

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

Assigned on Briefs September 29, 2020

JEFFREY GARNER v. GOODYEAR TIRE & RUBBER COMPANY

**Appeal from the Chancery Court for Obion County
No. 32782 W. Michael Maloan, Chancellor**

**No. W2020-00280-SC-R3-WC – Mailed February 4, 2021;
Filed March 19, 2021**

Employee filed a claim for workers' compensation benefits alleging he sustained high-frequency hearing loss during his employment with Employer. Employer disputed both causation and the method used by Employee's physician's to ascertain anatomical impairment. After considering the proof, the trial court determined the hearing loss was caused by Employee's employment and awarded benefits. Employer has appealed, arguing Employee's hearing loss was not primarily caused by his employment and contending the trial court erred in adopting an anatomical impairment rating method not "used and accepted by the medical community." The appeal has been referred to the Special Workers' Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law pursuant to Tennessee Supreme Court Rule 51. We affirm the chancery court's causation findings but we reverse the judgment in all other respects.

**Tenn. Code Ann. § 50-6-225(e)(1) (applicable to injuries occurring prior
to July 1, 2014) Appeal as of Right;
Judgment of the Chancery Court Affirmed in Part and Reversed in Part**

DON R. ASH, SR. J., delivered the opinion of the court, in which HOLLY J. KIRBY, J. and ROBERT E. LEE DAVIES, SR. J., joined.

Randy N. Chism, Union City, Tennessee, for the appellant, Goodyear Tire & Rubber Company

Jeffrey P. Boyd, Jackson, Tennessee, for the appellee, Jeffrey Garner

OPINION

Factual and Procedural Background

Jeffrey Garner (“Employee”) began employment with Goodyear Tire & Rubber Company (“Employer”) in August 1997, and left his employment on July 9, 2011, when the plant closed. Over the next two or three years, Employee noticed he was having difficulty hearing. He attributed his hearing loss to age until a friend informed him of other Goodyear hearing loss cases. Employee retained an attorney and filed a worker’s compensation claim on July 24, 2014. When a benefit review conference failed to resolve the claim, Employee filed a worker’s compensation complaint in the Obion County Chancery Court.

At trial, the parties disputed the cause of Employee’s hearing loss, and Employer challenged the method used by Employee’s physician to assess anatomical impairment. Employee was the only live witness. Mr. Garner, age fifty at the time of trial, graduated from high school and began working for the local utility district. He was hired by Employer in 1997, and worked various times in the curing department, the presses, the banbury, and the tire room. All of the work environments were described as “noisy.” Although ear plugs were made available to employees in 1997, hearing protection was not mandatory until near the end of Employee’s employment. Employer conducted annual hearing tests but Employee was never shown the results of the tests; informed his hearing was worsening; or advised to see a doctor. After leaving his employment in 2011, Employee worked in two other factories before accepting his current maintenance position at a local hospital in 2016. None of the post-Goodyear environments were particularly noisy but hearing protection was provided by the respective employers. About three years after leaving Employer, Employee noticed and was made aware by his family he was having hearing problems particularly when two or three conversations were going at the same time or when there was background noise such as a television.

Aside from his employment history, Employee started hunting as a young man. He wore hearing protection when he went skeet shooting but he did not wear protection when he went rabbit or duck hunting. According to Employee, his hunting trips were greatly curtailed when he began working six days per week at Employer. He acknowledged he hunted on occasion in 2006 or 2007.

Dr. Karl Studtmann, a surgeon with a specialty in otolaryngology, examined Employee on March 2, 2017, and testified by deposition. He discussed Employee’s employment history and related noise exposure. According to Employee he had little noise exposure in his post-Goodyear employment. Employee reported he had a history of hunting and was a right-handed shooter. He

also had experienced decreased hearing in his left ear since suffering from a ruptured eardrum as a child. Employee reported he had difficulty understanding speech if he could not see the speaker's face, and he was often forced to increase the television volume to hear certain pitches.

Upon reviewing the 1997 hearing screens conducted by Employer, Dr. Studtmann acknowledged Employee had severe hearing loss when he came to Goodyear. When he compared the 1997 hearing screen with the 2011 hearing screen taken the year the plant closed, Dr. Studtmann observed Employee's left ear had worsened from 25 to 40 decibels at 3,000 hertz; from 50 to 60 decibels at 4,000 hertz; 65 to 75 decibels at 6,000 hertz; and 50 to 60 decibels at 8,000 hertz. He characterized a greater than 10-decibel change as significant. As to Employee's right ear, Dr. Studtmann noticed Employee displayed no abnormalities in his right ear during the years of testing at Goodyear, indicating the abnormality noted at 8,000 hertz in the initial test was likely an incorrect result. Dr. Studtmann opined Employee has an "asymmetric . . . high frequency sensorineural or nerve type hearing loss in a checkmark pattern in both ears" which is consistent with noise-induced hearing loss, with the left ear substantially worse than the right ear. He also agreed right-handed gunfire is the most common cause of asymmetry and conceded right-handed gunfire could have caused the asymmetry. Dr. Studtmann ultimately opined the primary cause of Employee's hearing loss from 1997 to 2011 was his noise exposure at Goodyear.¹

Based on the American Medical Association Guide to Evaluation of Permanent Impairment (Sixth Edition) ("AMA Guides") which only provides an impairment rating formula for hearing losses in the ranges of 500, 1000, 2000, and up to 3000 hertz, Dr. Studtmann determined Employee had a monaural impairment in his right ear of zero (0) percent, left ear zero (0) percent, and whole person zero (0) percent. Because Dr. Studtmann believed the AMA Guides fail to adequately address impairment for hearing losses above 3000 hertz as in Employee's case, he used an alternative "flat-line" method he derived from a 2006 article. *See Benjamin W.Y. Hornsby & Todd A. Ricketts, "The effects of hearing loss on the contribution of high- and low- frequency speech information to speech understanding," THE JOURNAL OF ACOUSTICAL SOCIETY OF AMERICA, Vol. 113 (March 2003); see also Benjamin W.Y. Hornsby & Todd A. Ricketts, The effects of hearing loss on the contribution of high- and low- frequency speech information to speech understanding, II. Sloping hearing loss," THE JOURNAL OF ACOUSTICAL SOCIETY OF AMERICA, Vol. 119, Issue 3 (March 2006) ["Hornsby article"]*. In Dr. Studtmann's view, the AMA Guides do not describe the difficulty people have understanding in a real-world environment such as when background noise is present. Conversely, the flat-line approach mimics the actual disability suffered with high-frequency hearing loss. He explained high frequency sounds include consonants such as Ks, Fs, Ss, and Ths. If a person cannot hear those sounds, he can hear people speaking but he cannot understand what they are saying. With this explanation, Dr. Studtmann developed a formula which takes the highest score from each ear; adds it together four times; gets a total number; and inserts that number into the existing chart contained in the AMA Guides. Based

¹ Dr. Studtmann's 2017 audiogram indicated that Employee's hearing had continued to decline after leaving his employment at Goodyear.

on the flat-line method, he determined Employee had a monaural impairment of 15 percent to his right ear; 82 percent to his left ear; 26.3 binaural impairment, and 9 percent whole person impairment.

On cross-examination, Dr. Studtmann acknowledged this “high frequency hearing loss” impairment rating is not authorized by the AMA Guides. He conceded the Hornsby & Ricketts article has not been commented on or expanded since 2006 and the approach has not been adopted by any other medical organization.

Dr. Ronald Kirkland, a retired physician specializing in otolaryngology, testified by deposition on behalf of Employer. He saw Employee on March 22, 2018 and took his history noting Employee’s non-work noise exposure from lawnmower use, Harley Davison motorcycle riding, chainsaw use, and hunting. Like Dr. Studtmann, Dr. Kirkland noticed Employee had high frequency hearing loss in his left ear when he came to Goodyear in 1997. When he compared the 1997 hearing test with the 2011 hearing test, Dr. Kirkland observed Employee’s hearing grew “slightly worse” in the left ear during his fourteen years of employment. Dr. Kirkland believed hearing protection worn by Employee at Goodyear made it less likely his hearing damage was caused by Goodyear. He believed the asymmetric findings were consistent with someone who engaged in right-hand gunfire. Accordingly, he opined the most likely cause of Employee’s unilateral left-sided hearing loss was his hunting history. Dr. Kirkland disagreed with Dr. Studtmann’s use of the flat-line method, noting the ABA Guides should be followed.²

Dr. Robert Dobie, a physician specializing in otolaryngology, also testified for Employer by deposition.³ Dr. Dobie explained the AMA Guides are based on a formula from the American Academy of Otolaryngology Head and Neck Surgery. He previously served as chair of the hearing committee which generated the formula. The AMA formula is intended to estimate a material impairment -- an impairment affects the typical person in daily life. According to Dr. Dobie, the committee has periodically discussed including higher frequencies; however, to date the committee has declined to recommend a change to the formula. The current formula does not utilize ranges of 4000, 6000, and 8000 hertz⁴ because hearing loss at those frequencies does not materially contribute to the difficulty a typical person has in everyday life. In other words, the

² An audiogram ordered by Dr. Kirkland in March 2018 indicated Employee’s hearing had worsened since Dr. Studtmann’s March 2017 audiogram. Based on these results, he assigned an impairment rating of 33.8 percent to the right ear; 31.9 percent to the left ear; 32.2 percent binaural; and 11 percent to the whole body. Dr. Kirkland conceded that Dr. Studtmann’s audiogram, which revealed further hearing loss after 2011, was more accurate.

³ The deposition of Dr. Dobie was taken for universal consideration in the “Goodyear Hearing Loss Cases.”

⁴ Dr. Dobie testified that audiogram testing in the higher ranges is for diagnostic purposes.

formula contained in the AMA Guides gives no weight to hearing loss at these higher frequencies. Dr. Dobie is unaware of any American organization that has adopted or accepted a different method for rating hearing impairment.

Dr. Dobie reviewed Dr. Studtmann's utilization of a flat-line formula and the Hornsby article upon which Dr. Studtmann's method was purportedly based. Dr. Dobie disagrees with the methodology, adding Dr. Studtmann misinterpreted the article. According to Dr. Dobie, the Hornsby article addresses hearing aid fitting and discusses the controversy of whether to boost hearing at all frequencies when the hearing is really poor. In his view, the method employed by Dr. Studtmann is "utterly inappropriate" and is not supported by the Hornsby article. He challenged counsel to find anyone who would agree with the method, indicating further there are no studies which validate a method that would modify or extend the AMA methodology.

Dr. Robert Thayer Sataloff, an otolaryngologist with a specialty in ears and the voice, also testified by deposition.⁵ Dr. Sataloff served as the chairman of the committee for the otolaryngology chapter in the Sixth Edition. He recalled the development of the five earlier editions, explaining the otolaryngology chapter in the current edition was restructured to conform to the internationally accepted approach with every aspect reviewed in detail by a multi-disciplinary panel. Although the committee has previously considered whether to include hearing loss in the 4000, 6000, and 8000 hertz ranges in the formula, there was no consensus compelling inclusion of these ranges. Dr. Sataloff was not aware of any board-certified otolaryngologists (who do research and publish peer-reviewed papers) advocating these frequencies should be included in the AMA Guides. In the committee's view, hearing loss in the higher frequencies does not affect the ability to hear and understand speech in everyday situations. Dr. Sataloff stated many individuals who sustain hearing damage in the 4000, 6000, or 8000 hertz ranges are completely unaware of hearing loss unless they have a reason to get tested.

The trial court made findings on the record and entered a judgment summarizing the findings and conclusions. The court concluded by a preponderance of the evidence the primary cause of Employee's hearing loss was his employment at Goodyear "even though other factors may have contributed to his loss." The trial court mentioned the "flat line test" but did not make specific findings about the method before adopting a 20 percent impairment rating.

Analysis

Standard of Review

⁵ The deposition of Dr. Sataloff was also taken for universal consideration in the "Goodyear Hearing Loss Cases." He was deposed for the purpose of obtaining additional explanation about the hearing loss section in the Sixth Edition (and previous editions) of the AMA Guides.

Generally, appellate review of decisions in workers= compensation cases is governed by Tennessee Code Annotated section 50-6-225(e)(2) (2008), which provides appellate courts must A[r]review . . . 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.@ As the Supreme Court has observed many times, reviewing courts 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 the trial court has seen and heard the witnesses, considerable deference must be afforded the trial court's factual findings. *Tryon v. Saturn Corp.*, 254 S.W.3d 321, 327 (Tenn. 2008). No similar deference need be afforded the trial court's findings based upon documentary evidence such as depositions. *Glisson v. Mohon Int=l, Inc./Campbell Ray*, 185 S.W.3d 348, 353 (Tenn. 2006). Similarly, reviewing courts afford no presumption of correctness to a trial court's conclusions of law. *Seiber v. Reeves Logging*, 284 S.W.3d 294, 298 (Tenn. 2009).

Causation

In its first issue, Employer argues the trial court erred in concluding Employee's hearing loss was caused by his employment at Goodyear. In order to qualify for workers' compensation benefits, an employee is required to prove that his hearing loss "arose primarily out of and in the course and scope of employment." Tenn. Code Ann. § 50-6-102(12)(C)(ii) (2014). In most cases, the employee must establish by a preponderance of the medical expert evidence (as supplemented by lay evidence) a causal relationship between the alleged injury and his employment activity. *Orman v. Williams Sonoma, Inc.*, 803 S.W.2d 672, 676 (Tenn. 1991); *Trosper v. Armstrong Wood Prods, Inc.*, 273 S.W.3d 598, 604, 609 (Tenn. 2008). Causation cannot be based on conjectural or speculative proof but absolute certainty is not required. *Clark v. Nashville Mach. Elevator Co.*, 129 S.W.3d 42, 47 (Tenn. 2004).

In the instant case, Employee testified he was unaware he had suffered hearing loss until about three years after leaving his employment at Goodyear. He said he began to notice difficulty hearing when multiple conversations were occurring in the room or when there was background noise such as a television. Employee's family also informed him of his hearing difficulties. He had no indication such hearing loss could be attributed to his employment until he heard about the Goodyear hearing loss cases. Garner also described his various working environments at Goodyear, describing all of them as noisy. Although Employee had hearing loss when he arrived at Goodyear, a comparison of his 1997 pre-employment hearing screen and his 2011 final hearing screen revealed Employee's hearing had worsened in his left ear during his years of employment. Employee also testified he grew up hunting but claimed his hunting activities decreased substantially when he began working at Goodyear.

Employee was initially examined by Dr. Studtmann and was later examined by Dr. Kirkland at Employer's request. Both physicians reviewed the results of Employee's annual hearing tests conducted at Goodyear from 1997 through 2011, and both agreed Employee sustained

asymmetrical hearing loss during those years.⁶ Employee's hearing had worsened significantly in his left ear but not in his right ear. Dr. Kirkland opined the asymmetrical hearing loss was primarily attributable to Employee's right-handed gunfire from hunting. Although Dr. Studtmann acknowledged such asymmetrical hearing loss was consistent with right-handed gunfire, he opined the primary cause of Employee's hearing loss was his noise exposure at Goodyear.

The proof established various contributing factors to Employee's hearing loss. Employee's testimony was not particularly persuasive in determining the cause of the hearing loss. At a minimum, his testimony established he worked in a noisy environment and first noticed his hearing problems a few years after leaving his employment. Employee testified there was not much time to hunt after he began working six days per week at Goodyear. The reasonable inference is hunting had little to do with the hearing loss sustained during his employment. The trial court obviously accredited Employee's testimony. Having observed Employee's demeanor, the trial court is entitled to considerable deference. *Tryon v. Saturn Corp.*, 254 S.W.3d 321, 327 (Tenn. 2008). Our de novo review of the experts' deposition testimony reveals Employee's asymmetric hearing loss is consistent with right-handed gunfire. Without pointing to particular medical evidence to support their respective opinions, Dr. Studtmann sided with Employee while Dr. Kirkland sided with Employer. In such a close case, Employee's testimony may have barely tipped the scales in his favor. We cannot conclude the evidence preponderates against the trial court's ruling Employee's hearing loss was primarily caused by his employment.

Impairment Rating

In its second issue, Employer argues Dr. Studtmann's impairment rating is inadmissible under the worker's compensation law, and therefore, should not have been considered by the trial court. This issue stems from Tennessee Code Annotated section 50-6-204(d) which provides in pertinent part as follows:

To provide uniformity and fairness for all parties in determining the degree of anatomical impairment sustained by the employee, a physician . . . shall utilize the applicable edition of the AMA Guides . . . ***or in cases not covered by the AMA Guides, an impairment rating by any appropriate method used and accepted by the medical community.***

No anatomical impairment or impairment rating, whether contained in a medical record, medical report, including a medical report pursuant to § 50-6-235(c), deposition or oral expert opinion testimony ***shall*** be accepted during a benefit review conference or ***be admissible into evidence at the trial of a workers' compensation matter unless the impairment is based on the applicable edition of***

⁶ Both physicians also agree that Employee's pre-employment and post-employment hearing loss was not attributable to his employment at Goodyear.

the AMA Guides or, in cases not covered by the AMA Guides, an impairment rating by any appropriate method used and accepted by the medical community.

Tenn. Code Ann. § 50-6-204(d)(3)(A), (B) (2014) (emphasis added).

Based on the testimony of Drs. Dobie and Sataloff, the high-frequency hearing loss suffered by Employee clearly is not included in the formula utilized by the AMA Guides. The more narrow question in this case is whether the flat-line method utilized by Dr. Studtmann to assign an impairment rating for Employee's high-frequency hearing loss is "used and accepted by the medical community" as required by the statute.

Interestingly, our Supreme Court addressed a strikingly similar case involving the same employer, the same counsel, and many of the same experts (most notably Drs. Studtmann and Sataloff). In *Lambdin v. Goodyear Tire & Rubber Co.*, 468 S.W.3d 1 (Tenn. 2015), Mr. Lambdin, also a Goodyear employee, sustained high-frequency hearing loss determined to have been caused by his employment. The Court specifically recognized the AMA Guides do not sufficiently cover high-frequency hearing loss despite the medical profession's recognition of hearing losses within the higher ranges of sound discernible by the human ear. *Id.* at 14. As in the instant case, Dr. Sataloff testified the AMA Guides had no reason to consider losses above 3000 in the assessment of an impairment. *Id.* at 7. After reading Dr. Sataloff's testimony, Dr. Studtmann submitted to a supplemental deposition.⁷ He attached a position paper on "Occupational Noise Induced Hearing Loss" and cited nineteen (19) published medical research studies to support his contention the AMA Guides fail to adequately address the subject of high-frequency impairment. *Id.* at 8. Dr. Studtmann specifically cited an article from *The Journal of the American Medical Association* as an authoritative source, and he described each of the studies as having been subjected to peer review. *Id.* The following remarks by our Supreme Court are important to our instant analysis in this regard:

Dr. Studtmann provided testimony, unrefuted as it turned out, that the component parts of his method of calculating impairment ***had been subjected to peer review and had a level of acceptance among members of the medical profession.*** He presented published studies indicating that the higher frequency hearing losses tended to increase the number of accidents at the workplace and explained his method of assessment. In particular, ***a number of the studies indicated that impairment ratings are warranted at the higher levels of frequency beyond 3000***

⁷ The trial court originally declined to consider an impairment rating that included hearing loss at frequencies above 3000 hertz. However, the trial court granted a motion to alter or amend based on *Perry v. Lennox Hearth Products*, No. W2011-02389-SC-WCM-WC, 2013 WL 1461482 (Tenn. Workers' Comp. Panel Apr. 11, 2013) and utilized Dr. Studtmann's impairment rating that included hearing loss both below and above 3000 hertz. *Lambdin*, 468 S.W.3d at 8.

hertz. Exhibits made a part of the record support this methodology. Of importance, we note that the higher impairment rating by Dr. Studtmann, while not calculated pursuant to the AMA Guides, was based upon objective test results obtained during the treatment of the Employee.

Id. at 14 (emphasis added) (noting “the trial court approved Dr. Studtmann’s calculations of additional impairment as used and accepted in the medical community”). The judgment of the trial court utilizing the new impairment rating was affirmed. *Id.*

In contrast, Dr. Studtmann submitted only the Hornsby article, which he admitted had not been commented on or expanded and had not been adopted by any other medical organization. He did not mention, much less submit, a position paper citing nineteen (19) published medical research studies subjected to peer review. During his deposition, Employee’s counsel briefly suggested our Supreme Court adopted the flat-line method in *Lambdin*. However, after objection by Employer’s counsel to the erroneous characterization of the *Lambdin* decision, Employee’s counsel did not advance such a claim at trial or on appeal. Our plain reading of *Lambdin*, coupled with Dr. Studtmann’s failure to submit in this case the same materials submitted in *Lambdin*, fails to support such a conclusion our Supreme Court formally and universally adopted the flat-line method for all high-frequency hearing loss cases.

Viewing the record in this case, we cannot conclude the method used by Dr. Studtmann based on the Hornsby articles, establishes the method used by Dr. Studtmann to assign an impairment rating to Employee’s high-frequency hearing loss is not a method “used and accepted in the medical community.” Accordingly, the trial court erred in admitting the impairment rating into evidence.

Conclusion

We affirm the trial court’s causation findings and conclusions but we conclude the trial court erred in admitting the impairment rating determined by a method not used and accepted in the medical community. Costs are to be assessed equally between the parties.

Don R. Ash, Senior Judge

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

JEFFREY GARNER v. GOODYEAR TIRE & RUBBER COMPANY

**Chancery Court for Obion County
No. 32782**

No. W2020-00280-SC-R3-WC – Filed March 19, 2021

JUDGMENT ORDER

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 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 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 assessed equally between the parties, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM