting of over 35 pounds. This means I cannot do any of my previous jobs. My chest continues to hurt, and it sometimes makes me short of breath. Pain sometimes goes down my left arm to my hand and I sometimes have headaches.

. . . .

[7] The claim was settled for 23.5% PPD to the body as a whole, slightly more than three times the anatomical impairment (7% to the body as a whole) assigned by Dr. Barnes.

> I recorded my separation meeting from FFM on July 21, 1994. I had the permission of Mr. Scott Hastings, Human Resources Manager. Also present was the company nurse and Mr. Phil Whisnet, FFM Management. I am enclosing a copy of the tape.[8]

The responses containing these statements were signed by Employee and notarized on May 17, 1995, roughly ten months after his termination at FFM and ten months before he applied to be hired by Employer for the second time.

At trial, Employee stated repeatedly that he had no recollection of signing the interrogatory responses. He also testified that he had neither recollection of Dr. Barnes' restrictions, nor that the reason his employment ended was that FFM could not accommodate these restrictions. He also said that he had no recollection of attending his separation meeting on July 21, 1994, or of tape recording that meeting. Employee did not deny that any of these events had taken place; he did, however, deny the truth of the statement that he was unable to return to his previous jobs at the time the interrogatory responses were signed. He was uncertain whether he had provided the information used by his attorney to draft the responses.[9]

We find this document to be persuasive evidence that Employee was aware at the time of his job application in March 1996 that Dr. Barnes had placed permanent restrictions on his activities at FFM and that he was terminated from his position at FFM. His subsequent professed inability to recall the circumstances of preparation and execution of the document does not diminish its weight. Considering this document with the other evidence discussed herein, we find that the evidence preponderates in favor of the conclusion that Employee willfully misrepresented the circumstances of his termination from FFM on his March 1996 job application.

The "Physical Record" completed on April 16, 1996 does not contain any direct questions concerning prior injuries, restrictions or capabilities. The only question which arguably touches upon those subjects is "What accidents have you had?" This question does not address gradual injuries such as Employee's work injuries at FFM. The back of that same document contains a checklist of items which appear to be related to an actual physical examination. All have been left blank, and therefore provide no basis to conclude that a

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[8] Employee apparently tape-recorded this meeting.

[9] The Chancellor was unimpressed by Employer's use of the interrogatory answer as proof. The Chancellor remarked that the interrogatory was answered by the lawyer and that Employee only "signed them."

further misrepresentation occurred during any examination.

In light of this "Physical Record," it might be argued that the employee did not misrepresent his physical condition, as his misrepresentation related specifically to the question of why he left his prior employment at FFM. The Court is of the opinion that this is a distinction without a difference. A forthright answer as to why he left FFM would have disclosed his true reason for leaving - his medical condition that could not be accommodated. This fact would have put Employer on notice of his previous injuries. Employee should not be able to indirectly avoid the consequences of his misrepresentation merely because his misstatement of fact was not in direct response to a question of his past medical condition. If he had been honest in his answer to why he left FFM, he would have disclosed his medical condition. We therefore hold that *Federal Copper*, *supra*, governs this misrepresentation and this element is satisfied. Employer has met its burden in regard to Employee's material misrepresentation.

B. Reliance

Employee's misrepresentation also satisfies the second element of *Federal Copper & Alum. Co. v. Dickey*, 493 S.W.2d 463, 465 (Tenn. 1973), under which "[t]he employer must have relied upon the false representation and this reliance must have been a substantial factor in the hiring." In finding such reliance, we need look no further than the trial testimony of Ms.Crigger, Berkline's health and safety administrator:

> Q: Does Berkline rely on the information that it gets in the post-offer preemployment application and information that it gets in that examination in making the final job offer to that person?
>
> A: Yes.
>
> Q: And putting them to work?
>
> A: Yes.
>
> Q: Is it a substantial factor in the decision of Berkline to place that person in that position?
>
> A: Yes, definitely.

. . . .

Q: Now, had you known – let's say Mr. Allred decided to disclose this information to you. Had you known about those permanent restrictions that he had from this previous injury, would you have placed him in the material handler position?

A: No.

Q: Would you have hired him?

A: No.

We therefore find that Employer did sustain its burden of proving Employer's reliance upon the misrepresentation as required by *Federal Copper, supra,* and the evidence preponderates against the trial court's finding.

C. Causation

The trial court held that Employer had not sustained its burden of proof concerning causation because the injuries at issue manifested themselves over a period of years after Employee was hired, stating that it "would be impressed" if the injuries had developed in a shorter period of time. That finding was not supported by the evidence. The only evidence on the issue of causation was the testimony of Dr. Gavigan who testified that Employee's job duties, as described to him by Employee, did not comply with the restrictions placed upon him by Dr. Barnes in 1994. He opined that Employee would likely not have developed impingement syndrome in 2003 if he had complied with those restrictions. Employee did not cross examine Dr. Gavigan or present any contrary medical opinion.[10] Thus, the third element of *Federal Copper* is satisfied because here there was a "causal connection between the false representation and the injury." 493 S.W.2d at 465. We therefore find that Employer sustained its burden of proof concerning causation.

Employer has met the three requirements needed to bar recovery of benefits: Employee's misrepresentation in the job application; Employer's reliance upon this misrepresentation which was a substantial factor in hiring Employee; and a causal

[10] "Except in the most obvious cases, such causation must be established by expert medical testimony." *Daniels v. Gudis Furniture Co.*, 541 S.W.2d 941 (Tenn. 1976). Here, causation was so established.

connection between the misrepresentation and the injury. Thus, Employer has sustained its burden of proof on the affirmative defense of misrepresentation. Accordingly, we reverse the trial court's finding and hold that Employer is not liable for payment of benefits.[11]

2. *Consulting Surgeon Expense*

Employer contends that it should be reimbursed for incurring the expense of a doctor to observe a scheduled medical procedure on Employee.

Dr. Williams recommended a second surgical procedure on the left shoulder in late 2005. Employee was initially reluctant to undergo the procedure. Eventually he indicated that he wished to proceed. Dr. Michael Kioschos, an orthopaedic surgeon, conducted a second opinion examination and opined that Employee's symptoms were the result of new labral tears, which necessarily would have occurred after his employment ended. A motion was filed to compel Employer to provide the surgery. In June 2006, the trial court granted the motion but also granted Employer's request to have a second surgeon present to observe the surgery and to examine the shoulder during the procedure. Employer made the arrangements, which involved an advance payment of $10,000 to Dr. Kioschos. The surgery was scheduled for a Monday, but on the Friday immediately preceding Employee changed his mind and decided not to proceed. Initially he stated that this was because he had not been informed of the surgery date; however, at trial he testified that the decision was based upon his fear of another staph infection.

Employer sought to recover the fee paid to Dr. Kioschos, essentially arguing that Employee acted in bad faith by changing his mind at the last moment. The trial court denied the application. Employer does not cite any statutory or case authority for allowing such a recovery. In the absence of such authority, we conclude that the trial court correctly denied the motion.

Conclusion

For the reasons explained above, the judgment of the trial court granting benefits is reversed. The denial of Employer's motion to recoup the expenses associated with Dr. Kioschos is affirmed. Costs are taxed 3/4 to the appellee Employee and 1/4 to appellant Berkline, LLC, for which execution may issue if necessary.

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WALTER C. KURTZ, SENIOR JUDGE

[11] Because we so hold, it is not necessary to address the trial court's finding of Employee's permanent total disability.

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Chancery Court for Overton County
No. 62-1203

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JUDGMENT ORDER

This case is before the Court upon the motion for review filed by Mark Allred pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(A)(ii), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law.

It appears to the Court that the motion for review is not well-taken and is therefore denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed 3/4 to Employee, Mark Allred, and 1/4 to Employer, Berkline, LLC, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

William C. Koch, Jr., J., not participating