

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

February 24, 2014 Session

JOHN M. REITZ v. TRINET HR CORPORATION ET AL.

**Appeal from the Chancery Court for Wilson County
No. 2012CV86 C. K. Smith, Chancellor**

**No. M2013-01483-WC-R3-WC - Mailed July 2, 2014
Filed August 7, 2014**

In this case, the employee alleged that he sustained a compensable aggravation of pre-existing arthritis in his knee as a result of a fall at work. His employer denied that he had a permanent disability as a result of the event. The trial court awarded benefits, and the employer has appealed. The 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 pursuant to Tennessee Supreme Court Rule 51. We affirm the judgment.

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

DONALD P. HARRIS, SP. J., delivered the opinion of the Court, in which WILLIAM C. KOCH, JR., J. and J. B. COX, SP. J., joined.

Charles E. Pierce, Knoxville, Tennessee, for the appellants, TriNet HR Corporation and Insurance Company of the State of Pennsylvania.

David E. High, Nashville, Tennessee, for the appellee, John M. Reitz.

OPINION

Factual and Procedural Background

John M. Reitz began working for TriNet HR Corporation as a maintenance technician on October 18, 2010. On his first day of work, while cleaning apartments,

his foot caught on a brick and he fell down, striking his right knee. He reported the injury to Cathy Sanders, TriNet's office manager. He did not request medical treatment at the time and continued working for the next few weeks. During that time, the knee was painful and swollen. He self-treated the knee with ice and elevation, but it did not improve. He consulted his primary care physician, who recommended treatment by an orthopaedic surgeon. At that time, Mr. Reitz requested that TriNet provide medical treatment. He was provided with a panel of physicians and selected Dr. Scott Dube.

Dr. Dube testified by deposition. He first examined Mr. Reitz in November 2010. He ordered an MRI which revealed a tear of the medial meniscus, arthritis and post-surgical changes to the patella. Mr. Reitz had fractured his patella in 1980, requiring surgical treatment. After recovering from that injury, Mr. Reitz had no symptoms and received no medical treatment for his knee until the fall on October 18, 2010.

Upon physical examination, Dr. Dube observed swelling and tenderness along the medial joint line which was consistent with a medial meniscus tear. Dr. Dube recommended arthroscopic surgery, and Mr. Reitz agreed. On December 30, 2010, he performed a medial meniscectomy and abrasion chondroplasty of the right knee. He testified that he found a large meniscal tear that was consistent with the injury described by Mr. Reitz. He also found degenerative changes in the knee. Dr. Dube testified that in his opinion the October 18, 2010 fall either caused the meniscal tear or caused it to become larger. He further testified that the event also caused an advancement of the pre-existing arthritis in the knee.

Mr. Reitz's post-surgical treatment consisted of bracing and physical therapy. This conservative treatment continued through March 2011, but the knee did not improve. In April 2011, Dr. Dube ordered another MRI which revealed a large point of effusion or swelling. The knee was aspirated on several occasions, but the swelling returned. By May, Dr. Dube recommended that Mr. Reitz be referred to Dr. Stuart Smith for consideration of a total knee replacement. Dr. Dube did not see Mr. Reitz after Dr. Smith began providing treatment in July 2011.

Dr. Smith recommended knee replacement surgery. He believed that, although the arthritic changes in Mr. Reitz's knee predated his work injury, the injury had aggravated the condition and caused the need for the proposed surgery. Mr. Reitz

was sent to Dr. James Renfro for a second surgical opinion on September 20, 2011. He agreed with Dr. Smith that a total knee replacement was appropriate. Dr. Renfro testified that the horizontal pattern of the meniscus tear was more consistent with degenerative change, rather than an acute injury. He said that there was nothing in the MRI scan that definitely indicated a traumatic injury. He also testified, however, that the fall had aggravated Mr. Reitz's pre-existing arthritis and that the meniscus had a small radial tear that could have been caused by trauma.

TriNet declined to pay for the recommended knee replacement surgery. Mr. Reitz pursued a request for assistance through the Department of Labor and Workforce Development. The Department ordered TriNet to pay for the procedure. The operation took place on October 31, 2011. Dr. Smith declared Mr. Reitz to be at maximum medical improvement on January 27, 2012. He assigned a permanent anatomical impairment of 25% to the right leg. He permanently restricted Mr. Reitz from kneeling and recommended against Mr. Reitz running "any significant distances." The parties were unable to resolve their differences at a Benefit Review Conference, and Mr. Reitz filed this action in the Chancery Court for Wilson County on March 12, 2012.

TriNet ended Mr. Reitz's employment approximately one year after his injury. When the trial took place on May 22, 2013, he was sixty-three years old, unemployed, and had not worked since the injury. He had, however, attended classes and obtained a bachelor's degree in counseling. Additionally, he had re-obtained an expired real estate license. Prior to working for TriNet, he had worked primarily as a printer, but had also been a patient care technician at a hospital, a prayer counselor for a television network and a real estate agent.

Mr. Reitz testified that he no longer had pain in his knee. He was unable to kneel or to run and consequently no longer participated in basketball or tennis with his teenage son. He was not capable of heavy lifting or standing on concrete floors for a long period of time.

Dr. David Gaw, an orthopaedic surgeon, performed an independent medical examination and testified by deposition. His examination took place on November 13, 2012. He believed that Mr. Reitz's meniscus tear was more likely than not related to the October 2010 injury and that the fall had aggravated Mr. Reitz's pre-existing arthritis. He assigned 25% permanent impairment of the right leg due to the injury.

On cross-examination, Dr. Gaw stated that the meniscus tear was both degenerative and traumatic. In his opinion, Mr. Reitz would probably have needed a total knee replacement surgery if the injury had not occurred, but the injury had caused the need for the procedure to occur sooner than it otherwise would have.

The trial court issued its findings and conclusions from the bench. It found that the October 18, 2010 fall had “aggravated, speeded up, or accelerated, advanced - whatever word you want to use - this arthritis that [Mr. Rietz] had existing in his knee.” It therefore concluded that he had sustained a compensable injury and awarded 75% permanent partial disability benefits to the right lower extremity. TriNet and its insurer have appealed from that decision, contending that the evidence preponderates against the trial court’s finding on causation.

Standard of Review

Courts reviewing an award of workers’ compensation benefits must conduct an in-depth examination of the trial court’s factual findings and conclusions. Wilhelm v. Krogers, 235 S.W.3d 122, 126 (Tenn. 2007). When conducting this examination, Tenn. Code Ann. § 50-6-225(e)(2) requires the reviewing court to “[r]eview . . . the trial court’s findings of fact . . . de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise.” The reviewing court must also give considerable deference to the trial court’s findings regarding the credibility of the live witnesses and to the trial court’s assessment of the weight that should be given to their testimony. Tryon v. Saturn Corp., 254 S.W.3d 321, 327 (Tenn. 2008); Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 167 (Tenn. 2002). However, the reviewing courts need not give similar deference to a trial court’s findings based upon documentary evidence such as depositions, Orrick v. Bestway Trucking, Inc., 184 S.W.3d 211, 216 (Tenn. 2006); Bohanan v. City of Knoxville, 136 S.W.3d 621, 624 (Tenn. 2004), or to a trial court’s conclusions of law, Seiber v. Reeves Logging, 284 S.W.3d 294, 298 (Tenn. 2009).

Analysis

TriNet argues that Mr. Reitz failed to carry his burden of proof that the October 18, 2010 fall caused his knee injury and resulting surgery. It contends that the medical evidence establishes only that the fall caused increased pain without a

corresponding anatomical change in the knee. In Trosper v. Armstrong Wood Products, Inc., 273 S.W.3d 598 (Tenn. 2008), our Supreme Court stated:

“We reiterate that the employee does not suffer a compensable injury where the work activity aggravates the pre-existing condition merely by increasing the pain. However, if the work injury advances the severity of the pre-existing condition, or if, as a result of the pre-existing condition, the employee suffers a new, distinct injury other than increased pain, then the work injury is compensable.”

273 S.W.3d at 607.

We begin by noting that the undisputed evidence is that Mr. Reitz had no symptoms and received no medical treatment for his right knee for almost thirty years prior to the October 18, 2010 event. Likewise, there is no dispute that he actually tripped, fell and struck his right knee on that date and that he had pain and swelling in the knee thereafter. Four physicians testified concerning the effects of the fall. Dr. Dube, the initial treating physician, diagnosed a tear of the medial meniscus and arthritis in the knee. He testified that the meniscal tear “was consistent with [Mr. Reitz’s] injury.” He further stated that the fall “at least aggravated it, at that time. Whether it was brand new or a small one that got a lot bigger, he aggravated it, at that time.” He further testified that the fall caused an advancement of the severity of the pre-existing arthritis in the knee.

Dr. Smith, who became Mr. Reitz’s authorized treating physician, testified that the arthritic changes in the knee predated the October 2010 injury, noting that “cartilage loss is a slowly progressive process.” He also noted, however, that Mr. Reitz was asymptomatic before the injury and was of the opinion that his fall “caused an advancement of the severity of his pre-existing arthritic condition in his knee requiring the total knee replacement.” He added that the fall caused not only pain, but additional symptoms such as swelling and stiffness. Dr. Smith agreed that the meniscal tear was partially horizontal, which was consistent with a degenerative process, but noted that the tear had an extension into the meniscal body medially, which typically is an area where traumatic tears are found. He further testified that Mr. Reitz had a relatively large tear, while degenerative meniscal tears are typically small.

Dr. Gaw, who examined Mr. Reitz after the knee replacement surgery, testified that the meniscus tear was more likely than not related to the fall at work. He explained:

“I’m not sure that - that you can separate just pure degenerative from - from an acute trauma tear. I think there was both. He had degenerative change, because he was 62 years of age, so I’m not sure that you can just classify either/or. I think I’m not sure you can say that was just degenerative just because of the angle of the tear.”

He agreed that Mr. Reitz’s knee was arthritic prior to the fall and that Mr. Reitz would probably have required a total knee replacement at some future time, but the fall “made that happen much sooner than later.”

Finally, Dr. Renfro, who performed a second opinion examination concerning the proposed knee replacement, testified that the arthritis in Mr. Reitz’s knee resulted from the 1980 patella fracture and surgery. He agreed that the proposed procedure was appropriate. He testified that the fall “aggravated” the pre-existing arthritis. He stated, “in terms of an anatomic change that we could appreciate from, you know, the MRI, there is nothing you could see that you could hang your hat on that was acute there.” Although horizontal meniscus tears, such as Mr. Reitz’s, were typically seen in arthritic knees, he agreed that there was also a small radial tear present, which would be consistent with a traumatic injury. He further testified that the fall could have accelerated Mr. Reitz’s need for knee replacement surgery.

“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. . . .” Clark v. Nashville Mach. Elevator Co., 129 S.W.3d 42, 47 (Tenn. 2004); see also Glisson v. Mohon Int’l, Inc./ Campbell Ray, 185 S.W.3d 348, 354 (Tenn. 2006). All reasonable doubts as to the causation of an injury and whether the injury arose out of the employment should be resolved in favor of the employee. Phillips v. A&H Constr. Co., 134 S.W.3d 145, 150 (Tenn. 2004). A trial court may properly award benefits based upon medical testimony that the employment “could or might have been the cause” of the employee’s injury when there is also lay testimony supporting a reasonable inference of causation. Fritts v. Safety Nat’l Cas. Corp., 163 S.W.3d 673, 678 (Tenn. 2005).

In this case, the undisputed evidence establishes that the employee had an asymptomatic condition in his knee prior to October 18, 2010, that he fell in the course of his employment on that date, that his knee became painful and swollen thereafter and that his symptoms did not resolve until Dr. Smith performed a total knee replacement surgery. All of the physicians testified that the injury described either did, or could have, advanced the Mr. Reitz's pre-existing arthritis. All testified that the meniscal tear in the knee was consistent with both degenerative and traumatic causes. In our view, the evidence clearly supports the trial court's finding that the work event caused a compensable advancement of Mr. Reitz's pre-existing condition. We are therefore unable to conclude that the evidence preponderates against the trial court's finding.

Conclusion

The judgment is affirmed. Costs are taxed to TriNet HR Corporation, Insurance Company of the State of Pennsylvania and their surety, for which execution may issue if necessary.

DONALD P. HARRIS, SPECIAL JUDGE

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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 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 will be paid by TriNet HR Corporation, Insurance Company of the State of Pennsylvania and their surety, for which execution may issue if necessary.

PER CURIAM

