

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

October 30, 2017 Session

**DEBORAH GOODMAN v. SCHWARZ PAPER COMPANY ET AL.**

**Appeal from the Court of Workers' Compensation Claims  
No. 2016-07-0051 Amber E. Luttrell, Judge**

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**No. W2016-02594-SC-R3-WC – Mailed December 13, 2017; Filed January 18, 2018**

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Deborah Goodman (“Employee”) sustained a back injury in the course of her work for Schwarz Paper Company (“Employer”).<sup>1</sup> It is undisputed that the injury was compensable. All medical expenses were paid by Employer. Employee continued to work after her injury. The sole issue presented to the trial court was whether Employee successfully rebutted the presumption of correctness attached to the authorized treating physician’s impairment rating. Tenn. Code Ann. § 50-6-204(k)(7) (2014 & Supp. 2017). After a compensation hearing, the trial court ruled that Employee had not overcome the presumption. Benefits were awarded based on the treating physician’s impairment rating. Employee has appealed. The appeal has been referred to the Special Workers’ Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law pursuant to Tennessee Supreme Court Rule 51. We affirm the judgment.

**Tenn. Code Ann. § 50-6-225(a) (2014 & 2017 Supp.) Appeal as of Right; Judgment  
of the Court of Workers’ Compensation Claims Affirmed**

ROGER A. PAGE, J., delivered the opinion of the court, in which BRANDON O. GIBSON, J., and DON R. ASH, SR. J., joined.

Jay E. DeGroot, Jackson, Tennessee, for the appellant, Deborah Goodman

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<sup>1</sup> The spelling of Employer’s company name was inadvertently misspelled as “Schwartz” in the originating documents.

Kitty Boyte, Nashville, Tennessee, for the appellee, Bunzl USA Holdings, LLC d/b/a Schwarz Supply Source, and Sedgwick Claims Management Services, Inc.

## OPINION

### Factual and Procedural Background

Employee was fifty-eight years old on the date of trial. She is a high school graduate. Her injury occurred on December 1, 2014. On that date, she was working as a “lumping clerk” for Employer. Her job consisted of checking incoming shipments of goods and making sure that the boxes were correctly marked and stacked. Materials were placed on skids and moved about the premises by forklifts. On December 1, a skid broke while being lifted, causing boxes to fall onto Employee’s right side and pinning her against a wall. She received medical treatment from a local medical clinic, which provided medication and physical therapy. Employee’s symptoms did not improve. An MRI was performed. She was provided with a panel of physicians, from which she selected Dr. John Masterson, an orthopedic surgeon, to be her treating physician.

Dr. Masterson provided conservative treatment, including medication, physical therapy, and activity restrictions. His diagnosis was a lumbar sprain/strain with sacroiliitis. He determined that Employee reached maximum medical improvement on April 9, 2015. He released her to return to work with no restrictions. Employee returned to him in May with continuing complaints of pain in her right sacroiliac and buttock, running down her thigh and into her calf, as well as numbness on the outside of her right foot. Dr. Masterson ordered an EMG nerve conduction study to determine if there was any evidence of a neuropathy or other nerve-related problem. The study was carried out by Dr. Ron Bingham. The results were unremarkable, meaning they showed nothing abnormal. Employee returned for a final visit with Dr. Masterson on June 18, 2015. Her complaints were much the same as before. Dr. Masterson prescribed a ten-day supply of Flexeril, a muscle relaxer. Employee did not contact him thereafter.

Dr. Masterson assigned an impairment of 2% to the body as a whole, based on the Sixth Edition of the AMA Guides. He placed Employee in Class 1 of Table 17-4, located at page 570 of the Guides. He explained that he placed her in Class 1 because she did not meet the requirements of Class 2, which he characterized as “a herniated dis[c] with radicular findings on physical exam.” Dr. Masterson stated that he found no radiculopathy at any time during his course of treatment.

Dr. Samuel Chung, a physiatrist, examined Employee on October 18, 2015, at the request of her attorney. His diagnosis was “residual from low back injury secondary to

traumatic event with ongoing right lumbar radiculopathy. And number two, residual from trauma to the right sacroiliac with ongoing right trochanteric bursitis.” He testified that the report of Dr. Bingham’s EMG study found no entrapment neuropathy, plexopathy, or radiculopathy. Dr. Chung explained that an EMG can confirm a diagnosis of radiculopathy but cannot rule out the existence of that condition. He further testified that the MRI taken shortly after Employee’s injury revealed no evidence of disc rupture or extrusion. However, he stated that MRIs are not 100% accurate.

Upon examining Employee, Dr. Chung found that she had decreased range of motion of the right side of her lower back. Her seated straight leg raising test was positive at sixty degrees on the right. Her left leg reflexes were “equivocal,” which he later rephrased to mean they were equal across the left leg and normal. Employee’s right leg reflexes were normal, except for her right medial hamstring reflex, which was absent. Dr. Chung also found that Employee had diminished sensation on the right side in an S1 distribution and tenderness at the right trochanteric bursa. Based on these findings, he assigned an impairment of 12% to the body as a whole, based on the same table used by Dr. Masterson. Unlike Dr. Masterson, Dr. Chung placed Employee in Class 2, based on his diagnosis of radiculopathy. He assigned an additional 3% whole person impairment based on his diagnosis of trochanteric bursitis.

During cross-examination, Dr. Chung stated that Employee did not have either an intervertebral disc herniation or an alteration of motion segment integrity (“AOMSI”). He had earlier suggested that Employee’s radiculopathy was caused by chemical neuritis. He agreed that chemical neuritis was not mentioned in Table 17-4 of the Guides. He also agreed that the Guides stated that there was no separate impairment for radiculopathy unless the underlying condition was listed in that table.

After an extensive review and analysis of the medical evidence, the trial court found that Employee had failed to overcome the presumption of correctness attached to Dr. Masterson’s opinion by Tennessee Code Annotated section 50-6-204(k)(7). Benefits were awarded based on Dr. Masterson’s impairment rating. The court declined to award the fees associated with Dr. Chung’s deposition as discretionary costs. Employee has appealed.

### **Analysis**

Appellate review of decisions in workers’ compensation cases is governed by Tennessee Code Annotated section 50-6-225(a)(2) (2014 & 2017 Supp.), which provides that “[r]eview of the workers’ compensation court’s findings of fact 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.” 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) (citations omitted). 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) (citations omitted). 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).

### *Impairment Rating*

Employee contends that the trial court erred by finding that she did not overcome the statutory presumption of correctness assigned to the impairment rating of the authorized treating physician. In support, she relies on her own testimony that Dr. Chung's examination took more time and was more detailed than any of Dr. Masterson's several examinations. She argues that Dr. Chung's finding of radiculopathy is supported by objective evidence, including the absence of a medial hamstring reflex and decreased sensation in the right leg. She points out that Dr. Masterson admitted that he did not test her reflexes on the date he found her to be at maximum medical improvement. Finally, she asserts that Dr. Chung is better qualified than Dr. Masterson, based on his certification by the American Board of Independent Medical Examiners.

Employer points out that Dr. Masterson examined Employee on several occasions over a period of five months. It relies on Dr. Masterson's testimony that he never detected radiculopathy during any of his examinations. Employer also notes that Dr. Chung agreed that Class 2 of Table 17-4 of the AMA guides requires either a disc herniation or an AOMSI to support a radioculopathy diagnosis, and that the Guides further provide that there is no separate impairment for radiculopathy alone. He conceded that Employee did not have a disc herniation nor an AOMSI. Dr. Chung testified that he used Class 2 based solely on his diagnosis of radiculopathy.

When a trial court is presented with conflicting medical testimony "it is within the discretion of the trial judge to conclude that the opinion of certain experts should be accepted over that of other experts and that [the accepted opinion] contains the more probable explanation." Thomas v. Aetna Life & Cas. Co., 812 S.W.2d 278, 283 (Tenn. 1991) (quoting Hinson v. Wal-Mart Stores, Inc., 654 S.W.2d 675, 676-77 (Tenn. 1983)). In this case, the trial court observed that Dr. Masterson performed straight leg testing and motor strength testing at each examination of Employee; that he tested Employee's reflexes at the appointments immediately before and after he released her on April 9,

2015; and that the EMG nerve conduction study he ordered in May 2015 supported his conclusion that Employee had non-verifiable radicular complaints (Class 1 impairment) and that she did not have radiculopathy (Class 2 impairment). We conclude that the trial court's reasoning is sound and that the evidence does not preponderate against its findings.

### *Discretionary Costs*

Employee also contends that the trial court erred by failing to award the expenses associated with Dr. Chung's deposition as discretionary costs. The trial court noted that Employer contested the award of discretionary costs by arguing that if the court found that Employee did not rebut the presumption of accuracy of Dr. Masterson's rating, then Dr. Chung's deposition expenses were not reasonable and necessary. The trial court then determined that "in light of the Court's decision that [Employee] did not successfully rebut the presumption of accuracy afforded to Dr. Masterson, the Court, in its discretion, denies the request for the costs associated with Dr. Chung's deposition."

We review a trial court's rulings on discretionary costs and prejudgment interest under an abuse of discretion standard. Bradford v. Sell, No. E2008-02424-COA-R3-CV, 2009 WL 3103814, at \*3 (Tenn. Ct. App. Sept. 29, 2009) (citing Scholz v. S.B. International, Inc., 40 S.W.3d 78, 82, 84 (Tenn. Ct. App. 2000)). "[A]ppellate courts are generally disinclined to interfere with a trial court's decision in assessing costs unless there is a clear abuse of discretion." Perdue v. Green Branch Min. Co., 837 S.W.2d 56, 60 (Tenn. 1992). The appellant bears the burden of proving that the trial court abused its discretion, but this court must affirm the trial court's apportionment of discretionary costs "if any equitable basis appears in the record [that] will support the trial court's apportionment." See Sanders v. Gray, 989 S.W.2d 343, 345 (Tenn. Ct. App. 1998). In light of the trial court's finding that Dr. Chung's testimony was insufficient to rebut the presumption of correctness of the impairment assigned by the treating physician, we conclude that no abuse of discretion occurred.

### **Conclusion**

The judgment of the trial court is affirmed. Costs are taxed to Deborah Goodman and her surety, for which execution may issue if necessary.

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ROGER A. PAGE, JUSTICE

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**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 to the Appellant, Deborah Goodman, and her surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM