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

DANIEL VELER v. WACKENHUT SERVICES, INC.

Appeal from the Circuit Court for Anderson County
No. A8LA0417 Donald Ray Elledge, Judge

No. E2010-00965-WC-R3-WC - Filed January 28, 2011

An employee of a company providing security services injured a knee at his place of employment. The trial court denied workers' compensation benefits. Because the injury arose out of the employment and is not idiopathic in nature, the employee is entitled to recovery under the statute. The judgment is reversed. The cause is remanded to the trial court for a determination of benefits.

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

GARY R. WADE, J., delivered the opinion of the court, in which WALTER C. KURTZ, SR. J., and JON KERRY BLACKWOOD, SR. J., joined.

Ryan C. Edens, Knoxville, Tennessee, and John Dana Agee, Clinton, Tennessee, for the appellant, Daniel Veler.

Jeffrey Clyde Taylor, Morristown, Tennessee, for the appellee, Wackenhut Services, Inc.

MEMORANDUM OPINION

On March 24, 2008, Daniel Veler (the "Employee"), injured his left knee while entering data for his employer, Wackenhut Services, Inc. (the "Employer"), a company that provides security services on a contractual basis for various entities in Oak Ridge. The Employer denied workers' compensation benefits, claiming that the injury did not arise out of the employment. The Employee filed suit on June 4, 2009.

The proof offered at trial indicated that the Employee, while stationed at a desk at his place of employment, suffered injuries to his left knee as he stood to reach for forms stored on a shelf above his head and to his left. The Employee, sitting in a four-wheeled chair,

pushed himself away from his computer and turned his chair to the left. When he stood up to retrieve the forms, he felt pain and a pop in the knee. He immediately sat back down in his chair. The Employee testified that he did not strike his knee against the desk and did not trip or stumble. He provided a timely written report of the incident to the Employer. Fifty-five years of age at the time of his injury, the Employee had an average weekly wage of $1,686.35.

Two weeks after the injury, Dr. Richard Cunningham, an orthopedic surgeon, examined the Employee and diagnosed tears to his left anterior cruciate ligament and the meniscus. He performed arthroscopic surgery on April 25, 2008. By September, after a period of recovery and therapy, the Employee reached maximum medical improvement. Dr. Cunningham, testifying by deposition, assigned a permanent impairment rating of four percent to the body as a whole and nine percent to the lower left extremity, but placed no permanent restrictions on the Employee's activities at work.[1]

The Employee returned to work in the same position he had held prior to his injury. Thereafter, he was able to perform all of the duties required by his job, but he experienced continuous pain in the knee and could no longer use a stationary bicycle or treadmill, which he had previously done. The Employee had $11,828 in unpaid medical expenses as a result of the injury.

The Employee presented testimony of his educational background and his work experience. He had dropped out of high school, but eventually obtained a graduate equivalent diploma. Later, he attended Roane State Community College for two years. His prior work history included construction work and janitorial service.[2]

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[1] The Employer underscores the importance of a portion of Dr. Cunningham's deposition:

> Q: [B]ased on the history [the Employee] gave you, you cannot identify and tell the court that any specific hazard or condition that was associated with his employment . . . caused his knee to pop, can you?
>
> A: Nothing at all.
>
> Q: And, Doctor, is it true that Mr. Veler's injury could . . . just as likely have happened had he been sitting in the chair at home and stood up?
>
> A: It's possible.

[2] The Employee was the only live witness at trial. The trial court made no assessment as to his credibility.

At the conclusion of the proof, the trial court, after acknowledging the toughness of his "decision because of conflicting case law," denied recovery, finding that the injury was idiopathic in nature. While determining that the Employee had been injured in the course of his employment, the trial court ruled that because there had to be "a causal connection between the conditions under which the worker is required to perform and a resulting injury," the Employee's injury did not arise out of the employment as required by law. After observing that the holding in McConkey v. Vonore Police Department, No. E2005-01342-WC-R3-CV, 2006 WL 709042 (Tenn. Workers' Comp. Panel Mar. 21, 2006), suggested that the Employee was entitled to recover, the trial court perceived that three prior cases, Dickerson v. Invista Sarl, No. E2006-02144-WC-R3-WC, 2007 WL 4973735 (Tenn. Workers' Comp. Panel Oct. 18, 2007),[3] Connor v. Chester County Sportswear Co., No. W2001-02114-WC-R3-CV, 2002 WL 31348662 (Tenn. Workers' Comp. Panel Oct. 18, 2002), and Martin v. Flagship Airlines, No. 01S01-9310-CH-00145, 1994 WL 902440 (Tenn. Workers' Comp. Panel June 27, 1994), indicated that the Employee was not entitled to recover benefits. After the ruling, however, the trial court acknowledged that the decision of the panel in Martin, rather than being favorable precedent for the Employer, had actually overturned the trial court's denial of recovery under similar circumstances.

Standard of Review

In Tennessee workers' compensation cases, review of a trial court's findings of fact is de novo, accompanied by a presumption of correctness of the finding, unless the evidence preponderates otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2008); Wilhelm v. Krogers, 235 S.W.3d 122, 126 (Tenn. 2007). "This standard of review requires us to examine, in depth, a trial court's factual findings and conclusions." Galloway v. Memphis Drum Serv., 822 S.W.2d 584, 586 (Tenn. 1991) (citing Orman v. Williams Sonoma, Inc., 803 S.W.2d 672, 675 (Tenn. 1991)). Having seen and heard the in-court testimony, the trial court is entitled to considerable deference to its factual findings as to credibility or its assessment of the weight to be given the testimony. Trosper v. Armstrong Wood Prods., 273 S.W.3d 598, 604 (Tenn. 2008); Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 167 (Tenn. 2002). The same deference need not be afforded findings based upon documentary evidence, such as depositions. Glisson v. Mohon Int'l, Inc./Campbell Ray, 185 S.W.3d 348, 353 (Tenn. 2006). On questions of law, our standard of review is de novo with no presumption of correctness. Wilhelm, 235 S.W.3d at 126 (citing Perrin v. Gaylord Entm't Co., 120 S.W.3d 823, 826 (Tenn. 2003)). "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).

[3] The author of this opinion and one of the other two panelists participated in Dickerson.

Applicable Law

The workers' compensation statute in Tennessee permits recovery for injury "by accident arising out of and in the course of employment." Tenn. Code Ann. § 50-6-103(a) (2005). It is well-established that an injury must both "arise out of" as well as be "in the course" of employment in order to be compensable under the workers' compensation statute. Thornton v. RCA Serv. Co., 221 S.W.2d 954, 955 (Tenn. 1949). The terms are not synonymous. Blankenship v. Am. Ordnance Sys., LLS, 164 S.W.3d 350, 354 (Tenn. 2005). "[T]he phrase 'in the course of' refers to time, place and circumstances, and 'arising out of' refers to cause or origin." Brimhall v. Home Ins. Co., 694 S.W.2d 931, 932 (Tenn. 1985). "[A]n injury by accident to an employee is 'in the course of' employment if it occurred while he was performing a duty he was employed to do; and it is an injury 'arising out of' employment if caused by a hazard incident to such employment." Travelers Ins. Co. v. Googe, 397 S.W.2d 368, 371 (Tenn. 1965) (citing Shubert v. Steelman, 377 S.W.2d 940, 942 (Tenn. 1964)). "An accidental injury arises out of one's employment when there is apparent to the rational mind, upon a consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury." Fink v. Caudle, 856 S.W.2d 952, 958 (Tenn. Workers' Comp. Panel 1993); see also Cunningham v. Shelton Sec. Serv., Inc., 46 S.W.3d 131, 135-36 (Tenn. 2001). "[G]enerally, an injury arises out of and in the course of employment if it has a rational causal connection to the work and occurs while the employee is engaged in the duties of his employment . . . ." Hall v. Auburntown Indus., Inc., 684 S.W.2d 614, 617 (Tenn. 1985); see also Wilhelm, 235 S.W.3d at127; Fritts v. Safety Nat'l Cas. Corp., 163 S.W.3d 673, 678 (Tenn. 2005) (stating that when there is a causal connection between the conditions under which the work is required to be performed and the resulting injury, the injury arises out of the employment); Orman, 803 S.W.2d at 676.

"'Except in the most obvious, simple and routine cases,' a claimant must establish by expert medical evidence the causal relationship between the claimed injury and the employment activity." Cloyd v. Hartco Flooring Co., 274 S.W.3d 638, 643 (Tenn. 2008) (quoting Orman, 803 S.W.2d at 676). The relationship is to be established by the preponderance of the expert medical testimony, as supplemented by the lay evidence. Id. "'Although causation in a workers' compensation case cannot be based upon speculative or conjectural proof, absolute certainty is not required because medical proof can rarely be certain . . . .'" Id. (quoting Clark v. Nashville Mach. Elevator Co., 129 S.W. 3d 42, 47 (Tenn. 2004)).

An idiopathic injury is one that has an unexplained origin or cause, and generally does not arise out of the employment unless "some condition of the employment presents a peculiar or additional hazard." Shearon v. Seaman, 198 S.W.3d 209, 214 (Tenn. Ct. App. 2006). Examples of injuries deemed idiopathic by our Supreme Court have included an

unexplained seizure or fainting episode, see, e.g., Sudduth v. Williams, 517 S.W.2d 520, 523 (Tenn. 1974), and a knee "giving way" resulting in a fall, see, e.g., Greeson v. Am. Lava Corp., 392 S.W.2d 931, 934-35 (Tenn. 1965). An injury caused by purely personal conditions, as opposed to an employment condition, qualifies as idiopathic. See Thomas A. Reynolds, 20 Tennessee Practice Tennessee Workers' Compensation Practice and Procedure with Forms, § 10:7 (2005). An injury may arise out of employment, however, if causally related to the activity required by the employer, even if that activity bears no relationship to the normal work duties of the employee. Young v. Taylor-White, LLC, 181 S.W.3d 324 (Tenn. 2005).

Analysis

In this appeal, the Employee argues that the trial court erroneously determined that his injuries were idiopathic in nature, thus precluding any award of benefits. In response, the Employer asserts that the evidence does not preponderate against the finding by the trial court.

The Employee first relies upon the holding in McConkey v. Vonore Police Department. In that case, McConkey, a police department employee with administrative duties, suffered a sudden knee injury when he rose from his desk. 2006 WL 709042, at *1. The McConkey panel granted benefits, citing the proposition that "[a]ny reasonable doubt as to whether an injury arose out of the employment is to be resolved in favor of the employee." Id. at *2 (citing Bell v. Kelso Oil Co., 597 S.W.2d 731, 734 (Tenn. 1980)). Similarly, the Employee relies on the holding in Martin v. Flagship Airlines, where a gate agent for an airline, who felt a sharp pain in her knee as she descended the steps of an aircraft, received benefits. 1994 WL 902440, at *1. The rationale of the Martin decision was as follows:

> An accidental injury arises out of one's employment when there is apparent to the rational mind, upon a consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury, and occurs in the course of one's employment if it occurs while an employee is performing a duty she was employed to do.

Id. at *2. This panel cannot distinguish either of the cases cited by the Employee from the circumstances before us.

On the other hand, the trial court relied in great measure on the recent holding in Dickerson v. Invista Sarl that the employee's fall at work was idiopathic, and thus not compensable. That case is, however, distinguishable on the facts from both McConkey and

Martin.[4] Dickerson "had a long history of knee problems," including "at least two prior surgeries on the knee," and "[m]edical records . . . indicate[d] that he had [previously] been diagnosed with arthritis and walked with a limp." 2007 WL 4973735, at *1. He was injured while "walking up the steps, holding onto the hand rail" when his knee buckled. Id. Similarly, the claimant in Greeson v. American Lava Corp. had, prior to his work injury, undergone surgery to remove a tumor from the lower portion of his spinal column. 392 S.W.2d at 932. As a result, he experienced "a considerable atrophy of the right calf, the right lower extremity and the quadriceps muscles." Id. The condition progressively got worse, according to medical testimony. Id. at 933. Just before he began to walk up a stairwell at his workplace, he experienced "a sudden loss of feeling in his right leg" and fell down. Id. Because the injury was idiopathic, benefits were denied. Id. at 934-35.

The case before us is unusual in that the Employee suffered a relatively serious injury from a rather innocuous work activity; however, the basic principle of the workers compensation statutory scheme is its remedial purpose. Tenn. Code Ann. § 50-6-116 (2008);[5] Trosper, 273 S.W.3d at 609 & n.5. Historically, our courts have interpreted this statutory mandate to favor the employee under circumstances where there is reasonable doubt surrounding the compensability of a work-related claim. That is, while the evidence of causation must not be speculative or conjectural, absolute "certainty is not required, and reasonable doubt must be resolved in favor of the employee." Glisson, 185 S.W.3d at 354; see also Hall, 684 S.W.2d at 617; Bell, 597 S.W.2d at 734.

According to one treatise, non-compensable, idiopathic injuries, or "risks personal to the employee," typically fall into three major categories: (1) "Internal Weakness Causing Fall"; (2) "Internal Weakness Aggravated by Employment"; and (3) "Imported-Danger Cases." See 1-9 Larson's Workers' Compensation Law §§ 9.01-.03 (Lexis 2010). The general scope of coverage for such injures is described as follows:

> Injuries arising out of risks or conditions personal to the claimant do not arise out of the employment unless the employment contributes to the risk or aggravates the injury. When the employee has a preexisting physical weakness

[4] The trial court also relied upon Connor v. Chester County Sportswear Co., in which the employee injured her knee when she stood and twisted to flush the toilet while using the restroom at work, 2002 WL 31348662, at *1, and the panel concluded that the injury maintained no rational connection to the employee's work duties, id. at *3. Like the McConkey panel, 2006 WL 709042, at *2, we believe that Connor is not controlling because its facts and circumstances are distinguishable from this case.

[5] "[T]his chapter is declared to be a remedial statute, which shall be given an equitable construction by the courts, to the end that the objects and purposes of this chapter may be realized and attained."

> or disease, this employment contribution may be found either in placing the employee in a position which aggravates the effects of a fall due to the idiopathic condition, or in precipitating the effects of the condition by strain or trauma.

1-9 Larson's Workers' Compensation Law Scope (Lexis 2010) (emphasis added).[6] By the application of this standard, the injuries in Dickerson and Greeson, because of the pre-existing conditions of each claimant and the absence of any contributing cause associated with the employment, were properly classified as idiopathic.

In this case, however, the injuries to the Employee were casually related to the performance of his job responsibilities. His duties included gaining access to forms to be filled out, and his work required him to reach above his head to retrieve those forms. Unlike in Dickerson and Gleeson, there was no evidence of any prior infirmity that might create a risk of a serious knee injury that was personal to the Employee.[7] The claim, therefore, is compensable. In Distinctive Builders of Panama City, Inc. v. Walker., 518 So. 2d 1351 (Fla. Dist. Ct. App. 1988), an employee, while seated at his desk, turned to his left to reach for a set of blueprints. While doing so, he experienced intense pain and became paralyzed from the neck down. Id. at 1352. The employee did not have a prior history of back pain or troubles. Id. Because the case was distinguishable from one in which an idiopathic condition was the cause of the injury, as the employee's "turning and bending motions were determined to be the sole cause of his sudden paralysis," and because there was no personal

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[6] The "Internal Weakness Causing Fall" section of Larson's deals with the compensability of injuries where the employee suffers a physical event completely unrelated to the employment (i.e., a heart attack or seizure), falls, and the consequences of the fall cause some other injury (such as a skull fracture or a broken bone). Compensable falls are traditionally those where the employee has fallen onto dangerous machinery or from a great height "because the employment put the employee in a position where the consequences of blacking out were markedly more dangerous than if the employee had been in a more benign location," 1-9 Larson's Workers' Compensation Law § 9.01, but the rationale has been extended to falls onto level floor. The "outer boundary" of this rule is found in George v. Great Eastern Food Products, Inc., 207 A.2d 161 (N.J. 1965), where the New Jersey Supreme Court allowed recovery for injuries suffered as a result of an idiopathic fall on a level concrete floor; that court, relying on the principle that the Employer must take the employee as he is, found that the impact with the concrete floor was "a risk of this employment," thereby satisfying the "arising out of" requirement for compensability. Id. at 163.

[7] The Employee did testify on cross examination that he had previously obtained workers' compensation benefits for injuries to both his left and right knees. Specifically, he testified that while rehabilitating a work-related injury to his right knee that occurred in June of 2004, his left knee began to bother him. The doctor conducted an MRI on the left knee, but informed the Employee that the pain in that knee was likely caused by the extra stress being placed on it as a result of the right knee injury. The Employee filed a claim for benefits for his left knee, which he and the Employer later settled for $1,800.

risk involved, the Florida court found the injury compensable, observing that "'[a]ny employment contribution . . . is enough, because it is greater than the zero employee contribution.'" Id. at 1343 (quoting 1B A. Larson, The Law of Workmen's Compensation, § 38.83(b) (1987)).

Rising from a chair to reach for a form is not typically hazardous. Nevertheless, these circumstances are practically indistinguishable from an injury suffered by an employee while bending over to pick up a tool or any other instrument related to work duties. Finally, when a covered employee suffers an injury arising out of the course of employment, the employer is required to provide all medical and hospital care that is necessary on account of the injury. City of Bolivar v. Jarrett, 751 S.W.2d 137, 139 (Tenn. 1988). Thus, the Employee is entitled to medical costs.

Conclusion

The judgment is reversed and the cause is remanded to the trial court for an award of benefits in accordance with law and for such other proceedings, if any, as may be appropriate. Costs are taxed to the Employer, Wackenhut Services, Inc., for which execution may issue if necessary.

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GARY R. WADE, JUSTICE

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
October 25, 2010 SESSION

DANIEL VELER VS. WACKENHUT SERVICES INC.

Circuit Court for Anderson County
No. 1-587-08

No. E2010-00965-WC-R3-WC - Filed January 28, 2011

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 appeals 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 of this appeal are taxed to the Employer, Wackenhut Services, Inc., for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM