

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
February 24, 2014 Session

MARY WHEETLEY v. STATE OF TENNESSEE

**Appeal from the Claims Commission of the State of Tennessee
No. 30100589514**

**No. M2013-01707-WC-R3-WC - Mailed April 7, 2014
FILED JUNE 25, 2014**

This appeal involves a claim for workers' compensation benefits filed by a nurse employed at the Middle Tennessee Mental Health Institute. The nurse filed a claim with the Tennessee Claims Commission because she believed that she had contracted tuberculosis when her hand came into contact with a patient's blood. The claims commissioner dismissed the nurse's claim on the basis that she failed to produce expert medical evidence that she had tuberculosis, and the nurse sought judicial review under Tenn. Sup. Ct. R. 51. We affirm the judgment of the Claims Commission.

Tenn. Code Ann. § 50-6-225(e) (2008) Appeal as of Right; Judgment of the Claims Commission Affirmed

WILLIAM C. KOCH, JR., J., delivered the opinion of the Court, in which DONALD M. HARRIS and J. B. COX, SP.JJ., joined.

Mary Wheetley, for the appellant, pro se.

Robert Cooper, Attorney General; William E. Young, Solicitor General; and Mary M. Bers, Senior Counsel, for the appellee, the State of Tennessee.

OPINION

I.

Mary Wheetley began working as a registered nurse at the Middle Tennessee Mental Health Institute in 2003. She was taking a blood sample from a patient on March 23, 2006 but was not wearing gloves because she was in a hurry. According to Ms. Wheetley, the

patient became unruly and a drop of the patient's blood landed on a small wound on her ungloved finger.

Ms. Wheatley says the patient was diagnosed with tuberculosis three weeks later, and says she also began experiencing unpleasant symptoms. Ms. Wheatley sought a tuberculosis skin test, which she insists confirmed that she had contracted tuberculosis.¹ Ms. Wheatley has visited many medical clinics, hospitals, and physician's offices, including specialists in Boston, Cleveland, and Denver. None of the physicians Ms. Wheatley consulted has conclusively diagnosed her with tuberculosis.

On May 1, 2010, Ms. Wheatley filed a workers' compensation claim with the Tennessee Division of Claims Administration. Ms. Wheatley asserted that she has tuberculosis and that her infection arose out of the course of her employment with the State. In a letter dated July 30, 2010, the Tennessee Claims Examiner denied Ms. Wheatley's claim "[d]ue to lack of medical documentation." On August 3, 2010, Ms. Wheatley requested a benefit review conference with the Department of Labor. That request was denied on August 12, 2010, on the basis that the Department of Labor lacks jurisdiction over state employees. *See Tenn. Code Ann. § 9-8-307(a)(1)(K) (1999 & Supp. 2006).*

Ms. Wheatley then hired an attorney who helped her file a workers' compensation claim directly with the Claims Commission. On April 20, 2012, Ms. Wheatley's attorney asked to withdraw from representing Ms. Wheatley due to "the difference in [their] opinions." The claims commissioner granted the attorney's withdrawal motion on May 9, 2012.

Ms. Wheatley represented herself at the April 26, 2013 hearing. She failed to produce any admissible evidence from a physician that she had tuberculosis. There was no record of the tuberculosis test that she says rendered a positive result. She submitted no affidavits from physicians, and no physicians testified. Ms. Wheatley testified about her symptoms and voiced her frustration with the numerous physicians she had consulted, none of whom had diagnosed her with tuberculosis. She also submitted a collection of her own medical records, along with excerpts from textbooks, treatises, and websites – documents she claims support her self-diagnosis. When the State objected to the admission of this collection of documents, the claims commissioner marked them as a collective exhibit for identification purposes only.

¹There is no documentation in the record that this skin test yielded a positive result besides Ms. Wheatley's own testimony that she saw a "large induration" at the site of the skin test that lasted for approximately 72 hours.

In an order dated June 24, 2013, the claims commissioner dismissed Ms. Wheetley's workers' compensation claim. The commissioner stated:

The Tribunal has considered her testimony in its most favorable light to determine whether she was, in fact, infected with tuberculosis and has suffered with the disease. However, there is simply no independent or competent medical evidence to show the Claimant was infected with tuberculosis or is suffering from it now. The Tribunal sympathizes with the Claimant and realizes that she carries an honest belief that she is infected. However, in view of the lack of evidence that an injury or illness occurred, this claim must be respectfully dismissed.

II.

When we review a workers' compensation decision, we review the facts *de novo* upon the record of the trial court, accompanied by a presumption of correctness of the trial court's factual findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2005); *Whirlpool Corp. v. Nakhoneinh*, 69 S.W.3d 164, 167 (Tenn. 2002). We give particular deference to the lower court's findings concerning the credibility of witnesses and the weightiness of their testimony. *Vandall v. Aurora Healthcare, LLC*, 401 S.W.3d 28, 33 (Tenn. 2013). When we consider documentary evidence such as expert witness depositions, we review that evidence *de novo*, without any deference to the trial court's findings. *Krick v. City of Lawrenceburg*, 945 S.W.2d 709, 712 (Tenn. 1997). Likewise, we review a trial court's legal conclusions *de novo* without a presumption of correctness. *Seiber v. Reeves Logging*, 284 S.W.3d 294, 298 (Tenn. 2009).

To obtain workers' compensation benefits, a claimant must prove by the preponderance of the evidence that she suffered an injury that arose out of her employment and occurred in the course of her employment. Tenn. Code Ann. §§ 50-6-102(12), 103(a) (2005); *Dixon v. Travelers Indem. Co.*, 336 S.W.3d 532, 537 (Tenn. 2011). The phrase "arising out of" refers to the cause or origin of the injury; the phrase "in the course of" refers to the time, place, and circumstances of the injury. *Vandall v. Aurora Healthcare, LLC*, 401 S.W.3d at 31; *Dixon v. Travelers Indem. Co.*, 336 S.W.3d 532 at 537. Except in "the most obvious, simple and routine cases," a workers' compensation claimant must establish by expert medical testimony that she is injured and that there exists a causal relationship between the injury and the claimant's employment activity. *Excel Polymers, LLC v. Broyles*, 302 S.W.3d 268, 274 (Tenn. 2009); *Cloyd v. Hartco Flooring Co.*, 274 S.W.3d 638, 643 (Tenn. 2008).

III.

Because tuberculosis is a communicable bacterial disease, this case can not be fairly characterized as an “obvious, simple, or routine” case. *See Bass v. Barksdale*, 671 S.W.2d 476, 479 (Tenn. Ct. App. 1984) (describing the communicable disease of tuberculosis). The law, therefore, required Ms. Wheetley to prove with expert medical testimony that she suffered an injury and that the injury arose out of her employment and during the course of her employment. *See, e.g., Combustion Eng’g Co. v. Blanks*, 210 Tenn. 233, 357 S.W.2d 625 (1962) (awarding workers’ compensation benefits to an employee whose medically diagnosed spinal tuberculosis was aggravated by work-related trauma); *Smith v. Tennessee Furniture Indus., Inc.*, 208 Tenn. 608, 610, 348 S.W.2d 290, 291 (1961) (awarding workers’ compensation benefits for medically diagnosed bronchitis, tuberculosis, and emphysema); *General Shale Prods. Corp. v. Casey*, 202 Tenn. 219, 220, 303 S.W.2d 736, 737 (1957) (awarding workers’ compensation benefits for medically diagnosed tuberculosis and silicosis); *Housley v. American Mut. Liab. Ins. Co.*, 197 Tenn. 38, 40, 270 S.W.2d 349, 350 (1954) (awarding workers’ compensation benefits to survivors of an employee medically diagnosed with tuberculosis and silicosis).

The claims commissioner correctly found that Ms. Wheetley did not present any expert medical testimony that she contracted tuberculosis in the course and scope of her employment. Although Ms. Wheetley is a nurse, the claims commissioner properly held that her self-diagnosis is not admissible as evidence.²

Because Ms. Wheetley presented no expert medical testimony that she was infected with or carried tuberculosis, she did not establish a workers’ compensation claim by the preponderance of the evidence. Courts simply are not equipped or authorized to diagnose a litigant in the absence of admissible medical testimony.

Although Ms. Wheetley’s collective exhibit and the additional papers she submitted to this Court do not count as substantive evidence, we have read the material in detail.³ We

²As Tenn. Code Ann. § 63-7-103(b) (2004) explains, “the practice of professional nursing does not include acts of medical diagnosis or the development of a medical plan of care and therapeutics for a patient.”

³Ms. Wheetley’s collective exhibit includes numerous medical records from 2006 to 2011. These records include reports from CT scans of her chest, thoracic spine, lumbar spine, abdomen, and brain; x-rays of her chest, thoracic spine, lumbar spine, and pelvis; a whole-body bone scan; an abdominal ultrasound; and MRI scans of her brain, cervical spine, thoracic spine, and lumbar spine. Several of these scans were done multiple times. The records also contain results of blood tests, bone marrow tests, and other cultures. Ms. (continued...)

have also read her briefs and considered her complaints that her doctors treated her with disrespect and failed to properly diagnose her. Although Ms. Wheetley's documents are informative, they do not establish that Ms. Wheetley has tuberculosis.

While Ms. Wheetley's pain and frustration are reflected in every page of her handwritten briefs, this Court is simply not competent to diagnose her and determine that she has a medical condition that arose out of the course of her employment. In the absence of any competent medical proof that she contracted tuberculosis as a result of her employment, we cannot find that the evidence preponderates against the findings of the claims commissioner. Therefore, we must affirm the dismissal of Ms. Wheetley's claim.⁴

IV.

Although we sympathize with Ms. Wheetley, she has not provided adequate admissible expert medical evidence for this Court to determine that she contracted tuberculosis arising out of and in the course of her employment. We affirm the judgment of the Claims Commission. Costs are taxed to Mary Wheetley, for which execution may issue if necessary.

WILLIAM C. KOCH, JR., JUSTICE

³(...continued)

Wheetley's records include office notes from numerous clinics, doctors' offices, hospitals, and labs. These include records from a dentist, a dermatologist, an arthritis specialist, and an infectious disease specialist. Ms. Wheetley also annotated her medical records with many pages of commentary, background, interpretation, and lists of her symptoms. Ms. Wheetley's exhibit also includes excerpts from *Harrison's Principles of Internal Medicine* and *The Merck Manual*, as well as articles from the magazine *American Family Physician*, the *British Dental Journal*, and the *Journal of the American Dental Association*. Ms. Wheetley has also included articles on subjects such as tuberculosis, burning sensations, and lower back pain from websites such as About.com, Aetna.com, ArticlesBase.com, BoneProblems.net, CDC.gov, eCureMe.com, Ehow.com, Emedicine.com, DermNetNZ.org, herniated-disc-pain.org, MayoClinic.org, MerckManuals.com, Nature.com, and WebMD.com.

⁴The State also argues that Ms. Wheetley's claim is barred by the statute of limitations, but we need not reach this issue. See Tenn. Code Ann. § 50-6-203 (2005).

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Judgment Order

This case is before the Court upon the motion for review filed by Mary Wheetley pursuant to Tennessee Code Annotated section 50-6-225(e)(5)(A)(ii), 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.

It appears to the Court that the motion for review is not well taken and is, therefore, denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to Mary Wheetley, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

WILLIAM C. KOCH, JR., not participating