

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT JACKSON  
August 23, 2010 Session

**PRIANGLAM BROOKS v. CORRECTIONAL MEDICAL SERVICES**

**Appeal from the Chancery Court for Shelby County  
No. CH-07-1438-3      Kenny W. Armstrong, Chancellor**

---

**No. W2010-00266-WC-R3-WC - Mailed January 19, 2011; Filed February 25, 2011**

---

Employee sustained a compensable injury to her lower back. Employer initially provided medical treatment, but Employer's insurer subsequently declined to provide additional medical treatment. Employee sought treatment on her own. Her treating physician found that she retained a 15% permanent impairment as a result of her injury. An examining physician for Employer opined that she had no impairment. A physician was selected through the Medical Impairment Registry ("MIR") process. That physician also stated that Employee had no permanent impairment. The trial court found that Employee rebutted the presumption of correctness of the MIR physician's rating by clear and convincing evidence pursuant to Tennessee Code Annotated section 50-6-204(d)(5) and awarded 20% permanent partial disability. Both sides appealed.<sup>1</sup> We affirm the judgment of the trial court.

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

TONY A. CHILDRESS, SP. J., delivered the opinion of the Court, in which JANICE M. HOLDER, J., and DONALD P. HARRIS, SR. J., joined.

Gary H. Nichols and Mildred Sabbatini, Memphis, Tennessee, for the appellant, Correctional Medical Services.

Steve Taylor, Memphis, Tennessee, for the appellee, Prianglam Brooks

---

<sup>1</sup> 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.

## MEMORANDUM OPINION

### Factual and Procedural Background

On July 25, 2006, Prianglam Brooks (“Employee”) was working for Correctional Medical Services (“Employer”) as a registered nurse when she was injured while pushing a medication cart. Employee promptly reported the injury to Employer, which referred her to a local minor medical clinic for treatment. Employee was prescribed physical therapy, but that treatment was discontinued when it was discovered that Employee was pregnant. Employer’s insurer declined to provide additional medical treatment, and Employee sought treatment with Dr. Tewfik Rizk, a physiatrist.

Employee filed a complaint against Employer seeking workers’ compensation benefits for an injury she sustained at work. Employer asserted that Employee suffered no permanent disability as a result of the injury. The trial court held a hearing to determine Employee’s permanent partial disability from the injury, if any.

Dr. Rizk testified by deposition. Employee was under Dr. Rizk’s care from October 2005 through July 2009. Dr. Rizk diagnosed Employee as having sacroiliac joint dysfunction and right L5-S1 facet syndrome. Dr. Rizk ordered physical therapy, prescribed various medications, and performed epidural nerve block injections. Employee had a positive response to the injections, but the relief provided by the injections was temporary. Dr. Rizk testified that Employee’s response to the injections confirmed his diagnosis of sacroiliac joint dysfunction and right L5-S1 facet syndrome. Dr. Rizk opined that Employee had a permanent anatomical impairment of 15% to the body as a whole. He recommended that Employee avoid lifting weights greater than twenty pounds and repetitive movement of the lumbar spine.

Dr. Rizk testified that the fifth edition of the American Medical Association Guides (“AMA Guides”) did not directly address sacroiliac dysfunction or facet syndrome. Thus, he based his impairment rating on the Diagnosis Related Estimate (“DRE”) tables applicable to lumbar spine injuries, and his impairment rating of Employee fell between category III and IV of those tables. On cross-examination, Dr. Rizk conceded that Employee exhibited none of the three objective findings listed in the DRE table for those categories.

At the request of Employer’s attorney, Dr. Stephen Waggoner, an orthopaedic surgeon, conducted independent medical examination of Employee on April 8, 2008. Dr. Waggoner reviewed Dr. Rizk’s notes, Employee’s physical therapy records, and the results of a Magnetic Resonance Imaging (“MRI”) scan that had been performed before Employee came under Dr. Rizk’s care. Although Employee exhibited “tenderness” at the L4-5 level

and over the right sacroiliac joint, the results of Dr. Waggoner's physical examination of Employee were normal. He opined that Employee had 0% impairment according to the AMA Guides. Dr. Waggoner based his opinion on the absence of objective findings, and he placed her in category I of the DRE tables. Dr. Waggoner noted that Dr. Rizk's impairment rating was at or above the level normally assigned to patients who had undergone spinal surgery.

In light of the disparity between the impairment ratings assigned by Drs. Rizk and Waggoner, Employer requested that an examination be performed by an independent medical examiner from the Medical Impairment Registry ("MIR"), pursuant to Tennessee Code Annotated section 50-6-204(d)(5) (2008). Dr. Owen Tabor, an orthopaedic surgeon, was selected to conduct the examination, which took place on September 11, 2008. Although Dr. Tabor did find that Employee had some limitation of her range of motion, the results of his examination of Employee were otherwise normal. Dr. Tabor diagnosed Employee as having "lumbosacral pain without evidence of orthopaedic or neurologic deficit." He stated that "there was nothing in the record to support or there was nothing from an objective study to support either a diagnosis of sacroiliac disorder or facet syndrome," and he assigned Employee 0% impairment. Dr. Tabor noted that Dr. Rizk's epidural injections had been performed without a fluoroscope, and for that reason, he implicitly discounted their value as a diagnostic tool. On cross-examination, Dr. Tabor agreed that the AMA Guides do not directly address sacroiliac dysfunction.

Dr. Rizk testified in his deposition that he had reviewed Dr. Tabor's report and disagreed with Dr. Tabor's impairment rating. Dr. Rizk observed that Dr. Tabor did not perform any of the maneuvers to test for sacroiliac joint dysfunction despite knowing Dr. Rizk's diagnosis of sacroiliac joint dysfunction. Dr. Rizk further testified that Dr. Tabor's finding that Employee had some limitation in her range of motion is incongruent with Dr. Tabor assigning Employee 0% impairment. Dr. Rizk testified that, according to the AMA Guides, Dr. Tabor's findings regarding Employee limited range of motion is consistent with an assignment of 10% impairment to the body as a whole.

David Strausser, a vocational evaluator, testified on behalf of Employee. Mr. Strausser conducted his initial evaluation of Employee in August 2007, and he concluded that Employee had sustained a vocational loss of 51%. The 51% vocational loss was based on the restrictions Dr. Rizk imposed on Employee. Employee obtained a master's degree in nursing after Mr. Strausser's initial evaluation. Mr. Strausser therefore revised his initial estimate of her vocational loss to 40%. Based on the absence of restrictions later suggested by Drs. Waggoner and Tabor, Mr. Strausser testified that Employee would have sustained 0% vocational loss.

Employee was thirty-six years old at the time of trial. She had a bachelor's degree in psychology from Union University and a second bachelor's degree in nursing from Baptist College of Health Sciences. After her injury, she earned a master's degree in nursing and became a certified nurse practitioner. Employee resigned from Employer shortly after her injury and worked part-time as a registered nurse while obtaining her master's degree. At the time of trial, Employee was employed as a nurse practitioner in Ardmore, Oklahoma, and she was earning approximately \$80,000 per year in that position. Employee had earned approximately \$56,000 per year while working for Employer. Employee testified that she continued to have lower back and leg pain; that she took Ultram, a prescription medication; and that she used a transcutaneous electrical nerve stimulation ("TENS") unit regularly. Employee stated that she was limited in her ability to lift and bend, and that pain sometimes interfered with her ability to sleep.

In a letter to counsel, the trial court ruled that Employee had introduced clear and convincing evidence rebutting the statutory presumption in favor of the 0% impairment assigned by Dr. Tabor pursuant to Tennessee Code Annotated section 50-6-204(d)(5) and it awarded Employee 20% permanent partial disability ("PPD"). Employer appealed, contending that the trial court erred by finding that Employee had rebutted the presumption of correctness accorded to the independent medical examiner's impairment rating. Alternatively, Employer argues that the award is excessive. Employee argues that the award is inadequate.

### **Standard of Review**

The standard of review of issues of fact is "de novo upon the record of the trial court, accompanied by a presumption of correctness of the finding, 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's demeanor and to hear in-court testimony. Madden v. Holland Grp. of Tenn., Inc., 277 S.W.3d 896, 898 (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 Sys., Inc., 272 S.W.3d 560, 571 (Tenn. 2008). A trial court's conclusions of law are reviewed de novo on the record with no presumption of correctness. Seiber v. Reeves Logging, 284 S.W.3d 294, 298 (Tenn. 2009).

## Analysis

### 1. *MIR Impairment Rating*

Tennessee Code Annotated section 50-6-204(d)(5) provides that the impairment assigned by a doctor selected through the MIR process “shall be presumed to be the accurate impairment rating” unless rebutted by clear and convincing evidence. The Supreme Court has stated: “Clear and convincing evidence means evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence.” Hodges v. S.C. Toof & Co., 833 S.W.2d 896, 901 n.3 (Tenn. 1992). When addressing what may be required to rebutted the presumption found in Tenn. Code Ann. § 50-6-204(d)(5), we have stated that “[a] straightforward interpretation of this standard favors, or even requires, the presentation of affirmative evidence that an MIR physician had used an incorrect method or an inappropriate interpretation of the AMA Guides to overcome the statutory presumption.” Tuten v. Johnson Controls, Inc., No. W2009-1426-SC-WCM-WC, 2010 WL 3363609, at \*6 (Tenn. Worker’s Comp. Panel Aug. 25, 2010).

The trial court found that the Employee successfully carried her burden and therefore adopted the impairment rating assigned by Dr. Rizk. The trial court explained its decision as follows:

Based on my observation of [Employee] during her testimony, I find her to be credible and find her testimony regarding back pain and restrictions in her daily living activities because of her back pain to be believable.

Based on the medical proof, especially Dr. Rizk’s findings, the MRI finding of a mild bulge at L5-S1 and Dr. Tabor’s findings regarding loss of range of motion in the spine, and considering the credible testimony of [Employee], it is the Court’s finding based on clear and convincing proof that there is substantial doubt about the correctness of Dr. Tabor’s zero impairment rating as well as Dr. Waggoner’s rating. Indeed, as noted by Dr. Rizk in his deposition testimony, utilizing the tables in the AMA Guide for impairment due to abnormal motion of the lumbar region, [Employee’s] loss of motion alone as found by Dr. Tabor results in a ten (10) percent impairment based upon the applicable tables.

After fully considering the relevant provisions of the AMA guide, the Court adopts the fifteen (15) percent rating by Dr. Rizk. This is not a case where a zero rating is appropriate. Dr. Rizk treated [Employee] for more than three years and confirmed his diagnosis by administering blocks into the sacroiliac

joint and the facet joint. These blocks relieved [Employee's] back pain until the anesthetics used in the injections wore off. This is a clinically recognized method to confirm a diagnosis regarding the back. Dr. Tabor's and Dr. Waggoner's one-time evaluation[s] of [Employee] [are] not deserving of the same weight and consideration as Dr. Rizk's in-depth evaluation over a three (3) year period.

It is undisputed that Employee sustained a work related injury, and the question presented to the trial court was not merely the degree of permanent impairment arising from that event, but the existence of any impairment. The MIR physician opined that there was 0% impairment. Employee testified that she had chronic pain and limitations in her activities of daily living since being injured. Dr. Rizk's testimony and records of his observation of Employee over the course of more than three years substantiated that testimony. Dr. Rizk's diagnosis was confirmed by Employee's response to the injections which he performed. Dr. Tabor, though critical of Dr. Rizk's method, agreed that this procedure could be a valid diagnostic tool. Employer is correct that Dr. Rizk did not find diminished range of motion. However, as Dr. Rizk observed when discussing Dr. Tabor's deposition testimony, Dr. Tabor found diminished range of motion in his examination of Employee. After reviewing Dr. Tabor's finding, Dr. Rizk stated that a person with the degree of loss of range of motion such as that found by Dr. Tabor would have at least an impairment rating above 0% and, according to the AMA Guides, would have an impairment rating of 10% to the body as a whole.

When deciding whether or not an employee has rebutted the statutory presumption of correctness enjoyed by an MIR physician's impairment rating, the focus is on the evidence offered to rebut that physician's rating. The trial court considered its own observations of Employee, Employee's testimony, the medical proof, and the testimony of the physician who had treated employee for a number of years. Perhaps most importantly, Dr. Rizk's testimony reflected his disagreement with the MIR physician's testimony that Employee's impairment rating was 0% despite Employee's loss of range of motion. Considering this evidence in its totality, we are unable to conclude that the evidence preponderates against the trial court's finding that Employee rebutted the statutory presumption of the accuracy of Dr. Tabor's impairment rating by clear and convincing evidence.

## *2. Size of Award*

Employer contends the award is excessive. Specifically, it contends that Employee's vocational disability is minimal because she was able to obtain a master's degree and find a better-paying job after her injury. Employee, on the other hand, contends that the award is inadequate. Specifically, she points to Mr. Strausser's testimony that Dr. Rizk's restrictions limit her ability to perform nursing jobs that require movement of patients.

Employee, who is relatively young and well educated, is engaged in a highly skilled profession. While the injury she sustained limit some of the opportunities available to her, she has nevertheless been able to find and hold a position with an income substantially higher than her income at the time of the injury. In consideration of all factors, the trial court's award realistically reflects the effects of this injury, and we therefore conclude that the evidence does not preponderate against the amount of that award.

### **Conclusion**

The judgment of the trial court is affirmed. Costs are taxed to Correctional Medical Services and its surety, for which execution may issue if necessary.

---

TONY A. CHILDRESS, SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT JACKSON  
August 23, 2010

**PRIANGLAM BROOKS v. CORRECTIONAL MEDICAL SERVICES**

**Chancery Court for Shelby County  
No. CH-07-1438-3**

---

**No. W2010-00266-WC-R3-WC - Filed February 25, 2011**

---

**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, Correctional Medical Services, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM