

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT NASHVILLE

June 19, 2017 Session Heard at Memphis

**TROY S. ALEXANDER v. NGMCO, LLC A/K/A GENERAL MOTORS,  
LLC**

**Appeal from the Circuit Court for Maury County  
No. 14707 Russell Parkes, Judge**

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**No. M2016-01480-SC-R3-WC – Mailed September 21, 2017  
Filed October 26, 2017**

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The employee worked for the predecessor to the defendant employer for many years and developed carpal tunnel syndrome. The previous employer underwent bankruptcy, and the defendant became the employee's new employer. After the employee developed more severe symptoms, he filed a claim for workers' compensation benefits. The employer initially paid employee temporary total disability benefits but denied employee's later claim for additional benefits, taking the position that the employee's symptoms were caused by pre-existing medical conditions. At trial, both sides presented expert medical testimony. The trial court held in favor of the employee and awarded benefits. The employer now appeals, and the appeal has been referred to the Special Workers' Compensation Appeals Panel pursuant to Tennessee Supreme Court Rule 51. We affirm.

**Tenn. Code Ann. § 50-6-225(a) (2014) (applicable to injuries occurring prior  
to July 1, 2014) Appeal as of Right;  
Judgment of the Circuit Court Affirmed**

HOLLY KIRBY, J., delivered the opinion of the court, in which JAMES F. RUSSELL, J., and RHYNETTE N. HURD, J., joined.

Jason A. Lee and Seth B. Wilson, Nashville, Tennessee, for the appellant, NGMCO, LLC, a/k/a General Motors, LLC.

Rocky McElhaney and Justin Hight, Nashville, Tennessee, for the appellee, Troy S. Alexander.

## OPINION

### FACTUAL AND PROCEDURAL BACKGROUND

Troy Alexander (“Employee”) began working for General Motors Corporation (“GM”) in 1981. Throughout his career, Employee worked a production job, as an operations technician. Initially, he worked at a GM plant in Lansing, Michigan. In 1990, Employee moved to Tennessee and began working at what was then known as GM’s Saturn plant.

Employee was diagnosed with carpal tunnel syndrome and cubital tunnel syndrome in 1992 or 1993. Upon this diagnosis he transferred to another area in the plant performing tasks that were less hand-intensive and he was able to continue working. Employee had several other chronic medical conditions including heart disease, hypothyroidism, diabetes, and bipolar disorder. In spite of these issues, he continued working as an operations technician without difficulty and with no treatment for his bilateral carpal tunnel syndrome and cubital tunnel syndrome. He continued working in the Tennessee plant until the end of 2009.

In 2009, General Motors went through a bankruptcy proceeding, and a new corporate entity, NGMCO, LLC, also known as General Motors, LLC, (“Employer”), became Employee’s new employer.<sup>1</sup> In January 2010, Employee returned to Lansing and continued working as an operations technician for Employer.

Two months after beginning work at the Lansing location, Employee was assigned to work in the plant’s “marriage” area. Employee performed several tasks in the marriage area. The tasks included attaching a protector to the fuel tank; work on the emergency brake; a “back shock” job; and bolting the front and the back of the car together. Additionally, Employee was required to attach a “banjo bolt” to the brake assembly. The latter task required Employee to repeatedly screw parts together by hand and then use a vibrating torque gun to tighten the parts together. Employee attached the banjo bolt to approximately 125 cars every day.

In the summer of 2011, after he had been working in the marriage area for about a year, Employee noticed that he was having difficulty baiting fishing hooks and that he was dropping things. His symptoms worsened through the summer. His hands began throbbing, he lost feeling and grip strength in his hands, and he was unable to hold

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<sup>1</sup> For a description of the bankruptcy proceedings, see *Cook v. Gen. Motors Corp.*, No. M2010-00272-WC-R3-WC, 2011 WL 590456 (Tenn. Workers Comp. Panel Feb. 16, 2011).

objects—he dropped coffee cups and other items as a result. He could not hold a fork, operate a zipper, or bait a fish hook. It became very painful for him to do his job, especially torquing the banjo bolt. Employee said that he had experienced some symptoms in the past, but nothing like the problems that he experienced in 2011; the 2011 problems were “one thousand times worse” than anything he had experienced before. There was never an event that caused his symptoms to suddenly worsen; his difficulty built up over time to the point that it became very annoying and very painful to do his job.

In August 2011, Employee reported his problem to Employer’s Internal Care Facility. He was again diagnosed with bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome, and was referred to Dr. John Thiel. Dr. Thiel recommended surgery and thus performed a right carpal tunnel release and cubital tunnel release procedure on Employee on October 24, 2011.<sup>2</sup> The same procedures were performed on Employee’s left arm on January 26, 2012. Employee testified that his hands were “great” after the surgeries. He returned to work for Employer without restrictions. He worked for one more year in Lansing and then transferred to Employer’s plant in Bowling Green, Kentucky. He worked at the Bowling Green plant for two years before retiring in 2014.

Employee filed for worker’s compensation benefits with the Michigan Bureau of Workers’ Disability Compensation in August 2011. Employee received workers’ compensation payments under Michigan law for temporary total disability during the weeks that he missed work because of his surgeries. On June 21, 2013, following an unsuccessful benefit review conference with Employer, Employee filed a complaint in the Circuit Court for Maury County, Tennessee, for additional benefits under the Tennessee Workers’ Compensation Act.<sup>3</sup> Employee demanded additional temporary total disability benefits, as well as permanent partial disability benefits. Trial commenced on April 15, 2016.

At trial, Employee contended that the worsening of his carpal tunnel and cubital tunnel conditions was primarily caused by his employment, and therefore compensable. Employer contended that Employee’s hand and arm problems were the direct result of pre-existing factors, specifically diabetes and hypothyroidism, and, therefore, were not compensable.

In support of his position, Employee submitted the deposition testimony of

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<sup>2</sup> In accordance with the “last day worked rule,” October 24, 2011 is the effective date of injury. *Bldg. Materials Corp. v. Britt*, 211 S.W.3d 706, 713 (Tenn. 2007).

<sup>3</sup> Employer later filed an amended complaint on December 21, 2013.

Richard Fishbein, M.D., an orthopedic surgeon who performed an independent medical evaluation (IME) of Employee on April 9, 2013. Prior to examining Employee, Dr. Fishbein reviewed the records of the treating physicians in Michigan and the EMG studies performed on Employee. Dr. Fishbein reported that the physicians in Michigan had accurately diagnosed Employee with bilateral carpal tunnel syndrome and cubital tunnel syndrome and that surgery was required to treat the condition. Employee provided Dr. Fishbein with a history regarding his medical conditions and employment that was consistent with his trial testimony, as set out above. Dr. Fishbein reported in his IME that Employee described how he repetitively used his upper extremities and hands to beat garnishing and operate vibrating guns. Dr. Fishbein noted that Employee (who is right-handed), had a more severe condition on his right upper extremity than his left upper extremity. Dr. Fishbein acknowledged that Employee had a pre-existing condition that began in 1992 or 1993, and that factors contributing to the pre-existing condition included Employee's diabetes, hypothyroidism, and long work history. However, Dr. Fishbein agreed with Employee's counsel that the work activities Employee described can cause worsening of existing carpal tunnel syndrome and cubital tunnel syndrome. He further opined to a reasonable degree of medical certainty that there was an advancement or worsening of Employee's condition primarily caused by the stress put on his elbows, wrists, and fingers in performing his job duties for Employer in Lansing.

Employer submitted the testimony of Philip Coogan, M.D., an orthopedic surgeon specializing in treatment of the hand. Dr. Coogan examined Employee on November 10, 2014. Employee gave Dr. Coogan the same medical history that he gave to Dr. Fishbein. However, Dr. Coogan disagreed with Dr. Fishbein's opinion about the cause of Employee's arm problems that he experienced before surgery, stating on direct examination that Employee's work for Employer was not the primary cause of those problems. In support of his opinion, Dr. Coogan pointed out that: Employee's symptoms began in approximately 1992; there was a family history of carpal tunnel syndrome; Employee had insulin-dependent diabetes, a known contributor to carpal tunnel syndrome; and hypothyroidism is also a known contributor to carpal tunnel syndrome. Dr. Coogan further testified that, since 2009, "the role of occupational use in the production of carpal tunnel [syndrome] is somewhat controversial" in the medical profession, but the role of diabetes as a cause of carpal tunnel syndrome is not controversial. Dr. Coogan stated that most cases of carpal tunnel syndrome are idiopathic, without an identifiable cause, but the combined effect of diabetes and thyroid disease is the primary cause of Employee's carpal tunnel syndrome rather than his occupational use.

During cross-examination, Dr. Coogan testified that symptoms or signs that indicate a worsening or advancement of carpal tunnel syndrome and cubital tunnel syndrome are more numbness and more pain. Dr. Coogan agreed that Employee clearly

experienced significantly increased symptoms while he was working on his job assignment in Lansing. He acknowledged several times during his testimony that people with carpal tunnel syndrome become more symptomatic when they engage in certain activities and that Employee's increased symptoms are not surprising. Despite Employee's increased symptoms, Dr. Coogan maintained that he "[could not] say that [Employee's] carpal tunnel was anatomically worsened by his job." He testified that he did not have any "scientifically defensible data to say that the activity that [Employee] was doing is the anatomic cause of his carpal tunnel."

The trial court took the case under advisement and later issued its findings and conclusions in a written order. At the outset, it found Employee to be a credible witness. The trial court reviewed Tennessee Code Annotated section 50-6-102(12) as it existed on the date of Employee's 2011 injury and concluded that Employee had carried his burden of proof under that statute. The trial court awarded benefits in accordance with the parties' pretrial stipulations.

Employer now appeals, contending that the trial court's interpretation of the statute was erroneous. In the alternative, Employer contends that, even if the trial court's interpretation of section 50-6-102(12) was correct, Employee nevertheless failed to sustain his burden of proof.

#### STANDARD OF REVIEW

We review the trial court's findings of fact de novo upon the record, according them a presumption of correctness, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2)(2014) (applicable to injuries occurring prior to July 1, 2014). "When the trial court has heard in-court testimony, considerable deference must be afforded in reviewing the trial court's findings of credibility and assessment of the weight to be given to that testimony." *Tryon v. Saturn Corp.*, 254 S.W.3d 321, 327 (2008). "However, no similar deference need be afforded to a trial court's findings based upon documentary evidence such as depositions." *Id.* "Similarly, appellate courts afford no presumption of correctness to a trial court's conclusions of law." *Id.* Thus, issues of statutory construction are reviewed de novo on appeal. *Seiber v. Reeves Logging*, 284 S.W.3d 294, 298 (2009). We also note that, as of the date of injury in this case, Tennessee workers' compensation statutes still included a provision stating that the statutes are remedial in nature and are to be construed liberally in favor of the employee. Tenn. Code Ann. § 50-6-116 (2008); *Great American Indem. Co. v. Friddell*, 280 S.W.2d 908, 908 (1955).<sup>4</sup>

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<sup>4</sup> For injuries occurring *on or after* July 1, 2014, Tennessee's workers' compensation statutes "shall not be remedially or liberally construed" and "shall not be construed in a manner favoring either the employee or the employer." Tenn. Code Ann. § 50-6-116 (2014) (applicable to injuries occurring on

## ANALYSIS

Employer first contends that, under the language of the applicable statute, an injury that is only an “advancement” of a pre-existing cumulative trauma condition is not compensable. Tenn. Code Ann. § 50-6-102(12) (2014) (applicable to injuries occurring prior to July 1, 2014). It argues that Employee’s overall conditions of carpal tunnel syndrome and cubital tunnel syndrome were caused by non-work factors, such as Employee’s diabetes and hypothyroidism, so the conditions were not primarily caused by his employment. Employer submits that any work-related advancement or aggravation of that condition is not compensable.

Employer’s argument is based on the language of Tennessee Code Annotated section 50-6-102(12) as it existed on the date of injury, October 24, 2011. That section stated:

(12) “Injury” and “personal injury”: (A) Mean an injury by accident, arising out of and in the course of employment, that causes either disablement or death of the employee; provided, that: (i) An injury is “accidental” only if the injury is caused by a specific incident, or set of incidents, arising out of and in the course of employment, and is identifiable by time and place of occurrence; and (ii) The opinion of the physician, selected by the employee from the employer's designated panel of physicians pursuant to §§ 50-6-204(a)(4)(A) or (a)(4)(B), shall be presumed correct on the issue of causation but said presumption shall be rebutted by a preponderance of the evidence; ... and (C) Do not include: ... (ii) Cumulative trauma conditions, hearing loss, carpal tunnel syndrome, or any other repetitive motion conditions *unless such conditions arose primarily out of and in the course and scope of employment*[.]

Tenn. Code Ann. § 50-6-102 (2014) (applicable to injuries occurring prior to July 1, 2014) (emphasis added).

Prior to July 1, 2011, the definition of injury contained in section 50-6-102(12) was:

(12) “Injury” and “personal injury” mean an injury by accident arising out of and in the course of employment that causes either disablement or death of the employee and shall include occupational

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and after July 1, 2014).

diseases arising out of and in the course of employment that cause either disablement or death of the employee and shall include a mental injury arising out of and in the course of employment.

Tenn. Code Ann. § 50-6-102(12) (2008).

The 2011 amendment added elements and established a more stringent standard of proof to be applied in the analysis of gradual injuries. Most relevant to this case is the element added in the 2011 amendment stating that employers are required to prove that any cumulative trauma condition arose *primarily* out of and in the course and scope of employment. Prior to this amendment, an injury was considered compensable “if a work connected accident [could] be fairly said to be a contributing cause of such injury,” *Fink v. Caudle*, 856 S.W.2d 952, 958 (Tenn. 1993), as opposed to being the primary cause of the injury. The apparent legislative intent of the amendment was to narrow the type and number of compensable gradual injuries. However, in *DeGalliford v. United Cabinet Co.*, No. M2013-00943-WC-R3-WC, 2014 WL 1018170 (Tenn. Workers’ Comp. Panel Mar. 17, 2014), this Panel observed:

The language of § 50–6–102(12)(C)(ii) defines the law regarding aggravation of preexisting medical conditions resulting from repetitive work activity. However, by its explicit terms, it does not prohibit recovery of benefits for such conditions. The text of the statute provides that an injury does not include “cumulative trauma conditions, hearing loss, carpal tunnel syndrome, or any other repetitive motion conditions *unless such conditions arose primarily out of and in the course and scope of employment.*” Tenn. Code Ann. § 50–6–102(12)(C)(ii) (emphasis added). Accordingly, the plain text of the statute clearly permits a finding of compensability when a specific repetitive work activity *is* the primary cause of a medical condition . . . .

*Id.* at \*7.

In *DeGalliford*, the issue presented was whether the primary cause of the employee’s spinal injury was his underlying degenerative disc disease or the repetitive heavy lifting required by his job. *Id.* at \*6-8. The trial court was presented with conflicting expert evidence on the subject. *Id.* The trial court gave greater weight to the testimony of the employee’s expert witness, who testified that the “[e]mployee’s condition was primarily caused by his repetitive work activities” and that his work “did not merely increase his pain, but also advanced the severity of his pre-existing condition.” *Id.* at \*7. The trial court ruled that a compensable event had occurred. Based on the applicable standard of review, the Panel found that the evidence did not

preponderate against that finding and affirmed the judgment. *Id.* at \*8.

Similarly, in *Waters v. Gen. Motors, LLC*, No. M2015-01429-SC-R3-WC, 2016 WL 4411350 (Tenn. Workers Comp. Panel Aug. 19, 2016), the Panel held: “[T]he 2011 statute was not intended to preclude workers’ compensation recovery when employment activities are the primary cause of the advancement of severity in a pre-existing condition to the extent that employee’s injury condition requires surgery.” *Id.* at \*5. In *Waters*, the employee alleged that her employment with the employer advanced the severity of her pre-existing osteoarthritis in her right knee, causing loss of range of motion and disabling pain and resulting in knee replacement surgery. *Id.* at \*1. The employee defined her “condition” as the loss of range of motion combined with the debilitating pain that created the need for surgery, symptoms which onset during her employment with the employer. *Id.* at \*5. In response, the employer argued that the employee’s “condition” was the underlying arthritis. The Panel agreed with the employee, holding that she suffered from a “condition” as that term was used in Tennessee Code Annotated section 50-6-102(12)(C)(ii) (2014) (applicable to injuries occurring prior to July 1, 2014).<sup>5</sup> *Id.*

Consistent with *Waters*, we hold that, under the term “condition” as used in Tennessee Code Annotated section 50-6-102(12)(C)(ii) (2014) (applicable to injuries occurring prior to July 1, 2014), an employee can recover for a gradual worsening or advancement of a pre-existing condition that causes the need for surgery if the employment is primarily responsible for the worsening or advancement of the condition.

Employer next contends that, even under this interpretation of section 50-6-102(12), Employee failed to sustain his burden of proof. Consequently, we examine the evidence in light of our interpretation of the statutory definition of “condition” contained in Tennessee Code Annotated section 50-6-102(12)(C)(ii) (2014) (applicable to injuries occurring prior to July 1, 2014).

“Except in the most obvious cases, causation must be established by expert medical evidence.” *Trosper v. Armstrong Wood Products, Inc.*, 273 S.W.3d 598, 604 (Tenn. 2008). “Although evidence of causation may not be speculative or conjectural,

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<sup>5</sup> We note that the definition of “injury” in Tennessee Code Annotated section 50-6-102 was again revised, effective July 1, 2014. It now states that an injury “shall not include the aggravation of a preexisting disease, condition or ailment unless it can be shown to a reasonable degree of medical certainty that the aggravation arose primarily out of and in the course and scope of employment.” Tenn. Code Ann. § 50-6-102(14)(A) (2014 & Supp. 2016). The statute further clarifies that an injury “‘arises primarily out of and in the course and scope of employment’ only if it has been shown by a preponderance of the evidence that the employment contributed more than fifty percent (50%) in causing the injury, considering all causes.” *Id.* at § 50-6-102(14)(B).



‘absolute medical certainty is not required.’” *Id.* (quoting *Glisson v. Mohon Int’l, Inc./Campbell Ray*, 185 S.W.3d 348, 354 (Tenn. 2006)); *see also Chapman v. Employers Ins. Co. of Alabama*, 627 S.W.2d 122, 123 (Tenn. 1981) (“expert opinion must always be more or less uncertain”). Additionally, deposition testimony of experts should not be read and evaluated in a vacuum. *Thomas v. Aetna Life & Cas. Co.*, 812 S.W.2d 278, 283 (Tenn. 1991). “While causation . . . of an injury must be proved by expert medical testimony, such testimony must be considered in conjunction with the lay testimony of the employee as to how the injury occurred . . . .” *Id.*

Employee concedes that he had had carpal tunnel syndrome for nearly twenty years prior to 2011. He successfully coped with it by working in job assignments that did not place heavy demands on his hands. In early 2010, Employee was assigned to a position that required repetitive use of a torque gun, a vibrating tool that he operated with his hands. About a year after the onset of that job assignment, Employee began to experience pain, numbness and loss of grip strength in both hands, but especially in his dominant hand, the right hand. Because of those symptoms, surgery was necessary. After undergoing surgical treatment for bilateral carpal tunnel syndrome and cubital tunnel syndrome, Employee functioned well and returned to work without restrictions.

Based on the history Employee gave to him, Dr. Fishbein opined that Employee sustained a significant worsening of his pre-existing carpal tunnel syndrome and cubital tunnel syndrome as a result of the hand-intensive activities he performed while working for Employer in Lansing and that this worsening made surgical treatment necessary. Dr. Fishbein opined that Employee’s work activities were the primary cause of his worsened condition.

Dr. Coogan received the same history as did Dr. Fishbein. Dr. Coogan opined with certainty that Employee’s underlying condition was not primarily caused by his work for Employer. Given the number of potential causes involved, including diabetes and hyperthyroidism, Dr. Coogan testified that he could not say with a reasonable degree of medical certainty that Employee’s carpal tunnel syndrome was “anatomically worsened by his job.” Dr. Coogan emphasized his inability to determine the “anatomical” cause of Employee’s condition. However, he recognized that Employee experienced significantly increased symptoms while he was working on the specific job in Lansing, and he acknowledged that people with carpal tunnel syndrome become more symptomatic when they engage in certain activities.

After considering the record as a whole, in light of our interpretation of the applicable statutes, we are unable to conclude that the evidence preponderates against the trial court’s finding that Employee’s work activities primarily caused the advancement of his pre-existing carpal tunnel syndrome and cubital tunnel syndrome to the point that

surgery was required. Accordingly, we affirm the trial court's award of benefits to Employee in this case.

### **CONCLUSION**

The judgment of the trial court is affirmed. Costs are taxed to NGMCO, LLC, also known as General Motors, LLC, and its surety, for which execution may issue if necessary.

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HOLLY KIRBY, JUSTICE

