The Governor's Council for Judicial Appointments
State of Tennessee
Application for Nomination to Judicial Office

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INTRODUCTION

The State of Tennessee Executive Order No. 87 (September 17, 2021) hereby charges the Governor's Council for Judicial Appointments with assisting the Governor and the people of Tennessee in finding and appointing the best and most qualified candidates for judicial offices in this State. Please consider the Council's responsibility in answering the questions in this application. For example, when a question asks you to "describe" certain things, please provide a description that contains relevant information about the subject of the question, and, especially, that contains detailed information that demonstrates that you are qualified for the judicial office you seek. In order to properly evaluate your application, the Council needs information about the range of your experience, the depth and breadth of your legal knowledge, and your personal traits such as integrity, fairness, and work habits.

The Council requests that applicants use the Microsoft Word form and respond directly on the form using the boxes provided below each question. (The boxes will expand as you type in the document.) Please read the separate instruction sheet prior to completing this document. Please submit your original hard copy (unbound) completed application (*with ink signature*) and any attachments to the Administrative Office of the Courts as detailed in the application instructions. Additionally, you must submit a digital copy with your electronic or scanned signature. The digital copy may be submitted on a storage device such as a flash drive that is included with your original application, or the digital copy may be submitted via email to laura.blount@tncourts.gov .

THIS APPLICATION IS OPEN TO PUBLIC INSPECTION AFTER YOU SUBMIT IT.

PROFESSIONAL BACKGROUND AND WORK EXPERIENCE

1. State your present employment.

Nahon, Saharovich & Trotz, PLC

2. State the year you were licensed to practice law in Tennessee and give your Tennessee Board of Professional Responsibility number.

2010

029358

3. List all states in which you have been licensed to practice law and include your bar number or identifying number for each state of admission. Indicate the date of licensure and whether the license is currently active. If not active, explain.

Tennessee-October 18, 2010-029358 (active)

Mississippi-December 19, 2019-106018 (active)

Missouri-January 9, 2023-75107 (active)

4. Have you ever been denied admission to, suspended or placed on inactive status by the Bar of any state? If so, explain. (This applies even if the denial was temporary).

No

5. List your professional or business employment/experience since the completion of your legal education. Also include here a description of any occupation, business, or profession other than the practice of law in which you have ever been engaged (excluding military service, which is covered by a separate question).

Employed with Nahon, Saharovich & Trotz, PLC since May 2010.

Experience with personal injury, specifically automobile accidents and premises actions; social security disability appeals involving hearings before the Administrative Law Judge; and workers' compensation cases in Tennessee and Mississippi.

In 2013, ascension into the lead position within the workers' compensation practice division. Since that time, I have worked as the managing attorney of the workers' compensation practice division.

6. If you have not been employed continuously since completion of your legal education, describe what you did during periods of unemployment in excess of six months.

Not applicable

7. Describe the nature of your present law practice, listing the major areas of law in which you practice and the percentage each constitutes of your total practice.

Presently, my main practice area is workers' compensation. I handle Tennessee and Mississippi cases from the intake stage to conclusion, including the trial and appellate levels. I further assist with tort claims and Social Security Disability appeals derived from my workers' compensation cases.

8. Describe generally your experience (over your entire time as a licensed attorney) in trial courts, appellate courts, administrative bodies, legislative or regulatory bodies, other forums, and/or transactional matters. In making your description, include information about the types of matters in which you have represented clients (e.g., information about whether you have handled criminal matters, civil matters, transactional matters, regulatory matters, etc.) and your own personal involvement and activities in the matters where you have been involved. In responding to this question, please be guided by the fact that in order to properly evaluate your application, the Council needs information about your range of experience, your own personal work and work habits, and your work background, as your legal experience is a very important component of the evaluation required of the Council. Please provide detailed information that will allow the Council to evaluate your qualification for the judicial office for which you have applied. The failure to provide detailed information, especially in this question, will hamper the evaluation of your application.

In May 2010, I began working with Nahon, Saharovich & Trotz the day after law school graduation. Throughout the summer of 2010, I diligently studied for the bar and trained in matters of personal injury.

Upon my licensure in October 2010, I was tasked with working cases involving automobile accidents, workers' compensation injuries, and appeals for Social Security Disability.

In 2011, I was promoted to assist our firm's managing attorney with matters involving improvement of our intake process, productivity oversight of the pre-litigation associate attorneys, and standing in for the managing attorney at times when he was out of the office.

In 2013, my role switched as I ascended to the managing attorney position for my firm's workers' compensation practice division. As the managing attorney, I have been responsible for supervising all workers' compensation paralegal staff and any associate attorneys that assist within the department, while I remain lead counsel on all workers' compensation cases.

Throughout my practice, I have appeared before the Shelby County General Sessions Civil Court, Shelby County Circuit Court, Shelby County Chancery Court, Tennessee Court of Workers' Compensation Claims, Tennessee Workers' Compensation Appeals Board, Tennessee Supreme Court, Mississippi Workers' Compensation Commission, United States Bankruptcy Court for the Western Division of Tennessee, and Social Security Administration.

Before the Shelby County General Sessions Civil Court, I have assisted in trials involving automobile accidents. Before the Shelby County Circuit Court, I have been appointed as Guardian Ad Litem relating to minors involved in motor vehicle accidents and handled numerous minor settlement approvals before the Court. Before the Shelby County Chancery Court, I have been involved with various motion hearings and one pre-2013 Reform Act workers' compensation trial. After the 2013 Reform Act, all workers' compensation matters were moved to the Court of Workers' Compensation Claims, where I appear on a weekly basis for settlement approvals, status hearings, motion hearings, statutorily mandated mediation, expedited hearings, and trials. I have presented more than ten appeals before the Tennessee Workers' Compensation Appeals Board and submitted one appeal before the Tennessee Supreme Court.

Before the Mississippi Workers' Compensation Commission, I have argued numerous motions, participated in judicial settlement conferences, and settlement approvals. Before the United States Bankruptcy Court for the West Division of Tennessee, I have presented numerous motions connected with my workers' compensation clients when their case runs contemporaneously with an active bankruptcy. Before the Social Security Administration, I would estimate presentation of approximately fifty appeals at the hearing level.

9. Also separately describe any matters of special note in trial courts, appellate courts, and administrative bodies.

1) *Tawan Braden v. Mohawk Industries, Inc. et al.*, No. 2019-08-0544, 2022 TN Wrk Comp App Bd LEXIS 11 (Tenn. Wrk. Comp. App. Bd. March 1, 2022)-As the appellee in this matter, this appeal involved a post-2013 Reform Act analysis of the direct and natural consequences rule, unpacking the plaintiff employee's burden of proof in circumstances where the employee alleges an injury that follows and allegedly flows from the primary compensable injury. This matter was presented via oral argument. The Tennessee Workers' Compensation Appeals Board analyzed whether the chain of causation was broken between Mr. Braden's original injury causing event and a subsequent injury causing event and whether the medical proof of the treating physician was sufficient to show that the subsequent injury was a natural consequence of the initial event. As to this issue, the Appeals Board, affirming the trial court, held that Mr. Braden met his burden of proof as to medical causation when applying the direct and natural consequences rule.

At the time, this matter was the second case to analyze the direct and natural consequences rule following the 2013 Reform Act. The Appeals Board additionally reviewed presented issues involving the admissibility of Mr. Braden's vocational expert testimony and whether he met the burden of proof for permanent total disability in lieu of permanent partial disability. The Appeals Board analyzed the factors in proving permanent total disability, including medical impairment and Mr. Braden's overall vocational profile and reviewed the defendant employer's argument that Mr. Braden's vocational expert intentionally destroyed personal handwritten notes that were material to the case. As to these issues, the Appeals Board, affirming the trial court, held that Mr. Braden's vocational expert testimony was admissible based upon credibility, and further, that Mr. Braden met the burden of proof for permanent total disability based upon the vocational expert testimony and the residual complications addressed in the deposition testimony of his treating physician. To date, this is the largest monetary outcome I have received for a client. The permanent total disability award was $970,201.58. I additionally assisted in securing Social Security Disability benefits for Mr. Braden.

2) *Nicole Bowlin v. Servall, LLC, et al.*, No. 2017-07-0224, 2018 TN Wrk Comp App Bd LEXIS 6 (Tenn. Wrk. Comp. App. Bd. Feb. 8, 2018)-As the appellee in this matter, this interlocutory appeal of an Expedited Hearing Order involved a matter of first impression involving the Tennessee Drug Free Workplace Program and whether the defendant employer was entitled to the presumption that the plaintiff employee's drug use was the primate cause of her injuries as provided for in Tenn. Code Ann. 50-6-110(c)(1). When employers are certified with the Tennessee Drug Free Workplace Program, they are entitled to a presumption that the injured worker's injury was proximately caused by intoxication/drug use if the injured worker fails a post-accident drug test. The notable question in this matter, however, was whether the defendant employer's substantial compliance with the Tennessee Drug Free Workplace Program was sufficient for application of the presumption. As to this issue, the Appeals Board, affirming the trial court, held that an employer's substantial compliance with the Tennessee Drug Free Workplace Program was insufficient to trigger the presumption, and therefore, the plaintiff employee was entitled to medical benefits in accordance with the Tennessee Workers' Compensation Act. This matter was presented via oral argument.

3) *Nicole Bowlin v. Servall, LLC, et al.*, No. W2020-01708-SC-R3-WC, 2021 Tenn. LEXIS 533 (Tenn. Workers' Comp Panel 2021)-As the appellant in this matter, following the aforementioned Appeals Board decision, holding that the plaintiff employee was entitled to further medical benefits, the case was amicably resolved as to Ms. Bowlin's permanent partial disability; however, moved forward through the trial court, Appeals Board, and the Supreme Court of Tennessee Special Workers' Compensation Panel as to the original attorney fee award on Ms. Bowlin's unpaid medical bills at the Expedited Hearing. Before the Special Workers' Compensation Panel, the sole issue presented was whether the defendant employer was liable for attorney's fees to plaintiff employee's counsel as authorized in Tenn. Code Ann. 50-6-226(a)(1). While attempting to distinguish certain aspects of existing precedent with the legislative intent of the 2013 Reform Act in enacting attorney's fees for wrongful denial of benefits in Tenn. Code Ann. 50-6-226(d)(1)(B), the Special Workers' Compensation Panel affirmed the trial court and Appeals Board decisions that the legislative updates with the 2013 Reform Act did not supplant the precedent for awarding attorney's fees on medical expenses

recovered or awarded to an employee. This matter was presented via briefs only.

4) *Francisco Martinez v. ACG Roofing, Inc., et al.*, No. 2021-08-0059, 2023 TN Wrk Comp App Bd LEXIS 31 (Tenn. Wrk. Comp. App. Bd. July 12, 2023)-Every year, I attend the annual Tennessee Workers' Compensation Conference; however, in 2023, the Bureau of Workers' Compensation decided to add an event to the Conference: a live appellate oral argument. This matter was selected as the 2023 appeal for argument. At the time of this oral argument, I was six months pregnant with our fourth child. As the appellee in this matter, this interlocutory appeal of the trial court's denial of the Technology Assigned Risk (workers' compensation insurance carrier for ACG Roofing, Inc.) motion for summary judgment revolved around the complex analysis of an insurance coverage dispute wherein the subject workers' compensation insurance policy was cancelled one day before Mr. Martinez's work injury. The coverage dispute involved several questions of material fact, including whether the defendant employer failed to timely pay the insurance premiums, whether the insurance carrier's agent had authority to accept cash payments and bind the carrier to coverage, whether terms not explicitly within the insurance policy could lead to cancellation of the contract for insurance coverage, and whether the annual premium amount was discounted to allow for the alleged lapse in coverage. To complicate matters further, there were two additional defendants involved: the general contractor and one subcontractor. The Appeals Board denied, affirming the trial court, the Technology Assigned Risk motion for summary judgment and remanded the case as the relief Technology sought was beyond the scope of the trial court's subject matter jurisdiction.

10. If you have served as a mediator, an arbitrator or a judicial officer, describe your experience (including dates and details of the position, the courts or agencies involved, whether elected or appointed, and a description of your duties). Include here detailed description(s) of any noteworthy cases over which you presided or which you heard as a judge, mediator or arbitrator. Please state, as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) a summary of the substance of each case; and (4) a statement of the significance of the case.

Not applicable

11. Describe generally any experience you have serving in a fiduciary capacity, such as guardian ad litem, conservator, or trustee other than as a lawyer representing clients.

Over the years, I have served as a Guardian Ad Litem on four cases. Three of these were before the Shelby County Circuit Court, involving minor settlement approvals where the minor was involved in an automobile accident. The remaining case involved a workers' compensation death benefit claim with minor dependents.

12. Describe any other legal experience, not stated above, that you would like to bring to the attention of the Council.

Not applicable in light of the expansive discussion above

13. List all prior occasions on which you have submitted an application for judgeship to the Governor's Council for Judicial Appointments or any predecessor or similar commission or body. Include the specific position applied for, the date of the meeting at which the body considered your application, and whether or not the body submitted your name to the Governor as a nominee.

Application submitted for the District Court of the Western District of Tennessee in 2023.

Interviewed August 7, 2023 with staff counsel for Representative Blackburn and Senator Hagerty

On November 14, 2024, I learned through staff counsel that the application process would be re-opening, and new applications would need to be submitted. At that time, I opted against submitting an updated application. To the best of my knowledge, the applications were not submitted to the Governor's Council for Judicial Appointments or similar commission or body.

EDUCATION

14. List each college, law school, and other graduate school that you have attended, including dates of attendance, degree awarded, major, any form of recognition or other aspects of your education you believe are relevant. and your reason for leaving each school if no degree was awarded.

August 2003-May 2007

University of Memphis

Bachelor of Arts Degree-Major in Political Science; Minor in Criminal Justice

August 2007-May 2010

University of Memphis, Cecil C. Humphreys School of Law

Juris Doctorate

PERSONAL INFORMATION

15. State your age and date of birth.

40

[redacted]985

16. How long have you lived continuously in the State of Tennessee?

Since 1993

17. How long have you lived continuously in the county where you are now living?

Since 2003

18. State the county in which you are registered to vote.

Shelby

19. Describe your military service, if applicable, including branch of service, dates of active duty, rank at separation, and decorations, honors, or achievements. Please also state whether you received an honorable discharge and, if not, describe why not.

Not applicable

20. Have you ever pled guilty or been convicted or placed on diversion for violation of any law, regulation or ordinance other than minor traffic offenses? If so, state the approximate date, charge and disposition of the case.

Not applicable

21. To your knowledge, are you now under federal, state or local investigation for possible violation of a criminal statute or disciplinary rule? If so, give details.

No

22. Please identify the number of formal complaints you have responded to that were filed against you with any supervisory authority, including but not limited to a court, a board of professional responsibility, or a board of judicial conduct, alleging any breach of ethics or unprofessional conduct by you. Please provide any relevant details on any such complaint

if the complaint was not dismissed by the court or board receiving the complaint.

1) March 25, 2016 Complaint to the Tennessee Board of Professional Responsibility involving client Darwin Knox (File No. 46804-9-PS)-Mr. Knox's complaint involved issues surrounding his ability to seek medical care and disagreement as to payment for cases expenses upon the resolution of his case. Following responses and full evaluation through disciplinary counsel, this complaint was dismissed on November 8, 2016.
2) November 29, 2020 Complaint to the Tennessee Board of Professional Responsibility involving client Shaneace Brooks (File No. 66123-9-SC)-Ms. Brooks's complaint involved issues surrounding contact with my office, disagreement with the advice provided on the logistics of her medical care and impairment assessment, and requesting a copy of her file materials. Following responses and full evaluation through disciplinary counsel, this complaint was dismissed on September 9, 2021.

23. Has a tax lien or other collection procedure been instituted against you by federal, state, or local authorities or creditors within the last five (5) years? If so, give details.

No

24. Have you ever filed bankruptcy (including personally or as part of any partnership, LLC, corporation, or other business organization)?

No

25. Have you ever been a party in any legal proceedings (including divorces, domestic proceedings, and other types of proceedings)? If so, give details including the date, court and docket number and disposition. Provide a brief description of the case. This question does not seek, and you may exclude from your response, any matter where you were involved only as a nominal party, such as if you were the trustee under a deed of trust in a foreclosure proceeding.

No

26. List all organizations other than professional associations to which you have belonged within the last five (5) years, including civic, charitable, religious, educational, social and fraternal organizations. Give the titles and dates of any offices that you have held in such organizations.

Dogwood Creek South Homeowner's Association (Yard of the Month Selection Committee)

27. Have you ever belonged to any organization, association, club or society that limits its membership to those of any particular race, religion, or gender? Do not include in your answer those organizations specifically formed for a religious purpose, such as churches or synagogues.

a. If so, list such organizations and describe the basis of the membership limitation.

b. If it is not your intention to resign from such organization(s) and withdraw from any participation in their activities should you be nominated and selected for the position for which you are applying, state your reasons.

No

ACHIEVEMENTS

28. List all bar associations and professional societies of which you have been a member within the last ten years, including dates. Give the titles and dates of any offices that you have held in such groups. List memberships and responsibilities on any committee of professional associations that you consider significant.

Memphis Bar Association, Tennessee Bar Association, Tennessee Trial Lawyers Association, Mississippi Bar Association

Memphis Bar Association, Young Lawyer's Division Board of Directors 2014-2015

29. List honors, prizes, awards or other forms of recognition which you have received since your graduation from law school that are directly related to professional accomplishments.

Super Lawyers, Rising Star 2016-2025

30. List the citations of any legal articles or books you have published.

Not applicable

31. List law school courses, CLE seminars, or other law related courses for which credit is given that you have taught within the last five (5) years.

Tennessee Bureau of Workers' Compensation Annual Conference, June 2023

OrthoSouth Workers' Compensation Conference, March 2025

Tennessee Bureau of Workers' Compensation Annual Conference, June 2025

32. List any public office you have held or for which you have been candidate or applicant. Include the date, the position, and whether the position was elective or appointive.

Not applicable

33. Have you ever been a registered lobbyist? If yes, please describe your service fully.

Not applicable

34. Attach to this application at least two examples of legal articles, books, briefs, or other legal writings that reflect your personal work. Indicate the degree to which each example reflects your own personal effort.

See attached for the appellate briefs (both reflect exclusively my personal effort) in the following matters:

1) *Nicole Bowlin v. Servall, LLC, et al*, No. W2020-01708-SC-R3-WC, 2021 Tenn. LEXIS 533 (Tenn. Workers' Comp Panel 2021)
2) *William Markin v. Memphis Light, Gas & Water Division, et al*, No. 2023-08-7648, 2025 TN Wrk Comp App Bd LEXIS 7 (Tenn. Wrk. Comp. App. Bd. Feb 19, 2025)

ESSAYS/PERSONAL STATEMENTS

35. What are your reasons for seeking this position? ***(150 words or less)***

Dating back to my time in law school, I have desired to ascend from practice to judicial appointment. While I thrive in my law practice, I am confident that the time is ripe for change. In fifteen years of practice, I have gained a wealth of experience that I am confident will transition to the bench. I look forward to the intellectual challenges tied to migrating from practice to an appellate judgeship. Outside of zealous representation of my clients, the part of my career that I enjoy most is preparing for court and researching complex legal issues. Instead of arguing these issues, I relish the opportunity to be applying the law in my commitment to uphold the same.

36. State any achievements or activities in which you have been involved that demonstrate your commitment to equal justice under the law; include here a discussion of your pro bono service throughout your time as a licensed attorney. ***(150 words or less)***

Prior to our youngest three children (all under the age of seven), I volunteered with Memphis Area Legal Services for the Saturday legal clinic at Benjamin L. Hooks Library. Many legal clinic visitors have needs involving application for Social Security Disability, an area in which I am well-versed. While the hustle of four young children has temporarily impeded many activities outside of work and responsibilities relating to school, sports, and child-related

extracurriculars, I look forward to diving back into pro bono service in the very near future. In addition to my MALS experience, I regularly provide support, without the intention or receipt of attorney fee, to former clients that need assistance obtaining ongoing medical benefits relating to previously resolved workers' compensation matters.

37. Describe the judgeship you seek (i.e. geographic area, types of cases, number of judges, etc. and explain how your selection would impact the court. ***(150 words or less)***

I am seeking appointment to the Tennessee Court of Appeals, Western Section. There are twelve total judges, with four judges in each grand division. The Court of Appeals judges handle appeals involving civil cases from the Circuit and Chancery Courts, including but not limited to family law matters, tort claims, and contractual disputes, and appeals from certain administrative bodies.

If selected for appointment to the Western Section, I would be the sole judge within the Western Section without prior judicial experience. While judicial experience is not present, my experience before the trial and appellate courts compensates for my lack of judicial background. In addition to my practice experience, I bring the opportunity for considerable longevity as my husband and our young children are rooted in West Tennessee and for diversity given my Persian heritage.

38. Describe your participation in community services or organizations, and what community involvement you intend to have if you are appointed judge? ***(250 words or less)***

Prior to having children, I was avidly involved with the Big Brothers Big Sisters program and fostered a relationship with my little sister for several years. As a teenager, she attended my wedding with her father. I have fond memories of this experience and would advocate to anyone the benefits that this program provides to our community.

Presently, I am active within our church (Our Lady of Perpetual Help in Germantown, TN) and volunteer with the sandwich ministry, making sandwiches for delivery to the Catholic Charities of West TN for those in need of food in the Memphis Community.

If appointed to this judgeship, I intend to continue and expand upon the volunteer opportunities with my church.

39. Describe life experiences, personal involvements, or talents that you have that you feel will be of assistance to the Council in evaluating and understanding your candidacy for this judicial position. ***(250 words or less)***

Two years ago, I would have answered this question much differently. At that time, I had just given birth to our fourth child, Ellis. Never having a true maternity leave, I balanced my roles as wife, mother, and managing attorney with a level of multi-tasking that rivals most.

In February 2024, when Ellis was four months old, I was diagnosed with breast cancer. Within weeks, I was in surgery for port placement and quickly began a five-month course of aggressive chemotherapy, after which I underwent surgery and twenty rounds of radiation. As I near the mark of one full year in remission, I thank God for walking beside me during the most difficult journey of my life. My husband, family, friends, and colleagues were present beyond measure. During my treatment, I worked every day that I was not in the hospital. My law firm provided me with the luxury of working from home throughout my care, and the Court of Workers' Compensation Claims granted a blanket request for my attendance by phone or video for all appearances. I am grateful to have been given such comfortable accommodations during such an uncomfortable time that gave me the ability to continue my passion in practice.

As I reach fifteen years in practice, I am ready for a change. Being appointed to a judgeship has been my aspiration from the inception of practice, and there is no time like the present to begin treading this path.

40. Will you uphold the law even if you disagree with the substance of the law (e.g., statute or rule) at issue? Give an example from your experience as a licensed attorney that supports your response to this question. ***(250 words or less)***

I will apply the law, as written, even if I disagree with the substance of the law at issue.

Throughout my years of practice in workers' compensation cases, I have encountered aspects of the law that I disagree with, including the exclusion of benefits for non-dependents in a workers' compensation death claim.

Memorably, I once represented an injured worker in his twenties who suffered a severe head injury within the course and scope of his employment. After approximately one year in treatment, he suffered a massive seizure while at home. He lived alone, unmarried with no children. When his father was unable to reach him, he traveled to his son's home and was met with the unfortunate reality that no parent should ever experience. As his son's counsel, I was tasked with expressing my condolences while simultaneously advising him that under Mississippi law, despite the unimaginable grief that he was experiencing with the loss of his only son, he was entitled only to reimbursement for burial experiences and nothing more since he was not a legal dependent pursuant to the Mississippi Workers' Compensation Act. While vehemently disagreeing with this law and despite my personal feelings, I remained steadfast in my explanation and breakdown of the applicable statutes.

REFERENCES

41. List five (5) persons, and their current positions and contact information, who would recommend you for the judicial position for which you are applying. Please list at least two persons who are not lawyers. Please note that the Council or someone on its behalf may contact these persons regarding your application.

A. The Honorable P. Allen Phillips, Judge with the Tennessee Court of Workers' Compensation Claims (Jackson/Madison County); [redacted]
B. Stephen Miller, Attorney with McDonald Kuhn [redacted]
C. Jeff McEvoy, Chief Managing Attorney with Home Surety Title & Escrow, LLC [redacted]
D. Angie Brown, Mammographer at Methodist LeBonheur Healthcare [redacted]
E. Julianne Karpovich, Paralegal with Manier & Herod [redacted]

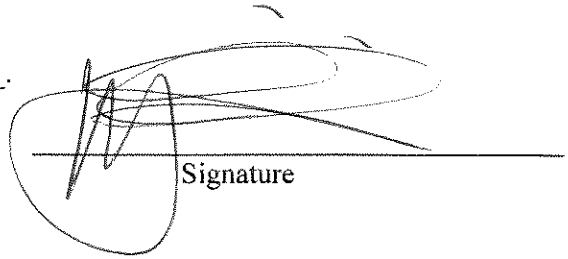
AFFIRMATION CONCERNING APPLICATION

Read, and if you agree to the provisions, sign the following:

I have read the foregoing questions and have answered them in good faith and as completely as my records and recollections permit. I hereby agree to be considered for nomination to the Governor for the office of Judge of the Court of Appeals, Western Section of Tennessee, and if appointed by the Governor and confirmed, if applicable, under Article VI, Section 3 of the Tennessee Constitution, agree to serve that office. In the event any changes occur between the time this application is filed and the public hearing, I hereby agree to file an amended application with the Administrative Office of the Courts for distribution to the Council members.

I understand that the information provided in this application shall be open to public inspection upon filing with the Administrative Office of the Courts and that the Council may publicize the names of persons who apply for nomination and the names of those persons the Council nominates to the Governor for the judicial vacancy in question.

Dated: November 2, 2025.



Signature

When completed, return this application to Laura Blount at the Administrative Office of the Courts, 511 Union Street, Suite 600, Nashville, TN 37219.

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

NICOLE BOWLIN,	)	
	)	
Employee/Appellant,	)	
	)	**No. M2020-01708-SC-R3-WC**
v.	)	**On Appeal from Order of**
	)	**Tennessee Workers'**
SERVALL, LLC,	)	**Compensation Appeals Board**
	)	**Docket No. 2017-07-0224**
Employer/Appellee	)	
	)	
And	)	
	)	
ACCIDENT FUND INSURANCE COMPANY	)	
	)	
Insurance Carrier.	)	

BRIEF OF APPELLANT
NICOLE BOWLIN-EMPLOYEE

Submitted By:

Monica R. Rejaei (#029358)
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Attorney for Employee/Appellant,
Nicole Bowlin

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ISSUE PRESENTED

When is an employer/carrier liable to pay attorney's fees to an employee's counsel under *Tenn. Code Ann.* § 50-6-226(a) based upon an award for contested medical benefits? Specifically, upon entry of the Compensation Hearing Order, whether the Court of Workers' Compensation Claims erred in failing to order Employer to pay Employee's counsel fees pursuant to *Tenn. Code Ann.* § 50-6-226(a) based upon the unpaid medical expenses of $89,377.37 that were ordered at the Expedited Hearing.

STATEMENT OF THE CASE

This matter was presented to the Court of Workers' Compensation Claims (hereinafter "trial court") and the Workers' Compensation Appeals Board (hereinafter "Appeals Board") originally following the Expedited Hearing and subsequently following the Compensation Hearing. As the full history is pertinent to the issue presented with the subject appeal, Employee provides the following detailed account:

A. EXPEDITED HEARING

On August 31, 2017, the parties presented before Judge Allen Phillips for an Expedited Hearing relating to medical and temporary disability benefits. Before the trial court, Employer maintained that it was entitled to the statutory presumption that Employee's injury was proximately caused by her use of marijuana. Employer averred that it fell within the protection of the Drug-Free Workplace Act. Employee countered that Employer was not entitled to the protections afforded under the Drug-Free Workplace Act as it was not certified with the Program as required under *Tenn. Code Ann.* § 50-9-101—114, et. seq. *See* Record at 5-7.

On September 28, 2017, Judge Phillips entered an Order rejecting Employer's defense and holding Employee was entitled to the requested medical benefits. The trial court held that Employer was not a member of the Drug-Free Workplace Program on the date of Employee's injury, and as such, was not entitled to the statutory presumption on causation. The trial court awarded Employee medical benefits, including ongoing treatment with Dr. Francis Camillo, and payment for Employee's outstanding medical bills with Tennova Healthcare Volunteer, Campbell Clinic, Regional One Health, and Air Evac Lifeteam. The trial court denied Employee's counsel's attorney fee request under the theory of wrongful denial per *Tenn. Code Ann.* § 50-6-226(d)(1)(B); however, granted Employee's counsel's attorney fees of twenty percent (20%) on the award of medical benefits per *Tenn. Code Ann.* § 50-6-226(a)(1). *See* Record at 9.

B. APPEAL OF EXPEDITED HEARING ORDER WITH WORKERS' COMPENSATION APPEALS BOARD

Following the Expedited Hearing Order, Employer filed a Notice of Appeal with the Appeals Board, contending that the trial court erred when it ruled the presumption under *Tenn. Code Ann.* § 50-6-110(c)(1) was not applicable and erred further in granting Employee's counsel attorney's fees. Employer asserted that it was entitled to the presumption afforded under the Drug-Free Workplace Program as it had previously been a member and only recently had failed to complete and file its renewal application with the Tennessee Department of Labor. *See* Record at 14-15.

Employee countered that the trial court made the appropriate rulings on both issues presented. First, substantial compliance with the Drug-Free Workplace Program requirements is insufficient to bring Employer under the umbrella of protection afforded for those employers that properly comply with the Program requirements. *See* Record at 17-19. Second, Employee

highlighted that Employer's reliance upon *Andrews v. Yates Services* to argue against the awarded attorney's fee was misplaced as *Andrews* analyzed only the wrongful denial attorney's fee provision under *Tenn. Code Ann.* § 50-6-226(d)(1)(B) and not the fees ordered under *Tenn. Code Ann.* § 50-6-226(a)(1). *Andrews v. Yates Services*, No. 2016-05-0584, 2017 Tenn. Wrk. Comp. App. Bd. LEXIS 35 (May 23, 2017).

Employee further asserted that the Tennessee Supreme Court had previously held contested medical expenses are part of the award in which attorney fees may be based and case law supported Employer paying these fees. *Langford v. Liberty Mutual Ins. Co.*, 854 S.W. 2d 100 (Tenn. 1993); *Reatherford v. Lincoln Brass Works*, No. 01S01-9707-CV-001451998, Tenn. LEXIS 33 (Tenn. Work. Comp. Panel January 26, 1998); *Moore v. Town of Collierville*, 124 S.W. 3d 93 (Tenn. 2004); *see also* Record at 19-21.

Following submission of briefs, on November 8, 2017, the Appeals Board entered an Order requesting supplemental briefs as to the following:

1) Whether Servall, LLC, substantially complied with the Drug-Free Workplace Program certification requirements, and if so, whether substantial compliance is sufficient to trigger the presumption of causation.
2) Whether attorney's fees may be awarded based upon unpaid medical bills pursuant to *Tenn. Code Ann.* § 50-6-226(a)(1) prior to entry of a final order or settlement.

Upon submission of supplemental briefs, Employer reiterated its argument that it substantially complied with the Drug-Free Workplace Program certification requirements and that this substantial compliance was sufficient to afford the statutory presumption. As to the attorney's fees, Employer maintained that awarding attorney's fees at the interlocutory stage would be

inconsistent with *Tenn. Code Ann.* § 50-6-226 and that attorney's fees can only occur after a final judgment or settlement.

Employee maintained that substantial compliance was insufficient to afford the benefits of the statutory presumption on causation, and that if it were intended for any employer to claim the presumption then there would be no reason to have the filing requirement under *Tenn. Comp. R. & Regs.* 0800-02-12-.15(1). As to the attorney's fees, Employee highlighted that all judicial review on contested cases prior to the Reform Act was through final order in Circuit or Chancery Court. In light of recent legislative changes that led to a bifurcation in judicial review now through Expedited Hearing and Compensation Hearing, Employee contended that an award of attorney's fees would be proper at the Expedited Hearing level. In the alternative, Employee requested the Appeals Board hold that the requested fees should be awarded upon final disposition of the case through Compensation Hearing or Settlement Approval.[1]

On February 8, 2018, the Appeals Board affirmed the trial court's decision regarding Employer's participation in the Drug-Free Workplace Program but vacated the award of attorney's fees. The Appeals Board held that substantial compliance with the Drug-Free Workplace Program did not suffice to afford Employer with the benefits of membership, including the presumption on causation. With this affirmation, Employee's entitlement to medical benefits was reiterated. On the attorney's fees issue, the Appeals Board held that the award for attorney's fees was premature at the Expedited Hearing level and noted that prior case law supported any fee award to occur at the end of the case following a trial on the merits. *See* Record at 14-21.

[1] As the appellate briefs relating to the appeal of the Expedited Hearing Order were not included in the record submitted by the Clerk of the Court of Workers' Compensation Claims, Employee has included these appellate briefs within Appendix A.

Following remand of the case to the trial court, Employer paid medical benefits for Employee, including payment for Employee's cervical spine fusion. Employer's payment of medical benefits continued through Employee's release at maximum medical improvement (MMI) on September 19, 2019.

C. MOTIONS TO ENFORCE PAYMENT OF MEDICAL BENEFITS

On September 19, 2018, Employee filed a Motion to Enforce Payment of Medical Benefits relating to Employee's outstanding balance with Tennova Healthcare; however, on October 3, 2018, the trial court found insufficient information to rule on the motion and directed Employee's counsel to provide clarity as to the outstanding balance.

On September 25, 2019, Employee filed a second Motion to Enforce Payment of Medical Benefits, which including request for payment of the Tennova Healthcare balance that was the subject of Employee's motion the year prior. With this motion, Employee attached for the trial court unpaid bills that dated back to 2016. Employee requested attorney's fees under *Tenn. Code Ann.* § 50-6-226(d)(1)(A) and/or *Tenn. Code Ann.* § 50-6-226(d)(1)(B) for Employer's failure to comply with the prior court order for payment of medical bills and/or for wrongfully denying payment. On October 28, 2019, the trial court ordered Employer to pay the outstanding medical bills and further awarded Employee's counsel fees for $750.00, based upon $300.00 per hour, for the work performed in handling the subject motion. *See* Record at 25-28.

D. SETTLEMENT APPROVAL OF PERMANENT PARTIAL DISABILITY

On June 30, 2020, the parties appeared before Judge Allen Phillips and secured approval for the permanent partial disability settlement. Based upon the six percent (6%) impairment rating of Dr. Raymond Gardocki, and application of enhanced benefits under *Tenn. Code Ann.* § 50-6-

207(3)(B), Employee was granted $13,708.11 in permanent partial disability benefits. Judge Phillips additionally approved attorney's fees of twenty percent (20%), or $2,741.62, to be paid from the permanent partial disability award.

The Order for Settlement Approval encompassed the permanent partial disability benefits and future medical care only and noted that attorney's fees for the medical benefits ordered in the Expedited Hearing will be addressed by a separate Compensation Hearing Order. [2]

E. COMPENSATION HEARING

On June 9, 2020, the parties presented telephonically before Judge Allen Phillips for a Compensation Hearing to address solely the issue of attorney's fees on contested medical expenses that was previously ordered at the Expedited Hearing. The trial court denied Employee's request for attorney's fees on the previously contested medical benefits and noted that any fee must be paid through the party employing the attorney. *See* Record at 105-108.

F. APPEAL OF COMPENSATION HEARING ORDER WITH WORKERS' COMPENSATION APPEALS BOARD

Following the Compensation Hearing Order, Employee filed a Notice of Appeal with the Appeals Board, contending the trial court erred in denying the attorney's fees that were originally ordered at the September 28, 2017 Expedited Hearing. *See* Record at 111-112.

Employee asserted that the issue of attorney's fees was now ripe, as per the prior Appeals Board Order, and that liability falls to Employer to pay the requested fee, particularly as payment was made directly to the medical providers. Employee noted the lengthy history of the claim, the

[2] As the settlement documents were not included in the record submitted by the Clerk of the Court of Workers' Compensation Claims, Employee has included these documents within Appendix A.

importance of incentivizing attorneys, and provided a dissection of case law in support of her position.

Employer contended that there was no basis for awarding attorney's fees as all contested medical bills had been paid prior to the Compensation Hearing. Specifically, Employer argued that if the medical bills were paid before final disposition of the case, there can be no recovery or award based upon contested medical bills. In the alternative, Employer argued that if the Appeals Board were to find an award for attorney's fees appropriate, that the amount awarded should be based upon the actual dollars paid to the healthcare providers, which Employer purported to be for $24,382.08. [3]

On November 25, 2020, the Appeals Board affirmed the trial court order and denied Employee's request for attorney's fees on the contested medical benefits. The Appeals Board held specifically that *Tenn. Code Ann.* § 50-6-226(a)(1) does not authorize the Court of Workers' Compensation Claims to order an employer to pay attorney's fees on disputed medical expenses and that any fee should instead be paid by Employee directly. *See* Record at 135-143.

G. NOTICE OF APPEAL FOR REVIEW BY TENNESSEE SUPREME COURT

On December 22, 2020, Employee timely filed her Notice of Appeal with the Clerk of the Appellate Courts. *See* Record at 145-146.

STATEMENT OF THE FACTS

On September 29, 2016, while within the course and scope of Employee's employment with Employer, she suffered severe injuries to her cervical spine in an automobile accident. During Employee's initial medical evaluation, she tested positive for marijuana. Following review of these

[3] As only the Employer/Carrier's appellate brief relating to the appeal of the Compensation Hearing Order was included in the record submitted by the Clerk of the Court of Workers' Compensation Claims, Employee has included her appellate brief within Appendix A.

results, Employer denied the claim for "violation of drug policy" and asserted the affirmative defense under *Tenn. Code Ann.* § 50-6-110(a)(3) that no compensation should be granted for Employee's injury due to intoxication or illegal drug usage. Employer further asserted it was afforded protection under the Tennessee Drug Free Workplace rules set forth in *Tenn. Code Ann.* § 50-9-101, *et. seq. See* Record at 5-7.

On September 28, 2017, the trial court held Employer was not entitled to the presumptions afforded under the Tennessee Drug Free Workplace Program and further did not establish that Employee's drug use was the proximate cause of her injury. Per the Expedited Hearing Order, the following benefits were to be provided by Employer to Employee: 1) medical treatment under *Tenn. Code Ann.* § 50-6-204(a)(3) with Dr. Francis Camillo, 2) payment of Employee's outstanding medical bills with Tennova Healthcare Volunteer ($4,620.82), Campbell Clinic ($379.78), Regional One Health ($36,201.61), and Air Evac Lifeteam ($48,175.16), and 3) payment of a twenty percent (20%) attorney fee on the award of medical benefits under *Tenn. Code Ann.* § 50-6-226(a)(1). The trial court declined Employee's counsel's request for attorney's fees under *Tenn. Code Ann.* § 50-6-226(d)(1)(B) for wrongful denial of the claim. *See* Record at 9.

On February 28, 2018, the Appeals Board affirmed the trial court's decision regarding Employer's lack of participation in the Drug Free Workforce Program and vacated the trial court's award of attorney's fees to Employee's counsel concluding that it was premature for the trial court to award attorney's fees at the Expedited Hearing stage, and remanded the case. *See* Record at 14-21.

Following the Appeals Board Opinion, Employee moved forward with her medical care, underwent surgery on her cervical spine, and was released at maximum medical improvement (MMI) with 6% permanent impairment to the body as a whole per the AMA Guides 6th Edition.

On June 19, 2020, the parties jointly presented the Settlement Agreement before the trial court wherein Employer agreed to compensate Employee for permanent partial disability (PPD) based upon 6% anatomical impairment, application of the enhancement factors under *Tenn. Code Ann.* § 50-6-207(3)(B), and coverage to Employee for future medical benefits under *Tenn. Code Ann.* § 50-6-204. The trial court approved an attorney's fee of twenty percent (20%) of the PPD award, or $2,741.62. Within the Order, it was specified that the attorney's fees based upon contested medical benefits ordered at the Expedited Hearing would be addressed by separate Compensation Hearing Order. *See* Appendix A.

It is the Compensation Hearing Order denying attorney's fees for the previously ordered contested medical benefits and the Appeals Board affirmation of the same that is the subject of this appeal. Employee's entitlement to and award for permanent partial disability benefits and future medical benefits with her authorized treating physician are not involved in the subject appeal.

APPLICABLE STANDARD OF REVIEW

The standard of review for workers' compensation cases is governed by *Tenn. Code Ann.* § 50-6-225(a)(2), specifically that "[r]eview of the workers' compensation court's findings of facts shall be *de novo* upon the record of the workers' compensation court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise." Even with this presumption, the reviewing court is still required to "conduct an in-

depth examination" of those findings. *Brantley v. Brantley*, No. E2018-01793-SC-R3-WC, 2019 WL 5783908, at *2 (Tenn. Workers' Comp. Panel Nov. 6, 2019) (*citing Wilhelm v. Krogers*, 235 S.W. 3d 122, 126 (Tenn. 2007). The trial court's conclusions of law are reviewed *de novo* without a presumption of correctness. *Foreman v. Automatic Sys., Inc.*, 272 S.W3d 560, 571 (Tenn. 2008).

LAW AND ARGUMENT

A. REVIEW OF *LANGFORD V. LIBERTY MUTUAL INS. CO.*

In a case of first impression, the Tennessee Supreme Court held that contested medical expenses awarded by a trial court are part of the "recovery or award" under *Tenn. Code Ann.* § 50-6-226(a), and as such, are subject to attorney's fees. *Langford v. Liberty Mutual Ins. Co.*, 854 S.W. 2d 100, 102 (Tenn. 1993). In its decision with the subject appeal, the Appeals Board correctly noted that the 2013 Workers' Compensation Reform Act did not "vitiate or impair the precedent *Langford* established." *See* Record at 140.

In *Langford*, this Honorable Court noted that lack of statutory specificity in *Tenn. Code Ann.* § 50-6-226(a) with reference to whether contested medical expenses fit within the statutory term "recovery or award." This Court analyzed the stance on this issue through review of other states, including Florida, New Mexico, Pennsylvania, Texas, North Carolina, and Oregon. Ultimately, this Court concluded that Tennessee's "workers' compensation laws should be construed so as to encourage adequate representation by counsel in contested claims." *Id.* at 102. This Court further noted that "[w]e think that representation would be less likely if medical expenses were not subject to attorney's fees in contested cases, particularly where the medical expenses constitute all, or a significant part, of the recovery." *Id.* This Court highlighted the trial court's observation as follows: "There are cases where the employee could not recovery anything without the lawyer. There are cases where medical expenses may be in up the tens of thousands of

dollars, yet the employee compensation may amount to only a few weeks. The possibility of a lawyer taking those cases would be rather small." *Id.*

It is the decision in *Langford* that has sparked Employee's effort to seek attorney's fees on the contested medical expenses in the subject matter. As it is well settled that the award of contested medical benefits is part of the "recovery or award" from which attorney's fees may be calculated, the issue before this Honorable Court then pivots to whether Employer should be held responsible to pay the requested fee.

B. REVIEW OF *WILKES V. RESOURCE AUTH. OF SUMNER CTY.* AND *BROWN V. STATE*

In *Wilkes v. Resource Auth. of Sumner Cty*, this Honorable Court cited to the *Langford* decision in its holding the employee's attorney was entitled to fees based upon the medical benefits contested at trial. *Wilkes*, 932 S.W.2d 458 (Tenn. 1996). The Court reasoned as follows: "We realize that the practical impact of this holding is that the employee will not receive one hundred percent of the cost of the surgery. Although this result is not attractive, we are not at liberty to rewrite [*Tenn. Code Ann.* § 50-6-226(a)] to provide for attorney's fees in addition to the 'amount of recovery or award.'" *Id.* at 463-464.

In the subject claim, the trial court and Appeals Board rely heavily on *Wilkes* in support that Employee's claimed attorney's fee should be paid by Employee directly. Employee would highlight that the employee in *Wilkes* directly received the full amount of contested medical benefits presented at trial. The employee in Wilkes presented the cost of reconstructive surgery through deposition testimony of his plastic surgeon. This presentation was for a procedure in which the employee was seeking to have performed and not a procedure for which was already completed. *Id.* at 460-462.

In *Brown v. State*, the Tennessee Supreme Court Special Workers' Compensation Panel held that the attorney's fee based upon contested medical expenses was to be paid by the employee directly. *Brown*, No. 01S01-9502-BC-0000201995, Tenn. LEXIS 712 (Tenn. Work. Comp. Panel Nov. 22, 1995). At trial, the employee in *Brown* presented $12,189.16 in outstanding incurred medical expenses. *Id.* at *2. The Court affirmed the Claims Commission decision denying the employee's application for an order requiring the employer to pay his attorney's fees for collecting medical expenses. *Id.* at *9-10.

At the decision conclusion, the *Brown* Court called to the Tennessee legislature: "We are impelled, however, in light of the circumstances in this case, to call to the attention of the General Assembly the injustice of requiring an injured worker to pay an attorney's fee to obtain the reasonably necessary medical care which the employer is bound to provide. We believe it should consider amending the Act to provide, as an additional benefit to injured workers, that the employer or its insurer be responsible for attorney's fees on contested medical and hospital expenses found to be recoverable." *Id.* at *10-11.

C. REVIEW OF *REATHERFORD V. LINCOLN BRASS WORKS*

Following the *Langford* ruling, the Tennessee Supreme Court heard another matter that involved attorney's fees on contested medical benefits. In *Reatherford v. Lincoln Brass Works*, the Tennessee Supreme Court Special Workers' Compensation Panel awarded medical expenses of $11,438.00 at trial, and of this sum, awarded the employee's attorney a fee of $2,287.60, or 20%, to be paid by the employer. *Reatherford*, No. 01S01-9707-CV-001451998, Tenn. LEXIS 33 (Tenn. Wrk. Comp. Panel January 26, 1998).

The medical provider reduced its charges to $7,625.00 following trial, after which the employer then sought to reduce the amount of attorney's fees to be paid to employee's counsel. *Id.* at *5. The Special Panel affirmed the original trial court decision awarding $2,287.60 in attorney's fees and remanded for damages to be assessed for frivolous appeal, holding: "We know of no authority, and none has been cited to us, for the proposition that under the circumstances of this case the defendant should be allowed to defeat the attorney fee in the manner fashioned." *Id.*

In the subject case, the Appeals Board correctly points out that the employee's attorney in *Reatherford* was awarded attorney's fees based upon the reasoning that the attorney represented the Veterans' Administration's (VA) subrogation interest. In full review of *Reatherford* and the Appeals Board decision, Employee must respectfully disagree with the Appeals Board determination that the employee's attorney in *Reatherford* was awarded an attorney's fee based upon separate representation of the VA.

Of crucial importance, the employee's attorney in *Reatherford* did not separately represent the VA but rather the judgment he secured served to satisfy the VA's subrogation interest against the claim. In *Reatherford*, the VA provided all medical services to the employee. *Id.* at *4 (fn. 1). The VA did not intervene in the case, but rather sent notice of its subrogation interest to the employer. *Id.* at *4. The employee's entitlement to an attorney's fee on the full trial award of contested medical expenses was affirmed, with the Special Panel highlighting that the employer was directed to pay all medical expenses, and contested medical expenses were an item of recovery on which attorney's fees could be assessed pursuant to *Tenn. Code Ann.* § 50-6-226(a). *Id.*

At the Expedited Hearing, Employer was ordered to pay the following outstanding medical bills: 1) Tennova Healthcare Volunteer-$4,620.82, 2) Campbell Clinic-$379.78, 3) Regional One

Health-$36,201.61, and 4) Air Evac Lifeteam-$48,175.16. *See* Record at 9. Upon receipt of the Air Evac charges, Employee's attorney received a written notice of interest, requesting Employee's signature on an assignment of benefits agreement. Employee's medical records with Regional One Health and Tennova Healthcare Volunteer included a signed assignment of benefits agreement. The charges for Campbell Clinic were originally filed through Employee's Tenncare/Medicaid coverage; however, upon entry of the trial court Order, the Tenncare/Bluecare/Medicaid payments were reversed and the outstanding charges were all billed to Employer. [4]

Pursuant to *Tenn. Code Ann.* § 71-5-117, upon accepting medical assistance, the recipient of Tenncare/Bluecare/Medicaid shall be deemed to have made an assignment to the state of the right of third party insurance benefits to which the recipient may be entitled. As Employee is a recipient of these benefits, there is a subrogation interest owed based upon any medical treatment paid in connection with the subject case. With the arguments Employee's attorney put forth, the case was adjudicated compensable and the charges that Tenncare/Bluecare/Medicaid made to Campbell Clinic were reversed and filed through Employer.

Pursuant to *Reatherford*, Employee's attorney is entitled to a fee on the full amount of contested medical bills for her zealous representation of Employee, the protection of subrogation interests for Tenncare/Bluecare/Medicaid, and securing payment for all interested medical providers.

[4] All aforementioned records and billing were filed with the trial court and are included within the record; however, for ease in review, Employee is including a copy of all referenced assignments of benefit and Tenncare/ Bluecare/Medicaid billing confirmation within Appendix A.

D. REVIEW OF *MOORE V. TOWN OF COLLIERVILLE*

Similar to the facts in *Reatherford*, in *Moore v. Town of Collierville* there existed a third party interest. In *Moore*, this Honorable Court determined that the employer was liable to the employee's health insurer for all reasonable and necessary medical expenses and that the health insurer was not required to intervene in the workers' compensation suit. *Moore*, 124 S.W. 3d 93 (Tenn. 2004)

Due to dispute over causation and medical necessity, the employer in *Moore* refused to pay alleged unauthorized medical expenses, and as a result, the employee's personal health insurer Blue Cross paid the majority of medical expenses relating to the claim. *Id.* at 96-97. When an employee receives medical care for a work-related injury that has not been authorized by the employer, the employee must establish the reasonableness and necessity before the employer is responsible. *Baggett v. Jay Garment Co.*, 826 S.W. 2d 437, 439 (Tenn. 1992). Once determined that an employer is liable for medical expenses, the employer must pay the medical providers rather than the employee personally. *Staggs v. Nat'l Health Corp.*, 924 S.W. 2d 79, 81 (Tenn. 1996) (construing *Tenn. Code Ann.* § 50-6-204(a)(1)). Where the employee has personally paid for the disputed medical expenses, the employer shall instead reimburse the employee personally. *Id.*; *see also State Auto Mut. Ins. Co. v. Hurley*, 31 S.W. 3d 562, 565 (Tenn. Wrk. Comp. Panel 2000).

The *Moore* Court reviewed as an issue of first impression whether the employer was liable for unauthorized medical expenses established as reasonable and necessary when the expenses were paid by a third party health insurer that did not intervene in the workers' compensation claim seeking reimbursement. *Moore* at 98. The *Moore* Court highlighted the employer's statutory responsibility to pay reasonable and necessary medical expenses for work-related injuries. *Id.* at

99. The Court noted that "where an employer does not authorize or pay for medical expenses and instead forces an employee who seeks early treatment to use personal health insurance benefits to pay for expenses that are later determined to be necessary and reasonable, a health insurer should not be required to intervene to be reimbursed for the medical expenses it paid, and the employee should not be required to force such intervention." *Id.*

The *Moore* Court held that the remedial policy of the workers' compensation statutes do not require a third-party health insurer to intervene to obtain reimbursement for medical expenses from the employer. *Id.* at 99-100. The Court explained: "Since the language of [*Tenn. Code Ann.* § 50-6-204] did not address this problem, we have crafted this solution. The legislature may likewise wish to address these issues to establish a statutory procedure." *Id.* at 100 (fn. 2). However, because the record did not fully reflect the medical expenses paid by the health insurance carrier or the employee, the case was remanded to the trial court. The Court included in its remand instructions that the employee's attorney shall be entitled to the statutory attorney's fee based on the additional recovered medical expenses. *Id.* at 100. [5]

E. REVIEW OF *POPE V. NEBCO OF CLEVELAND, INC.*

In her first appeal to the Appeals Board following the Expedited Hearing Order, Employee referenced the similarities between the subject claim and *Pope v. Nebco of Cleveland, Inc.*, No. 2015-01-0010, 2016 TN Wrk. Comp. App. Bd. LEXIS 88 (November 28, 2016)

[5] Employer in the subject appeal did not contest the reasonableness and necessity of care at the Expedited Hearing or Compensation Hearing and has paid all outstanding medical benefits pursuant to the trial court and Appeals Board Orders.

In *Pope*, the trial court awarded employee's attorney fees based upon the amount of contested medical expenses, including the medical expenses paid through the employee's health insurer provided through the employer. Following the trial court decision, the employer appealed, raising two (2) issues: 1) whether the trial court erred in its determination that the employee was within the course and scope of his employment at the time of the injury, i.e. whether the injury was compensable under the Tennessee Workers' Compensation Act, and 2) whether the award for fees was proper. The employer's appeal as to the attorney's fee award insinuates the employer's interpretation that the trial court had ordered the employer to pay the fee on the awarded contested medical benefits.

Since the first Appeals Board decision, the Tennessee Supreme Court Special Workers' Compensation Panel has heard *Pope* and affirmed the Appeals Board decision finding the employee's injury was not compensable, and thus, was unable to address the issue of attorney's fees order by the trial court. *Pope v. Nebco of Cleveland, Inc.*, 585 S.W.3d 874, 894 (Tenn. Wrk. Comp. Panel January 16, 1998).

While this Honorable Court was unable to perform this analysis in *Pope*, with the subject appeal, this Honorable Court will now have the opportunity, should the Court deem appropriate, to interpret post-Reform Act an award for attorney's fees on contested medical benefits under *Tenn. Code Ann.* § 50-6-226(a).

F. REVIEW OF *HARRIS V. NASHVILLE CENTER FOR REHABILITATION AND HEALING, ET AL.*

Since the filing of the subject appeal, the Appeals Board has heard another dispute over attorney's fees on contested medical benefits. In *Harris*, the employee's counsel contended the trial court erred in denying his request for attorney's fees relating to contested medical benefits.

The trial court had held that attorney's fees were not recoverable unless the employee paid for the costs of treatment out of pocket. *Harris v. Nashville Center for Rehabilitation and Healing, et al.*, No. 2019-06-1008, Tenn. LEXIS 9 (Tenn. Work. Comp. Panel March 15, 2021).

Upon review of the trial court's reasoning, the Appeals Board cited *Langford v. Liberty Mutual Ins. Co.* in support of its holding to reverse the trial court's determination that the recovery of attorney's fees for medical expenses is limited to a percentage of medical expenses paid by the employee out of pocket. The Appeals Board held that the employee's counsel could recover a fee on the contested medical benefits presented at trial. *Harris* at *17. The Appeals Board additionally cited to its decision in *Bowlin*. *Id.*

The Appeals Board noted the "plain reading of [*Tenn. Code Ann.*] § 50-6-226(a)(1) indicates that the attorney's fees awarded in this instance would be 'paid by the party employing the attorney.'" *Id.* An award for attorney's fees "would be deducted from Employee's award." *Id.* The Appeals Board pointed to the employee's counsel's argument that he did not desire his client to be "negatively affected" by an award of attorney's fees reducing her recovery. *Id.* Ultimately, the Appeals Board remanded the case to the trial court to address attorney's fees consistent with the appellate opinion. *Id.* at *18.

In the subject appeal, Employee's counsel grapples with the same concern as counsel in *Harris*. If Employee's counsel would have taken from her client the attorney's fee permitted under *Tenn. Code Ann.* § 50-6-226(a) that was granted by the trial court and affirmed by the Appeals Board, this would have resulted in a negative recovery for Employee.

G. THE REFORM ACT IMPACT ON ATTORNEY'S FEES FOR CONTESTED MEDICAL BENEFITS

The Tennessee Supreme Court has not yet been afforded the opportunity to fully analyze an award for attorney's fees under *Tenn. Code Ann.* § 50-6-226(a) based upon contested medical expenses following an Expedited Hearing Order granting medical benefits, after which the claim settled prior to a full Compensation Hearing on the merits.

Following institution of the Reform Act, the workers' compensation judicial system is handled administratively, now with the ability for an injured worker to seek a trial on compensability when medical and/or temporary disability benefits are denied (Expedited Hearing) before a full trial inclusive of review for permanent disability benefits (Compensation Hearing). Without differentiation between an Expedited Hearing and Compensation Hearing within *Tenn. Code Ann.* § 50-6-226(a), the legislative intent remains that an attorney's fee is deemed reasonable if the fee does not exceed twenty percent (20%) of the award to the injured worker.

In her first appeal to the Appeals Board following the Expedited Hearing Order, Employee averred that as compensability following review of the application of the Drug Free Workplace Program presumption had already been assessed, there might be no need for a Compensation Hearing once Employee reaches maximum medical improvement. Employee advised the Appeals Board, via her brief and through oral argument, that if Employee's case resolves without the need for further litigation, Employer could assert at the Settlement Approval that Employer would not be responsible for attorney's fees on contested medical bills at Expedited Hearing if said bills were paid following the Appeals Board Order. Now, following the Settlement Approval and Compensation Hearing as to attorney's fees only, this exact scenario has occurred.

While giving injured workers the opportunity to challenge temporary disability, medical, and compensability disputes prior to full trial on the merits, the bifurcated system post-Reform Act has resulted in the employee bar zealously advocating for their clients' benefits but with little opportunity for recovery of attorney's fees.

For injuries after July 1, 2016, *Tenn. Code Ann.* § 50-6-226 was amended to permit attorney's fees when an employer and/or carrier "[w]rongfully denies a claim or wrongfully fails to timely initiate any of the benefits to which the employee or dependent is entitled under this chapter, including medical benefits under *Tenn. Code Ann.* § 50-6-204, temporary or permanent disability benefits under *Tenn. Code Ann.* § 50-6-207, or death benefits under *Tenn. Code Ann.* § 50-6-210 if the workers' compensation judge makes a finding that the benefits were owed at an expedited hearing or compensation hearing." *Tenn. Code Ann.* § 50-6-226(d)(1)(B).

While *Tenn. Code Ann.* § 50-6-226(d)(1)(B) permits a fee award to an employee's attorney, the trial court must find the employer/carrier's denial to be wrongful or that the employer/carrier failed to timely initiate the benefits sought. Over the past few years, this has proven to be a challenging standard to meet.

Since *Tenn. Code Ann.* § 50-6-226(d)(1)(B) was enacted, the trial courts and Appeals Board have sparsely granted the employee bar these fees. In May 2017, the Appeals Board heard as a matter of first impression a request for application of *Tenn. Code Ann.* § 50-6-226(d)(1)(B) following favorable ruling to an employee an Expedited Hearing. *Andrews v. Yates Services*, No. 2016-05-0584, 2017 Tenn. Wrk. Comp. App. Bd. LEXIS 35 (May 23, 2017). In *Andrews*, the Appeals Board held that the trial court's award for attorney's fees was premature at the interlocutory stage (Expedited Hearing) as "[g]iven the twists and turns inherent in litigation, it

seems the better practice is to resolve such issues after the litigation has run its course and the parties and the court no longer face uncertainties over future developments, as opposed to adjudicating disputes concerning attorney's fees and expenses in piecemeal fashion as the case winds its way through the litigation process." *Andrews* at *7-8.

In *Thompson v. Comcast Corp.*, the Appeals Board awarded attorney's fees and referenced its prior holding against an award for attorney's fees at the interlocutory stage; however, the Appeals Board highlighted its conclusion in *Andrews v. Yates Services* that its ruling against an award for attorney's fees was "not to suggest that a determination of attorney's fees and expenses may never be proper prior to the conclusion of a case, as each case must be evaluated on the particular circumstances presented." *Thompson v. Comcast Corp.*, No. 2017-05-0639, 2018 Tenn. Wrk. Comp. App. Bd. LEXIS 1 at *23-33 (January 30, 2018).

Nine (9) days after the *Thompson* decision, the Appeals Board released its opinion relating to the Expedited Hearing appeal in the subject claim, citing to *Andrews v. Yates Services* in support of its holding that the request for attorney's fees was not ripe at the interlocutory stage. *Bowlin v. Servall, LLC, et al.*, No. 2017-07-0224, 2018 Tenn. Wrk. Comp. App. Bd. LEXIS 6 (February 8, 2018).

In March 2018, the Court of Workers' Compensation Claims held that employee's counsel was not entitled to attorney's fees following Expedited Hearing under *Tenn. Code Ann.* § 50-6-226(d)(1)(B) finding that the case did not fall within the "extremely limited circumstances" to justify an award of attorney's fees at the interlocutory stage," despite the fact that the trial court referred the employer for collection of penalties under *Tenn. Code Ann.* § 50-6-118(a)(3) and (12) for its failure to provide medical and temporary disability benefits to the employee "despite

eyewitness testimony of the accident and the only treating physician relating the injury to work." *Simpson v. City Auto, LLC*, No. 2017-08-0805, 2018 Tenn. Wrk. Comp. LEXIS 23 at *7-9 (March 22, 2018). Of note, Employee's counsel in the subject appeal also represented the employee in *Simpson v. City Auto, LLC*.

Following a full trial on the merits, the employee in *Andrews* again sought attorney's fees for wrongful denial of benefits. Ultimately, the trial court found that the requested fees were not warranted as the "wrongfully" in the context of *Tenn. Code Ann.* § 50-6-226(d)(1)(B) requires more than the "mere existence of a denial" and "requires, at a minimum, a finding that the employer's denial lacked good cause." *Andrews v. Yates Services*, No. 2016-05-0854, 2018 TN Wrk. Comp. App. Bd. LEXIS 22 at *2 (May 8, 2018).

In December 2018, the Appeals Board vacated a trial court's award of attorney's fees to an employee's attorney reasoning that the trial court did not enter a finding as to whether the case "fell within the limited circumstances supporting an award of attorney's fees and costs at an interlocutory stage of the case." *Travis v. Carter Express, Inc., et al.*, No. 2018-03-0237, 2018 Tenn. Wrk. Comp. App. Bd. LEXIS 67 at *24-26 (December 21, 2018).

Subsequent to the *Travis* decision, the Court of Workers' Compensation Claims has awarded attorney's fees under *Tenn. Code Ann.* § 50-6-226(d)(1)(B) sparingly. *See Hurd v. Kellogg Company*, No. 2018-08-0644, 2018 Tenn. Wrk. Comp. LEXIS 152 (December 26, 2018); *see also Bridges v. Lowe's Home Center, Inc.*, No. 2018-01-0771, 2019 Tenn. Wrk. Comp. LEXIS 20 (March 19, 2019). However, the Court of Workers' Compensation Claims has similarly denied these attorney's fees holding strong to the Appeals Board decision in *Thompson v. Comcast Corp.* *See Larry v. Cash America Int'l*, No. 2018-08-0945, 2019 Tenn. Wrk. Comp. LEXIS 28 (April 18,

2019); *see also Morton v. Alexian Village of Tennessee*, No. 2018-01-0748, 2019 Tenn. Wrk. Comp. LEXIS 41 (April 18, 2019); *see also Sevinsky v. Tridens Builders, LLC*, No. 2018-04-0350, 2019 Tenn. Wrk. Comp. LEXIS 51 (May 14, 2019); *see also Said v. Communications Test Design, Inc.*, No. 2018-06-0433, 2020 Tenn. Wrk. Comp LEXIS 224 (December 22, 2020).

In June 2019, the Appeals Board vacated the trial court's award of attorney's fees and remanded with instructions for the trial court to conduct a hearing as to whether the fees should be awarded, and if so, in what amount. *Hardin v. W.A. Kendall & Co., Inc., et al.*, No. 2017-02-0333, 2019 Tenn. Wrk. Comp. App. Bd LEXIS 23 (June 10, 2019). In *Hardin*, the Appeals Board cited to this Honorable Court's decision in *Keen v. Ingles Mkts., Inc.*, a pre-Reform Act case, holding that an evidentiary hearing should be conducted to determine the reasonableness of a requested attorney's fee. *Keen*, No. E2018-00306-SC-R3-WC, 2019 Tenn. LEXIS 209 (May 14, 2019).

In its decision in the subject appeal, the Appeals Board correctly noted that the 2013 Workers' Compensation Reform Act did not "vitiate or impair the precedent *Langford* established." The legislature's 2016 enactment of *Tenn. Code Ann.* § 50-6-226(d)(1)(B) provided an addition, not an abrogation, to the already present language in *Tenn. Code Ann.* § 50-6-226(a) addressing attorney's fees on the "recovery or award," which as *Langford* established, includes contested medical benefits. Employee offers the aforementioned summary of cases considering attorney's fees under *Tenn. Code Ann.* § 50-6-226(d)(1)(B) to provide this Honorable Court with background as to the difficulty the employee bar sees in achieving reasonable fees for their zealous representation.

H. WHEN SHOULD AN EMPLOYER BE LIABLE TO PAY THE ATTORNEY'S FEE IN AN AWARD BASED UPON CONTESTED MEDICAL BENEFITS?

Employee is in agreement that Employer should not be liable to pay for 100% of the medical benefits ordered plus the 20% attorney's fee to Employee's counsel as *Tenn. Code Ann.* § 50-6-226(a) and *Langford* do not provide for punitive payment of attorney's fees based upon contested medical benefits. This said, it is impossible for Employee's counsel to have achieved a fee on the awarded medical benefits, unless the benefits had been paid directly to Employee, which would have violated the trial court's order.

The question then comes: When should an employer become liable to directly pay the attorney's fee in an award for contested medical benefits? The answer: An employer should be liable when the awarded benefits are paid directly to the medical provider. This solution follows the foundation of *Langford* as well as *Reatherford v. Lincoln Brass Works* and *Moore v. Town of Collierville*.

From *Langford*, we know that contested medical expenses awarded by a trial court are part of the "recovery or award" under *Tenn. Code Ann.* § 50-6-226(a). From *Reatherford v. Lincoln Brass Works* and *Moore v. Town of Collierville*, this Honorable Court has held that when counsel works to secure payment for outstanding medical benefits owed to a medical provider or otherwise interested party, said counsel is entitled to an attorney's fee for the work that led to payment that would otherwise not have occurred.

Moving forward under the *Reatherford* and *Moore* precedent, counsel that works to secure payment for outstanding medical benefits owed to a medical provider, would be entitled to an attorney's fee for the work that led to payment that would otherwise not have occurred. In the

subject appeal, the *Reatherford* and *Moore* decisions bolster Employee's argument for Employer to pay the requested attorney's fee.

In this matter, we are not looking to this Honorable Court for a windfall blanket provision where employers/carriers are to always directly pay the attorney's fee on contested medical benefits. We agree that *Tenn. Code Ann.* § 50-6-226(a) and prior case law do not support such a provision. Instead, we are seeking construction where employers/carriers are to pay the attorney's fee when the medical benefits are paid directly to the medical providers or otherwise interested party, i.e. health insurers. Construction in this manner would not prejudice the employer/carrier as the total payment would never exceed the full amount of the medical bills presented in light of negotiated discounts and application of the medical fee schedule.

We would further highlight that the aforementioned construction would not contradict *Tenn. Code Ann.* § 50-6-226(a) noting that the fee is to be paid "by the party employing the attorney." The trial court and Appeals Board have relied heavily upon this language to support the prior decision in this matter. We would reiterate that it is not practical, and the majority of the time impossible, for an injured worker to pay a fee for recovered medical costs when the monetary recovery for these costs never touched their hands. The decision in *Harris v. Nashville Center for Rehabilitation and Healing, et al.* shined a light on this issue: How can the attorney for an injured worker justify taking a fee from his/her client for a monetary recovery the client never sees? How can this attorney then take from the empty pocket of his/her client who has spent months and sometimes years fighting for benefits stemming from an inability to work?

The solution: Under *Tenn. Code Ann.* § 50-6-226(a), the employee would pay the attorney's fee when the employee actually receives the monetary "recovery or award" for contested

medical benefits. In this scenario, the employee's attorney could recoup the much-deserved and statutorily authorized attorney's fee and pay the outstanding medical interests. However, when the employer pays the medical providers or other subrogation interests directly, this should not be categorized as a "recovery or award" such that the employee is to pay this fee, but rather that the precedent in *Reatherford v. Lincoln Brass Works* and *Moore v. Town of Collierville* should be followed and the employer should pay the 20% attorney's fee under *Tenn. Code Ann.* § 50-6-226(a) as the "recovery or award," while certainly a benefit enjoyed by the employee, is truly a "recovery or award" for the medical providers or other subrogation interests. In the subject appeal, Employee's counsel has advocated for Employee while in-tandem representing the interests of the medical providers and Tenncare/Medicaid. This solution also serves as a path around the dilemma this Court noted in *Brown v. State*.

I. INCENTIVIZING ATTORNEYS

The Appeals Board decision has left Employee's attorney unable to collect a fair and reasonable fee for her work in the subject claim. Further, the decision goes against the overarching reasoning in *Langford*, concluding that Tennessee's "workers' compensation laws should be construed so as to encourage adequate representation by counsel in contested claims." This Court further noted that "[w]e think that representation would be less likely if medical expenses were not subject to attorney's fees in contested cases, particularly where the medical expenses constitute all, or a significant part, of the recovery." *Langford* at 102.

In the subject claim, Employee's attorney has spent approximately four (4) years zealously advocating for her client. This work includes the following: preparation of Petition for Benefit Determination, pre-discovery mediation, participation in Dispute Certification Notification issuance, preparation and argument relating to the Expedited Hearing, preparation and argument

relating to the Expedited Hearing appeal, correspondence with numerous medical providers when Employee's medical bills had gone unpaid (even after the Appeals Board Order as to the Expedited Hearing appeal), multiple Status Hearings with the trial court, analysis of medical records, retention of an independent medical evaluation physician, coordination with Tenncare/Medicaid concerning their subrogation interest in the claim, consistent contact with her client, negotiation with opposing counsel following Employee's release at maximum medical improvement, presentation of the Settlement Approval, and finally the Compensation Hearing addressing the requested attorney's fees, which is now proceeding through the second level of appeal.

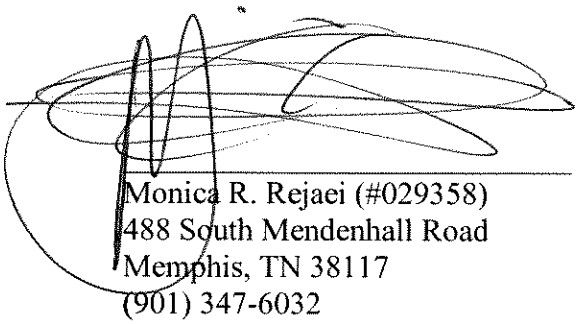
Thus far, Employee's counsel has received fees of $750.00, based upon $300.00 per hour, which was ordered by the trial court on October 28, 2019 for Employer's failure to pay outstanding medical bills previously ordered by the trial court and fees of $2,741.62 from the $13,708.11 award for permanent partial disability.

CONCLUSION

Employee respectfully requests this Honorable Court issue an Order reversing the Appeals Board decision that denied Employer's liability to render payment of attorney's fees based upon Employee's contested medical benefits. Employee implores the Court to extend the foundation of *Langford* to post-Reform Act workers' compensation claims, and in claims where medical benefits are paid directly to medical providers, thus never touching the hands of an employee or his/her counsel, to extend the foundation of *Reatherford v. Lincoln Brass Works* and *Moore v. Town of Collierville* and hold that Employer is liable to pay the requested attorney's fees for counsel's work in achieving benefits that Employee would not have otherwise received and securing payment for all interested medical providers.

Respectfully submitted:

Nahon, Saharovich & Trotz, PLC



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CERTIFICATE OF SERVICE

The undersigned certifies that on this 20th day of April, 2021, she served a true and correct copy of the foregoing by U.S. mail and email to the following:

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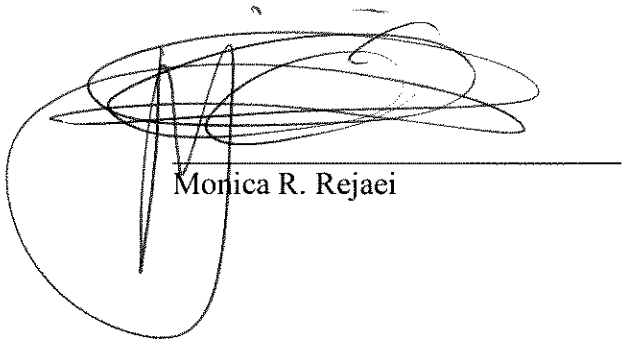

Monica R. Rejaei

TENNESSEE BUREAU OF WORKERS' COMPENSATION
IN THE WORKERS' COMPENSATION APPEALS BOARD

WILLIAM MARKIN,	)	**Docket No. 2023-08-7648**
Appellee/Employee,	)	
v.	)	**State File No. 4916-2023**
MEMPHIS LIGHT, GAS AND WATER	)	
DIVISION,	)	
Appellant/Employer,	)	
And	)	
BRENTWOOD SERVICES,	)	
Insurance Carrier.	)	
	)	

BRIEF OF APPELLEE (EMPLOYEE)

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MEMPHIS LIGHT, GAS AND WATER	)	
DIVISION,	)	
Appellant/Employer,	)	
And	)	
BRENTWOOD SERVICES,	)	
Insurance Carrier.	)	
	)	

BRIEF OF APPELLEE (EMPLOYEE)

Comes now your Appellee/Employee, William Markin, ("Appellee"), by and through counsel, pursuant to Rules of the Tennessee Department of Labor, Bureau of Workers' Compensation Rule 0800-02-22, and the Workers' Compensation Appeals Board Practices and Procedures, and hereby submits this appellate brief in response to the Notice of Appeal filed on September 12, 2024 by Appellant/Employer, Memphis Light, Gas and Water Division. ("MLGW"/ "Appellant"), by and through counsel.

STATEMENT OF FACTS

It is undisputed that Employee was injured while working as a welder for MLGW on January 17, 2023. *See Trial Exhibit #4-First Report of Injury*. Following a gas explosion on this date, Employee suffered complete loss of his right eye. Details surrounding the events leading to

Employee's injury are heavily contested, and as such, are appropriately included in the Law and Argument section of Employee's brief.

On August 10, 2023, MLGW filed a Form C-23, noting full denial of the claim on the basis that Employee's injury allegedly occurred while engaged in activity outside the course and scope of his employment. The date of denial on the Form C-23 reads as July 12, 2023. *See Trial Exhibit #5-Form C-23*. Simultaneously, MLGW's workers' compensation insurance carrier, Brentwood Services, mailed Employee a formal denial letter. *See Trial Exhibit #6-Brentwood denial letter*. Since the date of denial, Employee has received no medical benefits through MLGW or Brentwood Services.

Prior to the aforementioned claim denial, Employee received medical care through Regional One Health, Dr. Bryan Fowler with Hamilton Eye Institute, and Thomas Ocular. *See Trial Exhibit #1-Joint Filing of Employee's Medical Records*. While medical bills through July 12, 2023 were allegedly paid, outstanding balances are shown with these medical providers. *See id.*

On January 17, 2023, immediately following the injury, Employee was transported to Regional One Health, where he was treated over the course of two (2) days. *See Trial Exhibit #1 at 1-27*. The presentation discussion within these records show that Employee's right eye injury occurred when a plastic bottle exploded during a welding job. *See id. at 22*. Employee was diagnosed with a traumatic right globe rupture with decompression. *See id. at 24*.

On January 18, 2023, Employee underwent an evisceration procedure with Dr. Brian Fowler of Hamilton Eye Institute, which removed the inside of the eye and left the outer shell intact. *See id. at 31*. On January 30, 2023, Employee attended his first post-operative visit with Hamilton Eye Institute, where he noted headaches, swelling, and tearing. His assessment showed

that his conformer was fitting well and that his deep implant was well covered. He was referred to Thomas Ocular for a prosthetic eye and advised to continue wearing his polycarb glasses and using Maxitrol ointment. He was recommended to return in three (3) months. *See id. at 31-33.*

Following Employee's emergency treatment with Regional One Health, on January 23, 2023, Employee selected Dr. Brian Fowler from an offered panel of physicians. *See Trial Exhibit #7-Signed medical panel.*

On May 1, 2023, Employee returned to Hamilton Eye Institute with his prosthetic in place, advising that the prosthetic seemed too large, caused dry eyes, and was difficult to insert and remove. Dr. Fowler recommended to return, as scheduled, with Thomas Ocular. *See Trial Exhibit #1 at 38-41.* At this visit, Employee was released to return to work, without restrictions, but with recommendations for a driving evaluation to return to his job duties. *See id. at 43.*

On May 31, 2023, Employee presented to Hamilton Eye Institute, noting that he had seen Thomas Ocular for irritation and possible granuloma. Upon assessment, Dr. Fowler recommended a right orbitotomy with excision benign neoplasm and right conjunctivoplasty. *See id. at 46-48.*

On June 21, 2023, Employee returned to Hamilton Eye Institute following the June 8, 2023 surgery. Employee presented, noting irritation from work but no pain or headaches. *See id. at 51-53.* On August 9, 2023, Employee returned to Hamilton Eye, advising of irritation when removing his prosthetic but that the irritation had resolved. *See id. at 55-57.*

On December 18, 2023, Employee returned to Hamilton Eye Institute with complications involving his prosthetic. Employee advised that he noticed a growth or stitch in his eye that was bluish in color. *See id. at 58-61.*

Employee is still undergoing treatment with Dr. Fowler and has not yet been released at maximum medical improvement (MMI). *See id. at 45:4-46:11.*

SUMMARY OF DISPOSITION OF THE CASE

On August 21, 2024, the parties presented before Judge Allen Phillips for an Expedited Hearing as to Employer's denial of benefits for Employee's January 17, 2023 work injury. Thereafter, the Expedited Hearing Order for Medical Benefits was entered on September 10, 2024. Via this Order, the trial court held as follows:

1) MLGW shall pay Employee's outstanding medical bills and furnish ongoing treatment with Dr. Fowler.
2) As to MLGW's proposed affirmative defense of Employee's alleged safety violation, MLGW did not prove it enforced its rule requiring eye protection.
3) As to MLGW's proposed affirmative defense of Employee's willful misconduct, MLGW did not meet its burden of proof as the alleged misconduct was based upon supposition, circumstantial evidence, and an attempt to introduce expert proof through a lay witness.
4) In totality, Employee would likely prevail at trial regarding his request for medical benefits.

ISSUES PRESENTED ON APPEAL

In Employer's September 12, 2024 Notice of Appeal, the alleged errors made by the trial court are as follows:

1) Whether the trial court erred in rejecting MLGW's defense, alleging that Employee's injury is not compensable because he failed to adhere to MLGW safety standards?
2) Whether the trial court erred in rejecting MLGW's defense, alleging that Employee's injury is not compensable because he and his co-workers were engaged in non-work-related horseplay?

3) Whether the trial court erred in its consideration and weighing the documentary and testimonial evidence relating to MLGW's investigation into the injury and its horseplay-related cause, including matters susceptible to judicial notice?

4) Whether the trial court erred in finding and concluding that Employee would likely prevail at trial, including its Order for MLGW to pay any medical bills or benefits to Employee?

APPELLATE STANDARD OF REVIEW

The standard to be applied in reviewing a trial court's decision presumes that the court's factual findings are correct unless the preponderance of evidence is otherwise. *Tenn. Code Ann.* § 50-6-239(c)(7) (2021). However, "[n]o similar deference need be afforded the trial court's findings based upon documentary evidence." *Goodman v. Schwartz Paper Co.*, No. W2016-02594-SC-R3-WC, 2018 Tenn. LEXIS 8, at *6 (Tenn. Wrk. Comp Panel Jan. 18, 2018). Similarly, the interpretation and application of statutes are questions of law that are reviewed *de novo* with no presumption of correctness afforded the trial court's conclusions. *Mansell v. Bridgestone Firestone N. Am. Tire, LLC*, 417 S.W.3d 393, 399 (Tenn. 2013). Lastly, the workers' compensation statutes are to be construed "fairly, impartially, and in accordance with basic principles of statutory construction" and in a way, that does not favor either the employee or the employer. *Tenn. Code Ann.* § 50-6-116 (2021).

LAW AND ARGUMENT

I. The Trial Court Did Not Err in Rejecting MLGW's Safety Violation Defense Concerning Eye Protection

The controlling case outlining the willful misconduct affirmative defense is *Mitchell v. Fayetteville Public Utilities*. 368 S.W.3d 442 (Tenn. 2012). In order to successfully defend a

workers' compensation claim on the basis of willful misconduct, willful disobedience of safety rules, or willful failure to use a safety device under *Tenn. Code Ann.* § 50-6-110(a), the *Mitchell* Court adopted a four-step test: 1) the employee's actual, as opposed to constructive, notice of the rule, 2) the employee's understanding of the danger involved in violating the rules, 3) the employer's bona fide enforcement of the rule, and 4) the employee's lack of a valid excuse for violating the rule. *Mitchell* at 453. As highlighted in the trial court Order, in 2023, this Honorable Court confirmed its adoption of *Mitchell*. *See Wilder v. Monroe County Government*, No. 2022-01-0177, 2023 TN Wrk. Comp. App. Bd. LEXIS 1 (Tenn. Workers' Comp. App. Bd. Jan. 6, 2023).

Keeping in step with the *Mitchell* standard, and emphasizing the third prong of the employer's bona fide enforcement of the rule, the trial court found that MLGW offered no proof of regular enforcement of requiring eye protection. In fact, the trial court highlighted that MLGW's own investigation found breaches of safety protocols and TOSHA found a serious violation for failure to ensure Employee wore proper eye protection. *See Expedited Hearing Order p. 7.*

For MLGW to properly assert a safety violation defense, under *Mitchell*, all four prongs must be shown, and MLGW's bona fide enforcement of religiously requiring eye protection must occur. As the *Mitchell* Court discussed, "[t]he most frequent ground for rejecting violation of rules as a defense…is the lack of enforcement of the rule in practice." *See Mitchell* at 453 (*quoting Larson's Workers' Compensation Law § 35.04.*

As the trial court referenced, MLGW's own investigation found breaches of safety protocols, specifically that the crew lead for the subject jobsite failed to complete and document a job briefing session. *See generally, Trial Exhibit #9.*

In MLGW's Interdepartmental Memorandum with subject title Safety Investigation Report #1.701.2023.01.17, a pyramid chart is included, unpacking 1) "performance based errors-checklist not followed correctly" as follows: "CL [crew lead] failed to perform duties of the crew leader by not conducting a documented Jobsite Briefing and providing necessary leadership to protect crew members from recognized hazards;" 2) "judgment and decision-making errors-inadequate real time risk assessment" as follows: "WI [welder/installer] 1 did not recognize the hazards on the jobsite;" and 3) "violations-commits widespread/routine violations" as follows: "CL [crew lead] did not perform a documented jobsite briefing as required in the General Safety Manual." *See Trial Exhibit #9, p. 4.*

The MLGW Interdepartmental Memorandum elaborates with a second pyramid chart, unpacking 1) "state of mind-life stressors and complacency" as follows: "WI [welder/installer] 1 stated that he had just got off the phone with fiancée about sick daughter and [t]his work is a common repetitive task;" 2) "mental awareness-not paying attention" as follows: "WI [welder/installer] 1 didn't recognize the welding of components in a vacant lot as a jobsite and thus did not treat accordingly;" and 3) "teamwork-failure of crew/team leadership and briefing inadequate." *See Trial Exhibit #9, p. 5.*

The MLGW Interdepartmental Memorandum closes with a third pyramid chart, unpacking 1) "supervisory violations-failure to enforce existing rules" as follows: "supervision failed to enforce or collect completion/completed jobsite briefing forms;" 2) "inadequate supervision-failure to correct unsafe practices" as follows: "infrequent or no jobsite visits by supervision and no collection of forms by supervision;" 3) "personnel selection and staffing-failure to provide adequate manning/staffing resources" as follows: "WOC foreman rotation and job vacancies throughout department;" and 4) "organizational culture-organizational culture allows for unsafe

task/mission" as follows: "departments think that jobsite visits/audits are solely the responsibility of corporate safety." *See Trial Exhibit #9, p. 6.*

The MLGW Interdepartmental Memorandum may be the most critical document admitted into evidence. This document provides insight into all of the infrastructural problems that MLGW recognizes, including serious infractions with Employee's assigned crew lead on the date of injury and known failure of MLGW supervision to "correct unsafe practices." *See Trial Exhibit #9, p. 4-6.*

MLGW further fails in its defense concerning the alleged safety violation for eye safety protection, as Employee did not actually violate said rule. At Expedited Hearing, Employee testified that, at the time of his injury, his work on the subject job site had not yet begun. After completing a call with his fiancé while still inside the MLGW truck, Employee exited the truck, testifying that he did not know the welding had begun. *See Trial Record at 32:9-16; 60:23-61:11.* Employee further testified that he would normally get direction from his supervisor before the job was to begin, describing this as a "tailgate meeting" and "kind of like a powwow" but there was no preparation meeting prior to his injury. *See id. at 32:17-33:9.*

While Mr. Daniels did not regularly perform work as a crew lead, he served as the crew lead on the date of Employee's injury. *See id. at 108:13-109:5.* Mr. Daniels testified that he normally gives direction to his crew on the work to be performed. *See id. at 116:18-22.* However, on the date of injury, Mr. Daniels testified that he did not inform either member of his crew that he was ready to begin welding. *See id. at 120:16-19.* Mr. Daniels further testified that he did not conduct a jobsite briefing. In fact, Mr. Daniels testified that "we didn't do jobsite briefings at all. It's not something that we did at every job." *See id. at 129:1-130:7.* Mr. Daniels testified that the

crew will often do "like a tailgate," but confirmed that there was no tailgate briefing before Employee's injury .*See id. at 129:8-130:17.*

Supervisor of corporate safety, Mark Ward, testified to the importance of job briefings and that Mr. Daniels broke protocol in his failure to complete a job briefing sheet. *See id. at 158:11-160:18.* Mr. Daniels received a written reprimand for safety violation based upon this breach. *See Trial Exhibit #13.*

At the time of the explosion, Mr. Daniels was holding the welding torch. *See id. at 95:9-15; 116:7-13.* Mr. Daniels has "[j]ust started the torch" when the explosion occurred. Mr. Daniels described the explosion as having occurred "immediately." *See id. at 116:23-118:8.* Mr. Daniels testified that when you are welding, you put on the Shade 5 glasses as soon as welding is to begin, and when you are preparing and working without lighting the torch, you would wear regular safety glasses. Further, employees are not riding in the vehicle wearing either of these safety glasses. The safety glasses are worn when work is being performed. *See id. at 118:15-120:12.*

Employee testified that he performed welding the majority of his shifts and wore his Shade 5 protective glasses when welding. *See id. at 25:12-26:7.* Employee testified that someone could go blind if welding without their safety gear and that he followed safety protocol "every time." *See id. at 34:1-12.* Mr. Diffee echoed that blindness or burns could occur without PPE. Mr. Diffee testified that sparks can fly a good distance, estimating six to eight feet, and that ultimate distance depends upon factors including the type of part, torch setting, and the size/thickness of the pipe. *See id. at 72:11-75:13.*

Employee is well aware of the importance of following necessary safety protocol; however, bottom line, he was completely unaware that any welding work had started. If there were any

safety violations on the subject job site, Danny Daniels was guilty of these violations as the crew lead. Any arguable safety violations of Danny Daniels, or any other crew member, cannot be imputed to Employee and are insufficient under *Tenn. Code Ann.* § 50-6-110(a) to justify a claim denial.

II. The Trial Court Did Not Err in Rejecting MLGW's Willful Misconduct Defense Concerning Alleged Horseplay

On the date of injury, Employee, Matt Diffee, and Danny Daniels were working together on a welding/installing crew. *See Trial Record at 64:5-66:2.* The crew had been assigned a few jobs to perform on this date, some of which they were unable to perform for varying reasons, including arriving to a removal ticket that had already been completed and another job where the property owner had not completed the concrete pad placement necessary for the welding work to begin. *See id. at 67:12-68:15; 109:14-20; 163:23-164:24.*

Within Employer's Safety Investigation Report dated August 8, 2023, the "overview of incident" matches the recorded statements given by Employee, Danny Daniels, and Matt Diffie. *See Trial Exhibit #9.* The unanimous morning job map, per the recorded statements, is as follows: The crew was originally to perform a gas meter installation off Memphis Arlington Road; however, when they arrived, there was no concrete pad, which is required for the installation. At this point, Danny Daniels called Brandon Cook (supervisor) and was instructed to proceed to a meter removal job off Elvis Presley, but when the crew arrived, the meter had already been removed. Danny Daniels called Brandon Cook again and was instructed to begin welding the parts for the previous morning job after lunch. The crew had lunch at a convenience store off North Watkins Road. After lunch, the crew parked in a safe area, where the plan was to begin welding, per instructions of

Brandon Cook. *See Trial Exhibits #17, 18, 21, and 23-recorded statements of Brandon Cook, Danny Daniels, Matt Diffee, and William Markin.*

Mr. Diffee testified, "with the way the computer was set up, at that time, our department, we had to be on a ticket- - like, on an address…[w]e couldn't show that we weren't somewhere." *See Trial Record at 66:8-13.* When the crew is in between tickets, they will do "busy work" and weld parts that they will need later. *See id. at 66:14-67:11.* The crew had lunch at a small gas station on North Watkins. *See id. at 68:16-69:1; 109:21-110:12.*

After their lunch break, the crew proceeded to a grassy area at the intersection of Circle Road and Benjestown Road. *See id. at 110:13-21.* Dr. Daniels testified that his superior, Brandon Cook, gave direction to weld parts since their prior jobs were unable to be completed. *See id. at 110:22-111:8; 127:17-19.* Mr. Diffee was the first to exit the vehicle and stepped away for a moment to privately speak on the phone with his wife. *See id. at 69:23-70:5.* When Mr. Diffee came upon the rear of the truck, he set an empty Gatorade bottle on the back of the truck, "out of habit," as he would often use empty bottles or cups filled with water to cool parts while welding. *See id. at 70:6-71:6; 79:12-80:23.* After completing the call with his wife, Mr. Diffee walked toward the front of the truck to get his gloves, and the explosion occurred right after this. Mr. Diffee testified that he did not yet have his PPE on because, to his knowledge, to work had been started at that point. *See id. at 71:8-72:10; 75:14-76:17.*

Mr. Diffee has been performing welding work since 2016 and completed his certification credentials through MLGW. *See Trial Record at 65:3-20.* Dr. Diffee testified, [n]ever in my life would I ever do anything to not only endanger myself, but to endanger people that I care about that have children, that have families." *See id. at 76:20-22.*

Mr. Diffee described MLGW's questioning about the empty Gatorade botte as an interrogation and that he was "guilty until proven innocent, and bullied, and disrespected, and unethically talked to, cussed at." *See id. at 77:1-9.* Mr. Daniels recalled being questioned "multiple times" by safety supervisor Mark Ward, with "a lot of yelling and cursing and throwing a hat." *See id. at 11:17-114:19.* Mr. Diffee testified that there was no horseplay, as MGW has insistently alleged, and that this was a freak accident. *See id. at 78:18-19.* Mr. Diffee testified that no one on the crew was intentionally exploding bottles. *See id. at 83:14-84:2.* Crew lead, Mr. Daniels, testified that no one on the crew was intentionally exploding bottles. *See id. at 112:7-10.* Employee confirmed that no one on the crew had ever intentionally exploded a bottle. *See id. at 31:11-16.*

The trial court highlighted an important piece of evidence: the black soot mark on the back of the MLGW work truck. Mr. Diffee testified that there was a black soot mark exactly where he placed the Gatorade bottle. *See id. at 102:18-103:8.* Mr. Ward testified that he observed soot marks on the back of the MLGW truck. *See id. at 176:10-20; 180:11-15.* Mr. Davis testified that there was soot where the bottle was sitting on the passenger side rear of the MLGW truck. *See id. at 195:12-13.*

Mr. Diffee testified that he actually turned off the oxygen acetylene torches right after the explosion, and he elaborately summarized the functionality of these torches including swapping of the tanks. Per Mr. Diffee, the torches were left on from the tank exchange, but the sounds is so quiet that he only heard it when it was "at [his] face" when he made it way to the back of the truck after the explosion. *See id. at 85:16-88:1.*

At least in part, MLGW has based its theory of horseplay on the fact that neither Mr. Daniels nor Mr. Diffee suffered injuries; however, at the time of the explosion, Mr. Diffee was on the side of the truck where he was shielded from the explosion and Mr. Daniels, the only crew

member who was aware that the welding had begun, was wearing his PPE. *See id. at 100:23-101:6*; *117:17-118:1.*

MLGW also proffered that Mr. Daniels was dishonest in reporting the injury as having occurred at an Elvis Presley address; however, Mr. Daniels testified that "everything works off the computer and they needed to know where it says I am. And that's the ticket we were on." *See id. at 137:6-21.* Mr. Diffee confirmed how MLGW works with tickets, testifying, "with the way the computer was set up, at that time, our department, we had to be on a ticket- - like, on an address…[w]e couldn't show that we weren't somewhere." *See id. at 66:8-13.*

Mark Ward, supervisory of corporate safety, headed investigation efforts for the subject injury, and testified that he began a simulation because things were not "making sense." Mr. Ward testified that he "got on YouTube and [he] looked around, [he] found acetylene bombs on YouTube all over the place." *See id. at 150:17-151:2.* From this haphazard YouTube search, a theory was born. Mr. Ward's YouTube search walked so MLGW's obsessive attempts at lay scene recreation could run.

Mr. Ward testified that he came up with the idea to recreate various scenarios in an attempt to reenact the explosion. When asked if he was gauging things on YouTube videos that he found, he responded that he "didn't have anything else to go by. It was an idea." *See id. at 151:4-152:17.* Mr. Ward admitted that no one on the crew gave a statement that the explosion was intentional. In fact, Mr. Ward admitted that no one at all provided any statement to corroborate an intentional explosion, aside from allegedly an individual with TOSHA who neither testified nor provided a Rule 72 Affidavit for the trial court's consideration. *See id. at 152:18-154:8.* Further note that the TOSHA report had no mention of alleged horseplay. *See Trial Exhibit #11-TOSHA Report.* Mr. Ward testified that he had no background in accident reconstruction and that he used common

sense. When asked about the YouTube videos, Mr. Ward responded, "[g]ot to do it somewhere." Further, Mr. Ward testified that he does not "do this often." *See id. at 154:21-155:18.* In fact, this was something that Mr. Ward had never done before. He testified that other than review of YouTube videos, there was no other impact in how he was conducting the reenactments. *See id. at 161:14-162:2.*

Joshua Davis, manager of corporate investigations and revenue protection, also testified that he participated in the investigation efforts for the subject injury. *See id. at 184:8-24.* His investigation included a site visit approximately two months after the injury date, where he testified that he found additional bottles that looked as if they were exploded. These bottles were in a ditch next to some trash. *See id. at 185:3-21.* Mr. Davis identified that the bottles he found looked similar to the Gatorade bottle photo; however, he testified that he could not confirm that the bottles were those that he found on site. In fact, Mr. Davis testified that he had originally retrieved the bottles, brought them back to the corporate security office, but they were inadvertently thrown away by the cleaning crew. *See id. at 186:8-19; 191:12-192:2.* Mr. Davis testified that there were no statements made to indicate an intentional explosion, only theory. *See id. at 193:21-194:5.*

In line with Mr. Diffee's testimony concerning the conservation of empty bottles to cool welded parts, Mr. Ward testified that this was a common practice. *See id. at 156:18-157:22.* Mr. Ward testified that he did not believe the crew's statements. *See id. at 157:18-158:3.*

Aside from the theories generated from YouTube videos, Mr. Ward testified that the crew members' statements were inconsistent. Mr. Ward identified the two inconsistencies as the address of injury and which hose was being used. As to the address inconsistency, Mr. Daniels testified that "everything works off the computer and they needed to know where it says I am. And that's the ticket we were on." *See id. at 137:6-21.* Mr. Diffee confirmed how MLGW works with tickets,

testifying, "with the way the computer was set up, at that time, our department, we had to be on a ticket- - like, on an address...[w]e couldn't show that we weren't somewhere." *See id. at 66:8-13.*

Somehow MLGW has advanced an elaborate willful misconduct defense based upon alleged horseplay in review of YouTube videos, an address reporting inconsistency easily explained by MLGW's job ticket system, and questions over which of two hoses was being used when Mr. Daniels lit the torch to begin welding. All of this instead of believing three seasoned welders, none of whom had a history of reprimand for any type of misconduct. Further, even if the horseplay theory were to hold water, MLGW has no definitive evidence that Employee played an active role in the alleged horseplay.

III. The Trial Court Did Not Err in the Weight Given to All Documentary and Testimonial Evidence Presented, and Thus, Did Not Err in Holding That Employee is Likely to Prevail at Trial

As presentation of the subject matter at Expedited Hearing included heavily contested facts, in the Expedited Hearing Order for Medical Benefits, Judge Phillips performed an extremely detailed analysis of the hearing testimony, documentary evidence, and the respective positions of the parties.

At Expedited Hearing, the trial court reviews whether an injured worker would likely prevail at trial. *See Davis v. GCA Servs. Grp., Inc.*, No. 2017-06-0931, 2018 TN Wrk. Comp. App. Bd. LEXIS 11, at *7-8 (Tenn. Workers' Comp. App. Bd. March 14, 2018); *see also McCord v. Advantage Human Resourcing*, No. 2014-06-0063, 2015 TN Wrk. Comp. App. Bd. LEXIS 6, at *9 (Tenn. Workers' Comp. App. Bd. Mar. 27, 2015).

As to any raised affirmative defenses, pursuant to *Tenn. Code Ann.* § 50-6-110(b), "[i]f the employer defends on the ground that the injury arose in any or all of the ways stated in subsection (a), the burden of proof shall be on the employer to establish the defense." At the Expedited Hearing stage, the trial court does not assess the employer's burden of proof in establishing its affirmative defenses by a preponderance of the evidence but rather assesses these in the context of whether the injured worker is likely to prevail at trial. *See Iboy v. Kenten Mgmt., LLC*, No. 2017-06-1855, 2018 TN Wrk. Comp. App. Bd. LEXIS 23, at *18 (Tenn. Workers' Comp. App. Bd. May 8, 2018); *see also Burnett v. Builders Trans.*, No. 2017-08-0409, 2018 TN Wrk. Comp. App. Bd. LEXIS 5, at *9-10 (Tenn. Workers' Comp. App. Bd. Feb. 8, 2018).

In 2001, the Special Workers' Compensation Appeals Panel highlighted that "[w]orkers' compensation benefits are payable without regard to fault of the employee or the care exercised by the employee, except in cases where the employee is guilty of willful misconduct. *See Nall v. E.I. Dupont De Nemours & Co.*, No. M1999-00375-WC-R3-CV, 2001 Tenn. LEXIS 26, at *5 (Tenn. Workers' Comp. Panel Jan. 9, 2001). Upon review of the dispute in offered lay testimony, the *Nall* Court noted that the trial court "believed the employee's testimony" and "if issues of credibility and weight to be given oral testimony are involved, considerable deference must be accorded" the trial court's determinations. *See Oglesby v. United Parcel Service, Inc., et al.*, No. 2017-08-1148, 2018 TN Wrk. Comp. App. Bd. LEXIS 34, at *9 (Tenn. Workers' Comp. App. Bd. July 19, 2018); Id. at *7; *see also Nall* at *7.

While MLGW incorrectly submits Employee's requisite burden of proof as the preponderance of the evidence standard, citing two pre-Reform Act cases, *Talley v. Virginia Ins. Reciprocal* and *Hill v. Eagle Bend Mfg., Inc.*, this incorrect evaluation does not alter the course of review undertaken by the trial court. *See Talley*, 775 S.W.2d 587, 591 (Tenn. 1989); *see also Hill*,

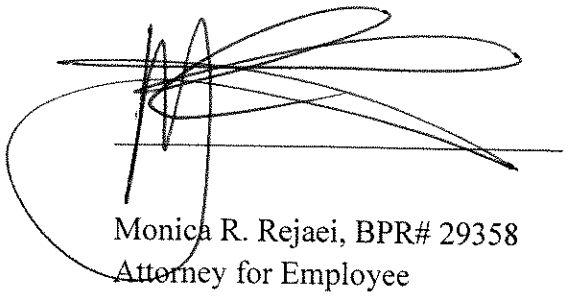
942 S.W. 2d 483, 487 (Tenn. 1997). When considering the correct burden of proof at Expedited Hearing, specifically whether Employee would likely prevail at trial, the trial court fully and competently weighed all evidence presented and found that MLGW fell short in its efforts to rest upon the willful misconduct and safety violation defenses of *Tenn. Code Ann.* § 50-6-110(a), and as such, the trial court did not err in finding "ample evidence" to hold that Employee would likely prevail at trial, even in context of MLGW's defenses. *See Expedited Hearing Order p. 9.*

CONCLUSION

Appellee respectfully requests this Honorable Court issue an Order affirming the trial court's Expedited Hearing Order for Medical Benefits.

Respectfully submitted,

Nahon, Saharovich & Trotz, PLC



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CERTIFICATE OF SERVICE

Pursuant to Rule 5.02 of the Tennessee Rules of Civil Procedure, the undersigned attorney certifies that a true and correct copy of the forgoing Brief of Appellee (Employee) was served to the following by emailing a copy in Adobe PDF format by email:

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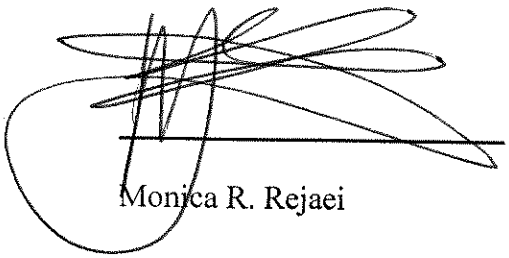

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