

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
June 28, 2010 Session

WILLIAM W. GRIFFIN v. WALKER DIE CASTING, INC., ET AL.

**Appeal from the Circuit Court for Marshall County
No. 17,633 F. Lee Russell, Judge**

**No. M2009-01773-WC-R3-WC - Mailed - September 15, 2010
Filed - November 10, 2010**

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. The employee sought to compel the employer to provide a total left knee replacement surgery based upon court-approved settlement for a work-related left knee contusion. The trial court ordered the employer to provide the knee replacement surgery and awarded attorney's fees to the employee. The employer has appealed, arguing that the trial court erred by finding that the proposed surgery was causally related to the work injury. We agree and reverse the trial court's order.

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

JON KERRY BLACKWOOD, SR. J., delivered the opinion of the Court, in which WILLIAM C. KOCH, JR., J., and WALTER C. KURTZ, SR. J., joined.

Christen C. Blackburn, Nashville, Tennessee, for the appellants, Walker Die Casting, Inc. and Liberty Mutual Insurance Company.

John R. White, Shelbyville, Tennessee, for the appellee, William W. Griffin.

MEMORANDUM OPINION

Factual and Procedural Background

William Griffin was a tow motor driver for Walker Die Casting (hereinafter "Walker"). On December 18, 2006, he sustained a work-related injury when he felt a pop in his left knee while getting off the tow motor. Walker accepted the injury as and provided

Mr. Griffin with medical treatment with Dr. Jeffrey Adams, an orthopaedic surgeon. Dr. Adams diagnosed Mr. Griffin's injury as a left knee contusion superimposed on degenerative joint disease. On March 29, 2007, Dr. Adams released Mr. Griffin to full duty and assigned him a permanent anatomical impairment of 0% to the left leg as a result of the December 18, 2006, injury.

The parties subsequently agreed to a settlement based upon 1.37% permanent partial disability to the left knee, resulting in a total payment of \$1,500, which the trial court approved on June 22, 2007. The order approving the settlement stated that Mr. Griffin would be entitled to receive "only future medical treatment which is reasonable and necessary for treatment of the work related injury as authorized by Tenn. Code Ann. § 50-6-204, and which is specifically authorized by a representative of the workers' compensation carrier."

After being released to full duty on March 29, 2007, Mr. Griffin continued to seek treatment from Dr. Adams, and later Dr. Frederick Wade, for bilateral degenerative joint disease of his knees. Mr. Griffin paid for this medical treatment through his personal health insurance. In August or September 2007, Mr. Griffin underwent a total knee replacement surgery for his right knee. After the surgery on his right knee, Mr. Griffin's left knee continued to give him trouble. On November 6, 2007, Dr. Wade noted that his left knee pain "has been exacerbated by his rehab for his right knee replacement." According to an August 20, 2008, medical record, Mr. Griffin told Dr. Wade that he had started working "on concrete at a press all day" (instead of driving the tow motor) because of personnel issues and that this new work had "aggravated his lower extremities more so." On October 29, 2008, Dr. Wade stated that Mr. Griffin was "standing on concrete everyday" and that "the pain [was] just increasing."

By March 20, 2009, Dr. Wade had recommended that Mr. Griffin have a left knee replacement "soon." In his note concerning that examination, Dr. Wade indicated that Mr. Griffin could not afford the procedure but that he had been given "lifetime medical" as a result of the 2006 contusion. Mr. Griffin decided to seek workers' compensation coverage for a left knee replacement. Walker denied the request.

On July 17, 2009, Mr. Griffin filed a motion requesting that Walker be ordered to provide him with a total knee replacement pursuant to the 2007 settlement. On August 10, 2009, the trial court granted Mr. Griffin's motion. Walker filed a motion to stay the order pending this appeal. The trial court denied Walker's motion to stay, and Mr. Griffin underwent the surgery on September 18, 2009. The court also awarded attorney's fees to Mr. Griffin in the amount of \$7,814.23.

The medical evidence in the record is limited to Mr. Griffin's medical records from

January 2007 through March 2009. Specifically, Mr. Griffin did not introduce any expert medical evidence in the form of live testimony, depositions, affidavits, or C-32s. The record contains doctors' notes from January 4, 2007; January 25, 2007; March 1, 2007; March 29, 2007; April 12, 2007; May 24, 2007; May 31, 2007; June 7, 2007; July 19, 2007; November 6, 2007; December 6, 2007; August 20, 2008; October 29, 2008; and March 20, 2009. None of these notes assert a causal relationship between the 2006 contusion and Mr. Griffin's need for a left knee replacement. In fact, after Dr. Adams released Mr. Griffin on March 29, 2007, none of the medical records even acknowledge the contusion injury until Dr. Wade's note of March 20, 2009, recalls that Mr. Griffin "did have an injury to this knee" and was given medical coverage that might help pay for the surgery. Instead, Mr. Griffin's medical records after March 29, 2007 refer consistently to his bilateral degenerative joint disease and left knee osteoarthritis as the conditions necessitating treatment.

Walker contends that the trial court erred by finding that the total knee replacement was reasonable and necessary for treatment of the 2006 work-related contusion. Walker also argues that the trial court erred by awarding attorney's fees to Mr. Griffin, and that the award was excessive. Mr. Griffin asserts that this appeal is frivolous.

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 findings, unless the preponderance of evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2008). Where the issues involve expert medical testimony and all the medical proof is documentary, as in this case, the reviewing court may draw its own conclusions about the weight and credibility of that testimony. *See Krick v. City of Lawrenceburg*, 945 S.W.2d 709, 712 (Tenn. 1997); *Orman v. Williams Sonoma, Inc.*, 803 S.W.2d 672, 676-77 (Tenn. 1991).

Analysis

"Except in the most obvious, simple and routine cases," a claimant in a workers' compensation case must establish by expert medical evidence the causal relationship between the claimed injury and the employment activity, and that relationship must be established by the preponderance of the expert medical testimony, as supplemented by the lay evidence. *Cloyd v. Hartco Flooring Co.*, 274 S.W.3d 638, 643 (Tenn. 2008). While absolute certainty with respect to causation is not required, *Fritts v. Safety Nat'l Cas. Corp.*, 163 S.W.3d 673, 678 (Tenn. 2005), the proof of the causal connection may not be speculative, conjectural, or uncertain, *Clark v. Nashville Mach. Elevator Co., Inc.*, 129 S.W. 3d 42, 47 (Tenn. 2004); *Simpson v. H.D. Lee Co.*, 793 S.W.2d 929, 931 (Tenn. 1990); *Tindall v. Waring Park Ass'n*, 725 S.W.2d 935, 937 (Tenn. 1987).

We conclude that Mr. Griffin failed to meet his burden of proving that the total knee replacement was causally related to the 2006 contusion. We note that a party who relies solely upon medical records, rather than expert medical testimony, does so at his own peril. See *Glisson v. Mohon Int'l Inc./Campbell Ray*, 185 S.W.3d 348, 355 (Tenn. 2006) (“relying on an employee’s medical records alone is a precarious—if not unwise—way to proceed in a workers’ compensation case”). In this case, the medical records introduced into evidence do not even purport to establish a causal relationship between the work-related contusion and the total knee replacement surgery. None of the medical records contained in the record either state or imply that Mr. Griffin’s need for a left knee replacement was causally related to the 2006 contusion of his left knee. The only reference to the contusion injury after March 29, 2007, does not appear in the context of medical treatment, but as a means of financing Mr. Griffin’s left knee replacement surgery.

Mr. Griffin argues that his own live testimony at the hearing on the motion to compel medical benefits sufficiently supplemented the medical records to establish causation. There is no transcript of that testimony in the record. Our Courts have “consistently held that an award may properly be based upon medical testimony to the effect that a given incident ‘could be’ the cause of the employee’s injury, when there is also lay testimony from which it reasonably may be inferred that the incident was in fact the cause of the injury.” *Reeser v. Yellow Freight Sys., Inc.*, 938 S.W.2d 690, 692 (Tenn. 1997). The limited expert medical evidence in this fails to establish, or even suggest, that the December 2006 injury “could be” the cause of Mr. Griffin’s subsequent need for left knee replacement surgery. In the absence of appropriate medical evidence, Mr. Griffin’s testimony on the subject is irrelevant. The absence of a transcript of that testimony from the record is, under the circumstances, of no consequence.

We are mindful of both our obligation to resolve all reasonable doubts as to causation in favor of the employee, *Phillips v. A. & H Constr. Co.*, 134 S.W.3d 145, 150 (Tenn. 2004), and of the presumption of correctness which attaches to the trial court’s findings, *Skinner v. CNA Ins. Co.*, 824 S.W.2d 164, 166 (Tenn. 1992). However, even taking those factors into account, we conclude that the evidence preponderates against the trial court’s finding that Mr. Griffin’s need for a left knee replacement in 2009 was causally related to the 2006 work-related contusion. We therefore find that the trial court erred by ordering Walker to provide the knee replacement.

In light of the foregoing findings, we also reverse the trial court’s award of attorney’s fees to Mr. Griffin. Finally, Walker having prevailed on this appeal, Mr. Griffin’s contention that the appeal is frivolous is not well taken and is denied.

Conclusion

The judgment of the trial court is reversed. The case is remanded to the trial court for entry of an order consistent with this opinion. Costs are taxed to William W. Griffin and his surety, for which execution may issue if necessary.

JON KERRY BLACKWOOD, SENIOR JUDGE