

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

February 12, 2018 Session

**CAROLYN ANNETTE YOUNG v. SUGAR HOLLOW PROPERTIES, LLC,
ET AL.**

**Appeal from the Chancery Court for Campbell County
No. 04-114 Elizabeth C. Asbury, Chancellor**

No. E2017-00981-SC-R3-WC

FILED

MAY 24 2018

Clerk of the Appellate Courts
Rec'd By _____

In June 2004, an employee sustained a work-related injury. After the employee sued her employer and its insurer for workers' compensation benefits, the parties settled the case. The trial court approved the settlement and, in part, ordered the defendants to pay the employee's reasonable and necessary authorized future medical expenses. In 2016, the employee moved to compel the defendants to provide medical treatment recommended by the employee's authorized treating physician; she also sought a finding of civil contempt and an award of attorney fees. The trial court ordered the defendants to provide the requested medical services and denied the motion for contempt. The defendants then authorized the employee's requested medical treatment. At a later hearing, the trial court awarded the employee her attorney fees under Tennessee Code Annotated section 50-6-204(b)(2) (2005). The defendants appeal the trial court's award of medical benefits and attorney fees. After careful review, we hold that the issue of medical benefits is moot and the trial court erred in awarding the employee her attorney fees.

**Tenn. Code Ann. § 50-6-225(e)(1) (for injuries occurring before July 1, 2014)
Appeal as of Right;
Judgment of the Chancery Court Reversed**

SHARON G. LEE, J., delivered the opinion of the Court, in which DON R. ASH, SR.J., and Robert E. Lee Davies, SR.J., joined.

Gregory H. Fuller and Todd I. Heird, Knoxville, Tennessee, for the appellants, Sugar Hollow Properties, LLC, and Brookwood Insurance Company.

Ameesh A. Kherani, Knoxville, Tennessee, for the appellee, Carolyn Annette Young.

OPINION

I.

On June 19, 2004, Carolyn Annette Young was injured in an accident arising out of and in the course of her employment with Sugar Hollow Properties, LLC. Ms. Young was moving a utility cart in the marina parking lot when another cart struck her, injuring her left leg, right hip, back, neck, and right shoulder. Ms. Young received medical treatment from several physicians, including an orthopedic surgeon who surgically repaired her right shoulder.

On July 15, 2004, Ms. Young sued Sugar Hollow Properties, LLC and its insurer for workers' compensation benefits in the Campbell County Chancery Court. The parties settled the case. On July 23, 2008, the trial court approved the settlement and entered an order that, in part, required the defendants to provide to Ms. Young "authorized reasonable and necessary future medical expenses for treatment, services, and supplies from authorized physicians."

On November 17, 2016, Ms. Young moved to compel payment of benefits, and/or for contempt, and for attorney fees and costs under Tennessee Code Annotated section 50-6-204(b)(2). Ms. Young asserted in her motion that under the terms of the trial court's 2008 order, she was awarded her authorized, reasonable, and necessary future medical expenses. Ms. Young alleged that her authorized treating physician, Dr. Paul Jett, recommended she have a medial branch block at L3-4, L4-5, and L5-S1 and a home health evaluation for bathroom modification because of her work-related injuries. Ms. Young asserted that the defendants had denied her requests based on the recommendations of the defendants' utilization review agent, Novare. She attached a letter from the Department of Labor and Workforce Development stating that its Medical Director agreed with the denial by Novare of the requested medical benefits. Ms. Young sought an order compelling the defendants to provide the medical care recommended by Dr. Jett and an award of reasonable attorney fees and costs.

The defendants responded that they properly denied Ms. Young's requested medical treatment through the utilization review process and that the requested medical treatment was not reasonable and necessary because the treatment did not comply with the Official Disability Guidelines.¹

¹ The Tennessee Bureau of Workers' Compensation adopted the Official Disability Guidelines published by the Work Loss Data Institute, effective January 1, 2016. Tenn. Comp. R. & Regs. 0800-02-25-.03(1) (2018). Any utilization review of treatment must apply the Official Disability Guidelines in determining whether treatment is medically necessary. *Id.* 0800-02-25-.03(2).

At the hearing on January 27, 2017, Ms. Young relied on the allegations in her motion and neither party presented any evidence. The trial court granted Ms. Young's motion to compel and ordered the defendants to provide the medical treatment recommended by Dr. Jett, the authorized treating physician, based on the presumption of correctness afforded to the opinion of the authorized treating physician. The trial court noted that Dr. Jett was the only doctor who had physically examined Ms. Young, whereas the utilization review doctors had only reviewed her records.

On February 9, 2017, the trial court entered an order granting Ms. Young's motion to compel payment of benefits and requiring the defendants to pay for the bilateral medial branch block injections and home health evaluation for bathroom modification. The trial court did not find the defendants were in contempt of court and held in abeyance the issue of attorney fees.

Ms. Young then moved for attorney fees and discretionary costs under Tennessee Code Annotated section 50-6-204(b)(2) (2005).² The defendants argued that an award of attorney fees would be improper under Tennessee Code Annotated section 50-6-204(b)(2) because the requested medical care was not reasonable and necessary. The defendants contended that they appropriately followed the utilization review process and the Official Disability Guidelines in their decision to deny the requested treatment and services. The defendants also argued that Ms. Young failed to establish reasonableness under the factors set forth for attorney fees in Tennessee Supreme Court Rule 8, Rule of Professional Conduct 1.5(a).

On April 6, 2017, Ms. Young moved to hold defendants in contempt for failure to comply with the trial court's order of February 9, 2017. On April 12, 2017, the defendants responded to Ms. Young's motion, asserting that the issue of civil contempt was moot because they had authorized the medial branch blocks and home health evaluation.

On April 17, 2017, the trial court held a hearing on Ms. Young's motion for attorney fees and discretionary costs and awarded her \$1,200 in attorney fees.

The defendants appeal the trial court's award of medical benefits and attorney fees. Under Tennessee Supreme Court Rule 51, this appeal was referred to the Special Workers' Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law.

² This motion was not included in the record on appeal. Our decision, however, does not require review of the contents of the motion.

II.

We review issues of fact de novo upon the record with a presumption of correctness unless the preponderance of evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2008 & Supp. 2012); *Jordan v. City of Murfreesboro*, M2016-02446-SC-R3-WC, 2017 WL 6623388, at *1 (Tenn. Workers' Comp. Panel Dec. 28, 2017). The interpretation and application of Tennessee's Workers' Compensation Law are questions of law that are reviewed de novo with no presumption of correctness. *Mansell v. Bridgestone Firestone N. Am. Tire, LLC*, 417 S.W.3d 393, 399 (Tenn. 2013) (citing *Nichols v. Jack Cooper Transp. Co.*, 318 S.W.3d 354, 359 (Tenn. 2010)).

Medical Benefits

The defendants argue that the trial court erred in compelling the defendants to provide medical benefits because Ms. Young failed to show a direct causal relationship between the need for the treatment and her 2004 injury. Although we agree Ms. Young failed to establish the required causal relationship between the requested treatment and her injury, this argument is without merit. After the trial court issued its ruling on the motion to compel, the defendants voluntarily authorized the disputed medical benefits. By doing so, the defendants eliminated the controversy between the parties. The issue of whether the defendants were required to provide medical benefits became moot. We will dismiss an appeal as moot when “by a court decision, acts of parties, or other causes occurring after the commencement of the action the case has lost its controversial character.” *West v. Vought Aircraft Indus.*, 256 S.W.3d 618, 625 (Tenn. 2008) (quoting *McCanless v. Klein*, 188 S.W.2d 745, 747 (Tenn. 1945)).

Attorney Fees

Next, the defendants argue that the trial court erred in awarding attorney fees because Ms. Young failed to show a direct causal relationship between the need for treatment and her previous injury. Although the defendants waived any issue on appeal regarding medical benefits by authorizing the medical benefits after the trial court's order, the issue of attorney fees is separate and requires us to determine whether Ms. Young established that the requested medical treatment was related to her 2004 work-related injury. See *Welcher v. Cent. Mut. Ins. Co.*, No. M2012-00248-WC-R3-WC, 2013 WL 1183314 at *5 (Tenn. Workers' Comp. Panel Mar. 21, 2013) (holding employee was not entitled to attorney fees incurred in seeking recovery of medical expenses for treatment of medical condition not related to his work injury).

The trial court awarded Ms. Young attorney fees under Tennessee Code Annotated section 50-6-204(b)(2). This subsection applies to injuries occurring on or before July 1, 2014, and provides, in part, that “. . . a court may award attorney fees and reasonable

costs . . . when the employer fails to furnish appropriate medical . . . care . . . to an employee provided for pursuant to a settlement or judgment under this chapter.” Tenn. Code Ann. § 50-6-204(b)(2).³

We presume that treatment furnished by a designated physician is necessary and the charges reasonable. *Russell v. Genesco, Inc.*, 651 S.W.2d 206, 211 (Tenn. 1983). When an employer has designated an authorized treating physician, the employee does not bear the burden of establishing the necessity of medical treatment or the reasonableness of medical charges. *Id.* However, an employee who seeks post-judgment future medical treatment under section 50-6-204(a) “must establish by expert medical evidence the causal relationship between the claimed injury and the employment activity.” *Cloyd v. Hartco Flooring Co.*, 274 S.W.3d 638, 643 (Tenn. 2008) (citing *Orman v. Williams Sonoma, Inc.*, 803 S.W.2d 672, 676 (Tenn. 1991)). The employee “is not relieved of the burden of establishing the link between the previous compensated injury and the additional treatment[.]” even if she did so at the initial hearing. *Greenlee v. Care Inn of Jefferson City*, 644 S.W.2d 679, 680 (Tenn. 1983). This requirement protects an employer from “unreasonable and unnecessary future medical charges.” *U.S. Fid. & Guar. Co. v. Morgan*, 795 S.W.2d 653, 656 (Tenn. 1990).

Shelton v. Joseph Constr. Co., No. M2014-01743-SC-R3-WC, 2015 WL 3509283 (Tenn. Workers’ Comp. Panel June 3, 2015), clarified the procedure for a post-judgment proceeding regarding medical benefits. In *Shelton*, the trial court’s final order awarded the employee future medical benefits. Several years later, the employee’s authorized treating physician recommended a surgical procedure. The employer’s utilization review provider declined to approve the procedure and the Department of Labor and Workforce Development sustained the denial. The employee moved to compel the employer to provide the surgery, and the trial court upheld the denial. *Id.*, at *1. The employee appealed and the Special Workers’ Compensation Appeals Panel reversed, holding that the trial court erred by deciding the case under the Uniform Administrative Procedures Act’s standard of review. *Id.*, at *6. The Panel concluded that, under the workers’ compensation statute, the trial court hears the case de novo, the Rules of Civil Procedure and Rules of Evidence apply, the parties may take discovery, and the trial court may review evidence not considered by the utilization review agent. *Id.*, at *5 (citations omitted). The Panel ruled that the trial court “must consider the evidence before it and make a de novo decision about whether the proposed treatment is reasonably necessary for the treatment of the employee’s compensable injury.” *Id.*, at *6.

We hold that in a hearing on a motion to compel medical benefits, the employee cannot rest on the allegations of her motion. She must offer evidence to support her claim that the requested medical treatment was causally related to her compensable injury. Ms.

³ Section 50-6-204(b)(2) was deleted by 2013 Tenn. Pub. Acts ch. 289 § 40 (effective July 1, 2014).

Young offered no evidence from Dr. Jett or any other witness to establish that the requested medical benefits were causally related to her compensable injury. Although the trial court correctly noted that the recommendations of the authorized treating physician are presumed to be reasonable and necessary, *see Russell v. Dana Corp.*, No. M2015-00800-SC-R3-WC, 2016 WL 4136548, at *7 (Tenn. Workers' Comp. Panel Aug. 1, 2016) (quoting *Russell*, 651 S.W.2d at 211); *see also* Tenn. Comp. R. & Regs. 0800-02-25-.03(2), this does not eliminate the employee's obligation to offer evidence on the causal link between the treatment and the injury. Tennessee Code Annotated section 50-6-204(b)(2) allows the trial court to award attorney fees and reasonable costs to an employee only "when the employer fails to furnish appropriate medical . . . care." We hold that appropriate medical care under this section requires the employee to establish, at a minimum, a causal relation between the requested treatment and the compensable injury.

Because Ms. Young offered no evidence of the causal link between the requested medical benefits and her injury to support her motion to compel medical benefits, the trial court erred in awarding her attorney fees.

III.

After careful consideration, we find the issue of medical benefits to be moot and we reverse the trial court's award of attorney fees. In our discretion under Tennessee Rule of Appellate Procedure 40(a), we tax the costs of this appeal to Sugar Hollow Properties, LLC, and Brookwood Insurance Company, for which execution may issue if necessary.

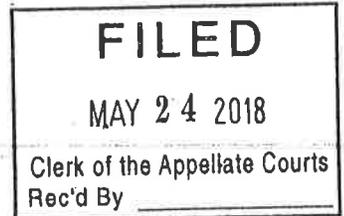


SHARON G. LEE, JUSTICE

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Chancery Court for Campbell County
No. 04-114



No. E2017-00981-SC-R3-WC

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 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 assessed to Sugar Hollow Properties, LLC, and Brookwood Insurance Company, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM