

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT NASHVILLE  
November 26, 2007 Session

**LELA EVA KNIGHT v. CARRIER CORPORATION ET AL.**

**Direct Appeal from the Chancery Court for White County  
No. 9654 Vernon Neal, Chancellor**

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**No. M2007-02423-WC-R3-WC - Mailed - July 9, 2008  
Filed - August 11, 2008**

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This appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) (Supp. 2007) for a hearing and a report of findings of fact and conclusions of law. It involves the attempt of a long-term employee of an air conditioner manufacturer to obtain benefits under the Workers' Compensation Act for an injury to her foot. She filed a claim seeking workers' compensation benefits in the Chancery Court for White County. Following a bench trial, the trial court determined that the employee had sustained a compensable injury and that she was entitled to workers' compensation benefits resulting from a fifty-five percent permanent partial disability to her foot. On this appeal, the employer asserts that the evidence does not support the trial court's finding that the injury arose out of the course of the employment and that the disability award was excessive. We have determined that the record contains sufficient evidence to support the trial court's award.

**Tenn. Code Ann. § 50-6-225(e) (Supp. 2006) Appeal as of Right;  
Judgment of the Chancery Court Affirmed**

WILLIAM C. KOCH, JR., J., delivered the opinion of the court, in which ALLEN W. WALLACE and JERRY SCOTT, SR. JJ., joined.

Raymond S. Leathers, Nashville, Tennessee, for the appellants, Carrier Corporation and Insurance Company of the State of Pennsylvania.

Van French, Murfreesboro, Tennessee, for the appellee, Lela Eva Knight.

**MEMORANDUM OPINION**

## I.

Lela Eva Knight began working for Carrier Corporation in 1978. She was nineteen years old at the time and had completed the ninth grade.<sup>1</sup> She continued to work at Carrier Corporation's air conditioner plant for the next twenty-six years, except during periods of layoff when she would work temporary jobs performing mostly manual labor.

Ms. Knight's work at Carrier Corporation required her to engage in physical labor while she stood on a concrete floor. In the mid-1990s, Ms. Knight began working in the press shop where she lifted metal from a skid that was brought to her by a fork lift. This required Ms. Knight to use her left foot to depress an elevated pedal to lift and bend the metal. During the course of a shift, she would press the pedal anywhere between fifty and two hundred times.

In the spring and summer of 2004, Ms. Knight incurred a significant amount of overtime by working shifts of up to ten hours for six and seven days per week. Around that time, she began to experience problems with her left foot, although she does not recall a specific injury-producing incident. Beginning in June 2004, Ms. Knight visited doctors for cortisone shots, X-rays, and a bone scan. On February 22, 2005, she was informed by her podiatrist, Dr. Fred Marino, that she should not return to work. Ms. Knight then called her foreman at Carrier and advised him of her injury.

Dr. Marino initially diagnosed Ms. Knight with chronic plantar fasciitis heel spur syndrome.<sup>2</sup> He also suspected a calcaneal stress fracture. Ms. Knight's foot was placed in a cast and, later, in a "walking boot." Ms. Knight continued seeing Dr. Marino for treatment and experienced some improvement.

By September 6, 2005, Dr. Marino concluded that Ms. Knight had reached maximum medical improvement. He also altered his diagnosis to reflect the permanent nature of Ms. Knight's condition. Dr. Marino concluded that Ms. Knight had arthritic change and cuboid syndrome in her left foot, in which the joint surfaces on each side of the arch of the foot break down and suffer permanent damage. Using the American Medical Association's Permanent Impairment Guide, Dr. Marino determined that Ms. Knight had suffered a thirty-six percent partial impairment to her left foot, which is equivalent to a twelve percent disability to the whole body. Dr. Marino placed permanent restrictions upon Ms. Knight's physical activities as they related to standing, walking, pushing, pulling, and climbing. Although Ms. Knight attempted to find employment within the bounds of those restrictions, she was unable to obtain another job.

On June 13, 2005, Ms. Knight filed a complaint in the Chancery Court for White County seeking a judgment for medical benefits for her work-related disability and related expenses, in

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<sup>1</sup>Ms. Knight later earned her G.E.D.

<sup>2</sup>Dr. Marino described chronic plantar fasciitis heel spur syndrome as an extremely painful condition in which a "band on the bottom of the foot. . .begins to tear. . . .That tearing goes through a series of repair[s] and tear[s] until it creates scar tissue and calcification."

accordance with Tennessee's Workers' Compensation Law, Tenn. Code Ann. §§ 50-6-101 through -801 (2005 & 2007 Supp.).

The matter proceeded to trial on July 7, 2006. The trial court accepted into evidence the deposition of Dr. Marino, as well as the deposition of Dr. Marion C. Harper, an orthopedic surgeon who conducted an evaluation of Ms. Knight pursuant to Carrier Corporation's request. The trial court also heard testimony from Ms. Knight and Stella Marsh, one of Ms. Knight's co-workers. On October 25, 2006, the trial court entered its judgment in the matter, determining that Ms. Knight had suffered a work-related injury to her left foot and assessing a fifty-five percent vocational disability. The trial court awarded Ms. Knight \$43,862.50 for her permanent partial vocational disability, \$19,430.00 in temporary total disability benefits that she had previously been denied, \$515.00 for out-of-pocket expenses, and \$12,658.50 in attorney's fees. Carrier Corporation has appealed.

## II.

Courts reviewing an award of workers' compensation benefits must conduct an in-depth examination of the trial court's factual findings and conclusions. *Wilhelm v. Krogers*, 235 S.W.3d 122, 126 (Tenn. 2007). When conducting this examination, Tenn. Code Ann. § 50-6-225(e)(2) requires the reviewing court to "[r]eview . . . the trial court's findings of fact . . . de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise." The reviewing court must also give considerable deference to the trial court's findings regarding the credibility of the live witnesses and to the trial court's assessment of the weight that should be given to their testimony. *Whirlpool Corp. v. Nakhoneinh*, 69 S.W.3d 164, 167 (Tenn. 2002). However, the reviewing courts need not give similar deference to a trial court's findings based upon documentary evidence such as depositions, *Orrick v. Bestway Trucking, Inc.*, 184 S.W.3d 211, 216 (Tenn. 2006); *Bohanan v. City of Knoxville*, 136 S.W.3d 621, 624 (Tenn. 2004), or to a trial court's conclusions of law, *Perrin v. Gaylord Entm't Co.*, 120 S.W.3d 823, 826 (Tenn. 2003).

## III.

Carrier Corporation first asserts that the evidence does not support the trial court's conclusion that the condition of Ms. Knight's left foot arose out of the course of her employment. Ms. Knight, on the other hand, insists that the record contains sufficient evidence to uphold the trial court's finding. We have concluded that Ms. Knight has the better argument.

In order to be compensable under the Workers' Compensation Act, Tenn. Code Ann. § 50-6-102(13) requires that an injury arise "out of and in the course of employment." It is now commonly understood that "arising out of" refers to the origin of the injury and "in the course of" refers to the "time, place, and circumstances" of the injury. *Wait v. Travelers Indem. Co. of Ill.*, 240 S.W.3d 220, 225 (Tenn. 2007). Although causation must be established with medical evidence, it need not be established to an absolute certainty. *Fitzgerald v. BTR Sealing Sys.*, 205 S.W.3d 400, 404 (Tenn. 2006). Thus, a court may award workers' compensation benefits when the medical evidence shows that the employment "could or might have been the cause" of the injury, and lay testimony has been

introduced from which causation may be inferred. *Fitzgerald v. BTR Sealing Sys.*, 205 S.W.3d at 404.

Carrier Corporation does not dispute that Dr. Marino is a qualified expert. However, it attaches great significance to Dr. Marino's testimony that he did not elicit from Ms. Knight detailed information about her job duties when he treated her. Dr. Marino testified that he had treated many Carrier Corporation employees and that he had a "general idea of what they do." Carrier Corporation argues that because Dr. Marino failed to determine Ms. Knight's precise job duties when he diagnosed her injury, his testimony is insufficient to establish that Ms. Knight's injury arose out of and in the course of her employment. Carrier Corporation also contends that the court should have accepted as "more credible" Dr. Harper's testimony that plantar fasciitis is a common injury and that it should not be attributed to Ms. Knight's work.

The evidence shows that Ms. Knight worked as a press machine operator for over nine years. This job required her to remain standing and to press an elevated foot pedal as many as two hundred times per shift. When Ms. Knight began to experience pain in her left foot, she consulted a doctor, received two cortisone injections, and was referred to a podiatrist. Dr. Marino examined Ms. Knight, conducted tests, diagnosed chronic plantar fasciitis heel spur syndrome, and provided treatment for over a year.

Although Dr. Marino did not ask about Ms. Knight's specific job duties, he had a general knowledge of the type of work she performed for Carrier Corporation, and he testified that the condition was aggravated by her work. Moreover, Ms. Knight's testimony revealed that she performed the type of work that would cause the repetitive stress injury described by Dr. Marino, and Ms. Marsh's testimony corroborated that Ms. Knight limped at work. The trial court specifically found that Ms. Knight and Ms. Marsh were "very credible" witnesses. Additionally, Dr. Harper conceded that the fact that Ms. Knight stood for eight hours at a time on concrete during her work day could have caused or aggravated her plantar fasciitis. Accordingly, considering the entire record in this matter, we cannot say that the evidence preponderates against the trial court's finding that Ms. Knight suffered a compensable injury arising out of and in the course of her employment.

#### IV.

Carrier Corporation also asserts that the trial court's assessment of a fifty-five percent vocational disability to Ms. Knight's foot is excessive and that the size of the award made to Ms. Knight was inappropriate. For her part, Ms. Knight asserts that the trial court's award is supported by the evidence. Again, we agree with Ms. Knight.

The extent of a vocational disability is a question of fact. *Orrick v. Bestway Trucking, Inc.*, 184 S.W.3d at 217. When making a vocational disability determination, a trial court must consider "all pertinent factors." Tenn. Code Ann. § 50-6-241. These factors include (1) lay and expert testimony, (2) the employee's age, education, skills, and training, and (3) the employee's capacity to work the types positions that are locally available. Tenn. Code Ann. § 50-6-241; *Orrick v. Bestway Trucking, Inc.*, 184 S.W.3d at 217. The employee's own assessment of his or her physical

condition can and should also be considered. *See Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 458 (Tenn.1988).

Carrier Corporation insists that the trial court erred by assessing a vocational disability of fifty-five percent because Dr. Harper assigned no impairment rating and because Ms. Knight “has acquired significant job skills” and “is still relatively young.” The trial court determined specifically that Dr. Marino’s testimony was more credible than that of Dr. Harper. Additionally, the record shows that Ms. Knight is forty-six years old, that, outside of her factory work for Carrier Corporation, she has only worked at jobs that required unskilled manual labor, and that she has been unable to find employment within the bounds of the restrictions placed upon her by virtue of her permanent injury. Accordingly, we have determined that the evidence does not preponderate against the trial court’s assessment that Ms. Knight has suffered a fifty-five percent vocational disability to her left foot.

#### V.

We conclude that the trial court did not err in its finding that Ms. Knight sustained a compensable injury and that she should receive an award reflecting a fifty-five percent vocational disability by virtue of the permanent injury to her left foot. The judgment of the trial court is affirmed. We tax the costs of this appeal to Carrier Corporation for which execution may issue, if necessary.

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WILLIAM C. KOCH, JR., JUSTICE

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SPECIAL WORKERS' COMPENSATION APPEALS PANEL

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**No. M2007-02423-WC-R3-WC - Decided August 11, 2008**

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**JUDGMENT**

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs are taxed to Carrier Corporation, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM