

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
March 17, 2014 Session

TEDDY WAYNE WILCUTT v. CAM ELECTRIC SYSTEMS ET AL.

**Appeal from the Chancery Court for Obion County
No. 29,441 and 29,442 William Michael Maloan, Judge**

No. W2013-00772-WC-R3-WC - Mailed June 25, 2014; Filed July 28, 2014

An employee sustained work-related injuries to his head, neck, and shoulders after being struck by a falling ladder. The trial court awarded the employee 60% permanent partial disability to the body as a whole. The employer appealed, arguing that the employee failed to prove causation. After carefully reviewing the record, we affirm the trial court's judgment.

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

DONALD P. HARRIS, SP. J., delivered the opinion of the Court, in which JANICE M. HOLDER, J., and J. S. "STEVE" DANIEL, SP. J., joined.

P. Allen Phillips, Jackson, Tennessee, for the appellant, CAM Electric Service.

Jeffrey A. Garrety, and Charles L. Holliday, Jackson, Tennessee, for the appellee, Teddy Wayne Wilcutt.

OPINION

Factual and Procedural Background

In 2007, Teddy Wilcutt began working as an electrician's assistant for CAM Electric Systems ("CAM Electric"), a company that performs residential and commercial wiring. On January 4, 2008, Mr. Wilcutt was standing next to his supervisor, Craig McManus, when an extension ladder fell from the roof of a client's building and struck him on the head. Mr. Wilcutt was hospitalized from January 4, 2008, until January 11, 2008, for testing and conservative treatment. He was released to return to work on January 22, 2008, and worked

full time until December 2009. While working full time, Mr. Wilcutt experienced a gradual increase of pain in his neck and numbness and tingling in his arms, resulting in his inability to perform his duties for CAM Electric. Mr. Wilcutt was subsequently diagnosed with herniated disks in his neck and underwent a cervical discectomy with a three-level fusion on April 29, 2010.

On November 8, 2011, the parties participated in a Benefit Review Conference, but the conference ended in an impasse. On November 14, 2011, Mr. Wilcutt filed a complaint against CAM Electric and its workers' compensation insurance carrier, Sheffield Insurance Company, in the Chancery Court for Obion County. In his complaint, Mr. Wilcutt alleged that he suffered injuries to his head, neck, and shoulders when an extension ladder was blown from a roof and struck him on the head. On the day he filed his first complaint, Mr. Wilcutt filed another complaint against the same defendants in the same court.¹ In his second complaint, Mr. Wilcutt alleged gradual, work-related injuries to his head, neck, and shoulders, listing his date of injury as December 7, 2009. The case proceeded to trial on February 27, 2013.

At trial, Mr. Wilcutt testified that he was not a licensed electrician and was not participating in an apprentice program while working for CAM Electric. Instead, he was an electrician's helper and was responsible for pulling electrical wires from electrical panels to outlets in houses and commercial buildings. His job required drilling into wall studs and foundations, crawling into attics and crawlspaces underneath buildings, and climbing ladders.

Mr. Wilcutt testified that on January 4, 2008, he was standing next to his supervisor, Craig McManus, the owner of CAM Electric, when he was struck in the head by an extension ladder that had fallen from the roof of a building they were wiring. After Mr. McManus asked if he was okay, Mr. Wilcutt walked to a truck and told Mr. McManus that "something wasn't right" and that he needed to "get somewhere and be checked." Mr. McManus drove Mr. Wilcutt to the office of a physician, Dr. John Clendenin, who cleaned an abrasion on his head and placed him in a neck collar. An ambulance transported Mr. Wilcutt to the emergency room at Baptist Memorial Hospital in Union City, Tennessee. Although Mr. Wilcutt had some difficulty recalling the details of his treatment that day, he did recall being taken to Dr. Clendenin's office and then to the hospital. He also recalled being given medication but did not remember being transferred to a second hospital, Jackson-Madison County General Hospital.

¹ Mr. Wilcutt also named as a defendant Abigail Hudgens, Administrator of the Division of Workers' Compensation, Tennessee Department of Labor and Workforce Development, seeking benefits from the Second Injury Fund. The Second Injury Fund, which did not participate in the trial, was dismissed from the case. The trial court's dismissal of the Fund has not been challenged on appeal.

Mr. Wilcutt testified that prior to January 4, 2008, he had no problem climbing a ladder, no difficulty with balance or strength in his arms, and no pain in his neck. Since January 4, 2008, however, he has experienced pain and stiffness in his neck and numbness and a tingling pain in both arms and legs. He also experienced a loss of strength in his arms. As a result of these symptoms, it was difficult for him to walk, drive, and perform his job for CAM Electric. These problems were still present at the time of trial, which took place five years after the ladder struck Mr. Wilcutt. Because of his inability to continue working for CAM Electric, Mr. Wilcutt was performing “a little shop work” and driving an “auger buggy” for a farming operation.

Mr. Wilcutt testified that his adult children help him with yard work and mechanical work at home due to the pain those activities cause him. In addition, Mr. Wilcutt testified that he has difficulty sleeping, turning his head, climbing a ladder, and bending over. He also has problems with balance and is limited in his role with the Obion County Rescue Squad to supervising accident scenes and directing traffic and cannot perform duties such as pulling an accident victim from a vehicle.

Craig McManus, the owner of CAM Electric, testified that he and Mr. Wilcutt were working together on January 4, 2008, when the wind blew an unsecured ladder off a roof, hitting them both. Mr. McManus observed a cut on Mr. Wilcutt’s head and took him to Dr. Clendenin’s office because it was “obvious” something was wrong with him. Mr. McManus testified that Mr. Wilcutt was then taken by ambulance to the hospital. He also testified that Mr. Wilcutt was slower in performing his duties when he returned to work following the accident.

The proof at trial also included the deposition testimony of two evaluating physicians, Dr. Apurva Dalal and Dr. John Brophy.² Dr. Brophy, a neurosurgeon, saw Mr. Wilcutt at the request of CAM Electric on December 23, 2009. During that visit, Mr. Wilcutt informed Dr. Brophy that a ladder had fallen from a roof about fifteen feet above him and struck him on top of his head. According to Dr. Brophy, after being struck by the ladder, Mr. Wilcutt was taken to a physician’s office, placed in a cervical collar, and then transported by ambulance to the emergency room at Baptist Memorial Hospital in Union City. From there, he was taken to Jackson-Madison County General Hospital where he underwent an MRI. Dr. Brophy testified that Mr. Wilcutt stated that he returned to work in March 2008 although he had neck pain and upper-extremity dysesthesia, which the doctor described as an unpleasant tingling or burning sensation. According to Dr. Brophy, Mr. Wilcutt’s symptoms worsened over time, and he reported problems with balance and difficulty sleeping.

² None of the physicians who treated Mr. Wilcutt, including his surgeon, testified. Some of their records, however, were made exhibits to the depositions of Doctors Dalal and Brophy.

Dr. Brophy's physical examination of Mr. Wilcutt revealed normal strength in his arms and legs, significantly decreased range of motion in his neck, and increased dysesthesia in his arms upon "minimal flexion and extension." Dr. Brophy testified that Mr. Wilcutt had a pre-existing narrow spinal canal that placed him at risk for spinal cord injury. Based on his review of Mr. Wilcutt's medical records, including MRIs conducted shortly after the accident, Dr. Brophy believed that as of December 23, 2009, Mr. Wilcutt had a "possible mild cervical myelopathy associated with multi-level cervical spondylosis." Dr. Brophy testified that a myelogram/CT scan performed on January 5, 2010, revealed herniated disks at the C3-4, C4-5, and C5-6 levels and that these herniations made Mr. Wilcutt a candidate for surgery.

Dr. Brophy did not believe, however, that Mr. Wilcutt's need for surgery was related to the ladder incident or that he suffered permanent impairment because of that accident. He explained that although the MRIs from January 4 and 10, 2008, showed "central disk protrusions at multiple levels associated with some cord flattening," the "films in 2008 were not severe enough to justify a three-level fusion procedure." According to Dr. Brophy, the more recent test results from January 5, 2010, were worse than those administered shortly after the accident because they revealed a spinal cord compression at C5-6, which is greater in degree than spinal cord flattening. Dr. Brophy acknowledged, however, that Mr. Wilcutt's symptoms were consistent with being hit on the head by a falling ladder, an event he described as "potentially hazardous to his health." On cross-examination, Dr. Brophy reiterated his view that Mr. Wilcutt needed surgery for the herniated disks in his neck. He did not see Mr. Wilcutt following that surgery.

Dr. Dalal, an orthopaedic surgeon, conducted an evaluation of Mr. Wilcutt on March 8, 2011, at his lawyer's request. Mr. Wilcutt informed Dr. Dalal that a ladder hit him on the head on January 4, 2008. Mr. Wilcutt reported experiencing severe pain, numbness, and weakness in his neck, shoulders, arms, and legs. Mr. Wilcutt informed Dr. Dalal that he was "miserable," having difficulty moving his head, bathing, and sleeping and was "constantly in pain." Dr. Dalal's physical examination of Mr. Wilcutt revealed limited range of motion in his neck and significant weakness in his left arm and wrist along with decreased sensation. He also suffered from moderate weakness in his right arm.

Dr. Dalal testified that Mr. Wilcutt was treated conservatively until he had surgery in 2010. Dr. Dalal stated that an MRI taken on January 13, 2008,³ showed a herniated disk at the C3-4 level causing an indentation of the spinal cord "to the point that the cord is pushed on the side," which was "a pretty significant finding." The MRI also showed "significant

³ According to Dr. Dalal's notes, a cervical spine MRI was performed on January 10, 2008, but the exam was limited due to "motion artifact." A second cervical spine MRI was performed January 13, 2008.

central canal stenosis,” or a congenitally narrowed spinal canal, along with degenerative disk disease, which Dr. Dalal also described as “pretty significant.” These pre-existing conditions, however, were asymptomatic before January 4, 2008. Dr. Dalal testified that the MRI also revealed herniated disks at the C4-5, C5-6, and C6-7 levels. In all, Mr. Wilcutt had four herniated disks in his neck.

Dr. Dalal testified that, in his opinion, being struck by the ladder on January 4, 2008, caused Mr. Wilcutt’s problems and necessitated his surgery. He explained that “the work related [event], a twenty foot ladder falling on his head[,] caused severe axial compression along with a torque which resulted in not only all these disk herniations, but the pressure on the spinal cord.” Dr. Dalal stated that “this is a terrible thing to happen to this man because he had [a] congenital narrowed canal, he had degenerative disk disease of his neck. All this was already there, and then the ladder falls on his head. So this . . . is bad.” Dr. Dalal also was of the opinion that Mr. Wilcutt’s fusion surgery increased the “stress, strain, and anatomical work” of the herniated disk at the C3-4 level, which had not been fused during the surgery. Referring to that disk, Dr. Dalal stated it was not good to “clear up all of the levels and leave the worst thing behind.” Dr. Dalal testified that Mr. Wilcutt’s medical history showed no indication that he had experienced pain or impairment to his neck prior to being hit by the ladder on January 4, 2008.

Dr. Dalal believed that Mr. Wilcutt retained a 28% permanent anatomical impairment to the body as a whole, stating that “[t]his man was a hard working man . . . and now unfortunately because of this injury he is almost crippled.” Dr. Dalal testified that the ladder incident produced pain, limited function, and permanent anatomical impairment. He stated that “it’s very clear this man has the worst thing possible that can happen in [the] cervical spine,” spinal cord compression, multilevel involvement, weakness, radiculopathy, and he “can’t move his head.” Dr. Dalal believed that the 28% rating was “extremely conservative” given that Mr. Wilcutt had a three-level fusion and should have had a fourth fusion. Dr. Dalal testified that Mr. Wilcutt should not lift more than fifteen pounds and should avoid overhead work and work away from his body. In addition, he should avoid repetitive pulling, pushing, or lifting. According to Dr. Dalal, exceeding these restrictions would pose a “significant risk of neurological injury.”

Mr. Wilcutt, who was forty-four years old at the time of trial, had not completed high school, had no vocational training, and had not obtained a GED. His employment history included working in a machine shop, making deliveries for a soft drink manufacturer, and performing farm labor. He also worked as a volunteer for the Obion County Rescue Squad, which entailed, among other things, working car accidents and fires, searching for missing persons, and maintaining equipment. At the time of trial, he held the rank of captain in that organization.

At the conclusion of the trial, the trial court found that Mr. Wilcutt suffered compensable injuries to his head, neck, and shoulders stemming from the accident involving the ladder and awarded 60% permanent partial disability to the body as a whole. In doing so, the trial court took into account the lay and expert testimony, along with Mr. Wilcutt's age, education, work history, transferable job skills, and his ability to work in the open labor market in his condition. The trial court dismissed Mr. Wilcutt's second complaint premised on a gradual-injury theory but found that if the injuries stemming from the ladder incident were found not to be compensable on appeal, Mr. Wilcutt suffered 60% vocational disability for "multiple repetitive workplace trauma from his return to work up to and through December 7, 2009." CAM Electric has appealed. Pursuant to Tennessee Supreme Court Rule 51, this workers' compensation 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.

Standard of Review

The standard of review of issues of fact is de novo upon the record of the trial court accompanied by a presumption of correctness of the findings unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2008). When credibility and weight to be given testimony are involved, considerable deference is given the trial court's decision when the trial judge had the opportunity to observe the demeanor of witnesses and hear in-court testimony. Tryon v. Saturn Corp., 254 S.W.3d 321, 327 (Tenn. 2008). A reviewing court may draw its own conclusions about the weight and credibility to be given expert testimony when the medical proof is by deposition. Glisson v. Mohon Int'l, Inc., 185 S.W.3d 348, 353 (Tenn. 2006); Krick v. City of Lawrenceburg, 945 S.W.2d 709, 712 (Tenn. 1997). With these principles in mind, we review the record to determine whether the evidence preponderates against the trial court's decision to award benefits.

Analysis

The dispositive issue before us is whether the evidence preponderates against the trial court's finding that Mr. Wilcutt's injuries were caused by the ladder falling on his head on January 4, 2008. CAM Electric contends the evidence fails to establish that this incident caused the injuries for which Mr. Wilcutt underwent surgery on April 29, 2010. CAM Electric focuses on the fact that physicians who treated Mr. Wilcutt immediately following the accident—none of whom testified—did not uncover an injury sufficient to warrant surgical intervention. CAM Electric points out that Mr. Wilcutt was released to return to work on January 22, 2008, and that he worked full time from February 2008 to December 2009. Relying upon Dr. Brophy's testimony, CAM Electric asserts that Mr. Wilcutt recovered from the ladder incident and then encountered further difficulties unconnected to

his work. CAM Electric also argues that there is insufficient evidence to support the trial court's alternative finding that Mr. Wilcutt's return to work aggravated either his pre-existing conditions or initial injury to the point that he could no longer perform his duties for CAM Electric. Mr. Wilcutt responds that the lay and expert testimony support the trial court's decision to award benefits. We agree with Mr. Wilcutt.

Except in obvious cases, a workers' compensation claimant must establish by expert medical evidence the causal relationship between the alleged injury and the claimant's employment activity. Cloyd v. Hartco Flooring Co., 274 S.W.3d 638, 643 (Tenn. 2008). The element of causation is satisfied when the "injury has a rational, causal connection to the work." Braden v. Sears, Roebuck & Co., 833 S.W.2d 496, 498 (Tenn. 1992). Although causation in a workers' compensation case cannot be based on speculative or conjectural proof, absolute certainty is not required because medical proof can rarely be certain. Clark v. Nashville Mach. Elevator Co., 129 S.W.3d 42, 47 (Tenn. 2004). Thus, a court may properly award benefits based on medical testimony that the employment could or might have been the cause of the employee's injury when lay testimony also supports an inference of causation. Fritts v. Safety Nat'l Cas. Corp., 163 S.W.3d 673, 678 (Tenn. 2005). Any reasonable doubt as to the causation of an injury is resolved in favor of the employee. Phillips v. A & H Constr. Co., 134 S.W.3d 145, 150 (Tenn. 2004).

In this case, the trial court heard evidence that on January 4, 2008, Mr. Wilcutt and his supervisor, Mr. McManus, were standing next to each other when an extension ladder fell from the roof of the building they were wiring and hit Mr. Wilcutt on the top of the head. Mr. Wilcutt immediately told Mr. McManus that "something wasn't right" and that he needed to "get somewhere and be checked." Mr. McManus observed a cut on Mr. Wilcutt's head and took him to Dr. Clendenin's office because it was obvious to Mr. McManus that something was wrong. Dr. Clendenin immobilized Mr. Wilcutt's neck and summoned an ambulance to transport him to an emergency room. Mr. Wilcutt, who was "kind of out of it" from the blow to his head, was hospitalized for a week to undergo testing and conservative treatment. Although he returned to work in February 2008 and continued working until December 2009, Mr. Wilcutt's symptoms worsened to the point that he could no longer perform his responsibilities for CAM Electric. Prior to January 4, 2008, he had no problems with balance or strength in his arms and had no pain in his neck. After January 4, 2008, however, he has experienced stiffness in his neck and pain and tingling in his arms and legs, making it difficult for him to walk. He has also experienced numbness and loss of strength in his arms, making it difficult for him to drive. Due to these problems, he was unable to continue working for CAM Electric. This evidence was uncontradicted and, in our view, supports the trial court's decision.

The medical proof likewise supports the trial court's decision to award benefits. Dr. Dalal's physical examination of Mr. Wilcutt revealed that he had limited range of motion in his neck and significant weakness in his left arm and wrist along with decreased sensation. Dr. Dalal also found that Mr. Wilcutt suffered from moderate weakness in his right arm. Dr. Dalal stated that an MRI taken on January 13, 2008, showed a herniated disk at the C3-4 level causing an indentation of the spinal cord. Although the MRI also showed a congenitally narrowed spinal canal along with degenerative disk disease these pre-existing conditions were asymptomatic before January 4, 2008. The MRI also showed herniated disks at the C4-5, C5-6, and C6-7 levels. Dr. Dalal believed that being struck by the ladder on January 4, 2008, caused Mr. Wilcutt's problems and necessitated his surgery. Dr. Dalal believed that the ladder incident produced pain, limited function, and permanent anatomical impairment, stating that "[t]his man was a hard working man . . . and now unfortunately because of this injury he is almost crippled." Dr. Dalal stated that the 28% impairment rating he gave Mr. Wilcutt was "extremely conservative."

The other physician who evaluated Mr. Wilcutt, Dr. Brophy, testified that a myelogram/CT scan performed on January 5, 2010, revealed three herniated disks at the C3-4, C4-5, and C5-6 levels. Although Dr. Brophy did not believe that Mr. Wilcutt's need for surgery was related to the ladder incident, he acknowledged that Mr. Wilcutt's symptoms were consistent with being hit on the head by a falling ladder. He further testified that Mr. Wilcutt needed surgery for the herniated disks in his neck. We also note that, unlike Dr. Dalal, Dr. Brophy did not see Mr. Wilcutt following his surgery.

The trial court obviously accredited Mr. Wilcutt's testimony that he was asymptomatic prior to January 4, 2008, and that he experienced increasing difficulties after that date. Mr. McManus's testimony corroborated Mr. Wilcutt's testimony. As stated above, the evaluation of in-court testimony is entitled to considerable deference on appeal. Just as obviously, the trial court determined that Dr. Dalal's opinions were more consistent with Mr. Wilcutt's testimony and therefore chose to accept the opinions of Dr. Dalal over those of Dr. Brophy. When physicians provide conflicting opinions about causation, a trial court generally has the discretion to choose which expert to accredit. Kellerman v. Food Lion, Inc., 929 S.W.2d 333, 335 (Tenn. Workers' Comp. Panel 1996); Johnson v. Midwesco, Inc., 801 S.W.2d 804, 806 (Tenn. 1990). Considering the record as a whole, we cannot conclude that the evidence preponderates against the trial court's decision to award benefits. The trial court considered the lay and expert testimony, the factors identified in Tennessee Code Annotated section 50-6-241(d)(2)(A) (2009) for assessing vocational disability, and reached a result consistent with the proof. In our view, Mr. Wilcutt established that his injuries have "a rational, causal connection to the work." Braden, 833 S.W.2d at 498. In light of this holding, it is unnecessary for us to address CAM Electric's argument that the trial court lacked a basis for

its alternative finding that Mr. Wilcutt's return to work aggravated his pre-existing conditions or his initial injury.

Conclusion

For the foregoing reasons, we hold that the evidence does not preponderate against the trial court's finding that Mr. Wilcutt's injuries were work-related. Accordingly, we affirm the trial court's judgment. The costs of this appeal are taxed to CAM Electric Systems and its surety, for which execution may issue if necessary.

DONALD P. HARRIS, SPECIAL JUDGE

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

TEDDY WAYNE WILCUTT v. CAM ELECTRIC SYSTEMS ET AL.

**Chancery Court for Obion County
No. 29,441 and 29,442**

No. W2013-00772-WC-R3-WC - Filed July 28, 2014

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 on appeal are taxed to the Appellant, CAM Electric Systems, and its surety, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM