IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
April 22, 2019 Session

TERESA ADAMS V. RICH PRODUCTS CORPORATION

Appeal from the Chancery Court for Shelby County
No. CH-10-2013-III Joedae Jenkins, Judge

No. W2018-00288-SC-R3-WC – Mailed July 31, 2019; Filed August 30, 2019

Teresa Adams ("Employee"), a general laborer at Rich Products Corporation ("Employer") developed carpel tunnel syndrome in both hands. After two separate surgeries, Employee developed bilateral hand stiffness and deformity of her fingers. Due to the disparity between the impairment ratings assigned by her treating physician and the Independent Medical Examination ("IME") physician, Employer sought review through the Medical Impairment Rating Registry (MIR) program. The MIR physician opined that Employee suffered from inflammatory arthritis unrelated to her employment. The IME physician disagreed with the MIR physician's impairment rating and diagnosed Employee with Complex Regional Pain Syndrome ("CRPS"). The trial court found that Employee rebutted the presumed accuracy of the MIR physician's impairment rating by clear and convincing evidence. Employer has appealed alleging that the accurate impairment rating presumption was not rebutted. 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(e) (2014) (Applicable to injuries occurring prior to July 1, 2014) Appeal as of Right; Judgment of the Chancery Court Affirmed.

ROBERT E. LEE DAVIES, SR. J., delivered the opinion of the court, in which ROGER A. PAGE, J. and WILLIAM B. ACREE, SR. J., joined.

Kenneth D. Veit, Nashville, Tennessee, for the appellant, Rich Products Corporation

Christopher L. Taylor, Memphis, Tennessee, for the appellee, Teresa Adams

OPINION

Factual and Procedural Background

On November 4, 2010, Employee filed a petition for determination of workers' compensation benefits in the Chancery Court of Shelby County. On December 30, 2010, Employer filed its answer. The Chancellor heard the case on December 4, 2017 and took the case under advisement. On December 6, 2017, the court issued its ruling from the bench in favor of Employee. Employer then properly perfected its appeal.

Teresa Adams, age fifty-five, is employed as a general laborer at Rich Products Corporation. On a particularly busy day, while working on the assembly line, Ms. Adams began to experience pain in her hands and observed they were swollen. After the pain in her hands intensified, Ms. Adams went to her personal doctor, who informed her she was developing carpal tunnel syndrome. Subsequently, Ms. Adams reported the injury to Employer, who sent her to Dr. Robert Lonergan.

Dr. Lonergan confirmed the diagnosis of bilateral carpel tunnel syndrome and began conservative treatment. On July 28, 2009, he performed surgery on Ms. Adams' left hand, and on August 14, 2009, he performed surgery on the right hand. Despite post-operative physical therapy, Ms. Adams experienced severe stiffness in her fingers and the inability to make a fist with either hand. Ms. Adams denied having any stiffness or restrictive range of motion in her hands and fingers prior to the surgeries. However, Dr. Lonergan was unable to attribute the stiffness in Ms. Adams' fingers to the surgeries and referred her for a second opinion to Dr. Cole, a hand and finger specialist. Dr. Cole diagnosed Ms. Adams with bilateral hand stiffness, post carpal tunnel release surgery. In January 2010, Dr. Lonergan diagnosed Ms. Adams with bilateral upper extremity multiple joint arthralgia[1] and stiffness, unrelated to her work injury. Dr. Lonergan determined that Ms. Adams reached maximum medical improvement on February 4, 2010. He assigned an impairment rating of three percent for each of the right and left upper extremities, for a total of six percent impairment to the whole body. He also suggested that Ms. Adams see a rheumatologist but informed her that any treatment would fall outside her workers' compensation claim.

On June 24, 2010, Ms. Adams saw Dr. Apurva Dalal, a board-certified orthopedic

[1] Arthralgia refers to joint pain, whereas arthritis refers to inflammation of the joints.

surgeon, for an independent medical examination (IME). Dr. Dalal reviewed Ms. Adams' medical and employment history and conducted a physical examination. Dr. Dalal noted Ms. Adams had extensive deformity of her fingers, specifically finding her fingers were "rounder … were edematous …[and] had lost skin creases." He observed very little motion in the joints. According to Dr. Dalal:

> It almost looks like she has leather gloves on both her hands. There is moderate swelling of all the fingers. She has evidence of allodynia … a hypersensitivity to skin. She has severe contractures …mean[ing] the fingers have all stiffened up. She has severe stiffness of her wrist, that means the wrist doesn't move, and all the fingers. There is complete loss of hair on both her hands. She has an extremely cold hand touch compared to the rest of her body. So, there is a temperature difference. The patient has severe loss of sensation in the median nerve distribution of both hands with severe stiffness and sausage shaped deformity of all her digits.

Dr. Dalal also observed a significant decrease in range of motion in Ms. Adams' left and right hands and noted an eighty percent reduction of motion in all her fingers and joints. Dr. Dalal opined Ms. Adams had developed complex regional pain syndrome (CRPS)[2] which Dr. Dalal described as a rare reaction to the injury and carpal tunnel surgery. Dr. Dalal determined that Ms. Adams' CRPS resulted from her original work injury. He then combined the loss of motion with sensation and assigned an impairment rating of forty-five percent to each upper extremity. Dr. Dalal disagreed with Dr. Lonergan's impairment rating based on the carpal tunnel section of the AMA Guidelines (6th Edition) since "that section does not speak to every problem," noting Ms. Adams' post-surgery condition was "much worse" than her carpal tunnel syndrome.

Of her own accord, Ms. Adams saw Dr. Cathy Chapman, a board-certified rheumatologist. Dr. Chapman first saw Ms. Adams on December 17, 2012, approximately three years after her carpal tunnel surgery. Dr. Chapman diagnosed Ms. Adams with rheumatoid arthritis, which she described as a common disease of the joints and immune system. Although Dr. Chapman did not provide a formal opinion as to whether Ms. Adams' condition was caused by her work, Dr. Chapman remarked that the arthritis was not work related. Dr. Chapman admitted she had no knowledge if Ms.

[2] CRPS, also called reflex sympathetic dystrophy syndrome (RSD) is a chronic pain condition in which high levels of nerve impulses are sent to an affected site. Symptoms include intense or burning pain, swelling and stiffness in affected joints, motor disability, changes in hair growth pattern, and changes in skin temperature, color and texture.

Adams had experienced swelling in her fingers prior to the carpal tunnel surgeries. For her part, Ms. Adams denied that Dr. Chapman diagnosed her with rheumatoid arthritis and recalled she was told the test results were negative. According to Ms. Adams, Dr. Chapman "never said anything about arthritis." Dr. Chapman did not assign an impairment rating.

Because of the disparity between the impairment ratings assigned by Drs. Lonergan and Dalal, Employer sought review through the Medical Impairment Rating Registry (MIR) Program. Dr. Michael Calfee, a board-certified orthopedic surgeon, was assigned to evaluate Ms. Adams in August 2014. Dr. Calfee reviewed Ms. Adams' nerve studies, x-rays, and records from Drs. Lonergan, Dalal, Chapman and Cole. He noted the bilateral carpal tunnel syndrome and attributed it to Ms. Adams' work-related injury. Dr. Calfee opined that Ms. Adams also suffered from inflammatory arthritis, "where the body reacts … to her joints and kind of attacks her joints." Although Dr. Calfee observed restrictions in Ms. Adams' range of motion, he attributed those deficits to her arthritic condition, which he found was not related to her employment.

Using the "diagnosed based" method to assess impairment, Dr. Calfee assigned a three percent upper extremity impairment rating for the left hand and a six percent upper extremity impairment rating for the right hand. He also disagreed with Dr. Dalal's impairment rating, which utilized the "range of motion" method. According to Dr. Calfee, the diagnosis-based method is the preferred methodology because Ms. Adams' impairment rating is limited to the carpal tunnel diagnosis. Dr. Calfee disagreed with Dr. Dalal's use of the range of motion method because he found those deficits were attributable to Ms. Adams' arthritic condition rather than her work injury. Finally, Dr. Calfee also disagreed with Dr. Dalal's CRPS diagnosis, claiming that this type of diagnosis must be confirmed by objective standards and by more than one physician.

Dr. Dalal was then provided with Dr. Calfee's report and gave a supplemental deposition. Dr. Dalal disagreed with Dr. Calfee and pointed out that Dr. Calfee failed to address how Ms. Adams' carpal tunnel syndrome and subsequent surgeries affected her range of motion. Dr. Dalal noted that prior to her work injury, Ms. Adams had functioning hands; could move and bend her fingers; and could make a fist. Dr. Dalal found Ms. Adams had post-injury contractures of the fingers and felt it was inappropriate for Dr. Calfee to conclude her loss of function was due to arthritis. According to Dr. Dalal:

> What Dr. Calfee has not addressed is how that carpal tunnel syndrome and the surgery made this individual lose the motion. Prior to this work-

> related problem, this patient had a functioning hand. She could move her fingers. She could bend them, she could make a grip. She could hold a fist. She was doing everything.

As a result, Dr. Dalal disagreed with Dr. Calfee's assigned impairment rating since he failed to take in to account the post-surgical range of motion deficits.

Ms. Adams continues to work at Rich Products Corporation in her prior capacity as a general laborer and has continued to receive annual raises. However, she has difficulty at work and occasionally requires assistance from co-workers when performing her tasks. Ms. Adams also continues to have pain and difficulty performing tasks in her private life. She can no longer braid her hair, she requires assistance with yard work, cooking, dressing, and opening jars or bottles. She also has difficulty lifting and cleaning herself.

Trial Court Ruling

The proof at trial included the live testimony of Employee and the deposition testimonies of Drs. Dalal, Lonergan, Chapman, and Calfee. The parties stipulated to the compensation rate of $540.51; that notice was provided to Employer; that Employee suffered a compensable injury; that Employee had reached MMI; and that Employee had made a meaningful return to work. The dispute was over the nature and extent of Employee's permanent partial disability.

In its oral ruling, the trial court characterized the sole issue as "whether [Employee] has overcome the presumption of the accuracy of [ ]Dr. Calfee's impairment rating." The trial court found there was clear and convincing evidence to overcome the impairment rating of Dr. Calfee. Although Dr. Calfee admitted the range of motion diagnosis is an alternate method of rating this particular type of injury, he did not provide an explanation as to why there was a significant functional loss of Employee's upper extremities which affected her ability to do general work labor and daily living activities. The trial court went on to find that Dr. Dalal provided an explanation as to the cause of Employee's current condition, which she did not have prior to her diagnosis of carpal tunnel syndrome and subsequent surgeries. The trial court then applied the 1.5 times multiplier to the forty-five percent impairment rating of Dr. Dalal and found Employee sustained permanent partial disability of 67.5% to both arms.

Standard of Review

A trial court's findings of fact in a workers' compensation case are reviewed de

novo 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). When credibility and the weight to be given testimony are involved, considerable deference is given to the trial court when the judge had the opportunity to observe the witness' demeanor and to hear in-court testimony. Madden v. Holland Grp. Of Tenn., Inc., 277 S.W.3d 896, 898 (Tenn. 2009). "When the issues involve expert medical testimony that is contained in the record by deposition, determination of the weight and credibility of the evidence necessarily must be drawn from the contents of the depositions, and the reviewing court may draw its own conclusions with regard to those issues." Foreman v. Automatic Sys., Inc., 272 S.W.3d 560, 571 (Tenn. 2008) (citing Orrick v. Bestway Trucking, Inc., 184 S.W.3d 211, 216 (Tenn. 2006)).

Analysis

The sole issue raised by Employer is whether Employee rebutted the presumed accuracy of the MIR physician's impairment rating by clear and convincing evidence. The MIR registry program was established as a resource to resolve disputes regarding the degree of permanent medical impairment ratings. Tenn. Code Ann. § 50-6-204(d)(5)(2005); Tenn. Com. R. Regs. 0800-2-20-.02(2008). The statute provides in part that:

> (5) When a dispute as to the degree of medical impairment exists, either party may request an independent medical examiner from the Administrator's registry … The written opinion as to the permanent impairment rating given by the independent medical examiner pursuant to this subdivision (d)(5) shall be presumed to be the accurate impairment rating; provided, however, that this presumption may be rebutted by clear and convincing evidence to the contrary.

Tenn. Code Ann. § 50-6-204(d)(5)

In Mansell v. Bridgestone Firestone North America Tire, LLC, 417 S.W.3d 393 (Tenn. 2013), the court held that the clear and convincing evidence needed to overcome the statutory presumption of accuracy given to a MIR physician's impairment rating requires more than disagreement between medical expert witnesses regarding the proper diagnosis. Id. at 411. In the context of this statute, our Supreme Court has interpreted the clear and convincing evidence standard to mean that "if no evidence has been admitted which raises a 'serious and substantial doubt' about the evaluation's correctness, the MIR evaluation is the accurate impairment rating." Id. (citing Beeler v. Lennox Hearth Prod., Inc., 2009 WL 396121 *4 (Tenn. Special W.C. Panel, Feb. 18, 2009). The Mansell Court noted that several special workers' compensation appeals panels have

given different interpretations of the clear and convincing evidence standard. One panel observed that the standard requires the presentation of affirmative evidence that a MIR physician used an incorrect method or inappropriate interpretation of the AMA Guides, Tuten v. Johnson Controls, Inc., 2010 WL 3363609 (Tenn. Special W.C. Panel, August 25, 2010). However, more recent panel decisions have expanded this narrow interpretation, holding, that the presumption may be rebutted by affirmative evidence that an MIR physician "used an incorrect method or an inappropriate interpretation of the AMA Guides." Smith v. Elec. Research & Mfg. Co-op., Inc., 2013 WL 683192 *4 (Tenn. Special W.C. Panel, February 22, 2013). Another panel held that evidence an MIR physician used an incorrect method, or an inappropriate interpretation of the AMA Guides, can be used to overcome the statutory presumption. Bean v. Tepro, Inc., 2011 WL 686449 *7 (Tenn. Special W.C. Panel, February 28, 2011). Taking all of these opinions into consideration, the Mansell Court determined that rebutting the presumption of accuracy of the MIR report requires the court to focus on the *evidence offered to rebut* the MIR physician's rating. Mansell, 417 S.W.3d at 411. (emphasis added).

In the case at bar, although Dr. Calfee agreed with the diagnosis of bilateral carpal tunnel syndrome which was caused by Employee's work-related injury, Dr. Calfee opined that any other symptoms beyond the carpal tunnel syndrome were caused by Employee's arthritic condition, not her work injury or carpal tunnel release surgeries. Therefore, based solely on the bilateral carpal tunnel diagnosis and using the diagnosis-based method, Dr. Calfee assigned a three percent upper extremity impairment rating to the left and a six percent upper extremity impairment rating for Employee's right carpal tunnel.

To overcome the presumption, Employee produced the supplemental deposition of Dr. Dalal. After reviewing Dr. Calfee's report, Dr. Dalal disagreed with the cause of Employee's post-surgical contractures and range of motion deficits. Although Dr. Calfee believed the contractures and range of motion deficits were caused by Employee's unspecified inflammatory arthritis, he failed to give details about the arthritic condition or its onset. Dr. Calfee acknowledged Dr. Lonergan's notes indicated Employee had full range of motion in May 2009 just prior to surgery. He also admitted that the medical records indicated the range of motion problems did not develop until after the carpal tunnel surgeries. What Dr. Calfee failed to do (as was pointed out by Dr. Dalal) was to address how the carpal tunnel syndrome and the surgeries caused this individual to lose significant range of motion in her hands. Dr. Dalal explained that prior to the injury Employee had completely functional hands with no range of motion issues. Dr. Dalal observed a post-surgical eighty percent reduction in motion in all of Employee's fingers and joints, using the terms "sausages" and "leather gloves" to describe her fingers and

hands. Dr. Dalal's conclusions are further supported by the medical history and Employee's testimony at trial.

Employee testified that she had no issues with her hands until she experienced pain and swelling in her fingers after a difficult day on the assembly line. She told the trial judge about the pain and swelling in her fingers, and she explained she could not make a fist or otherwise bend her fingers. Clearly, the trial judge had an opportunity to observe Employee's hands, and in his ruling from the bench, noted the "severe deformity and limitations occasioned by the [Employee] after the surgery for the carpal tunnel, which was not present prior to the injury …"

Having reviewed the record, we agree with the trial court's conclusion that Employee's post-surgical complications were caused by her work injury and manifested after her carpal tunnel surgeries. We find unpersuasive Dr. Calfee's testimony attributing the complications to an arthritic condition. Further, Dr. Calfee's sole reliance on the carpal tunnel diagnosis with complete disregard of the post-surgical problems raises a "serious and substantial doubt" about the correctness of his impairment rating. We, therefore, agree with the trial court and conclude that Employee rebutted the statutory presumption set forth in Tenn. Code Ann. § 50-6-2047(d)(5) by clear and convincing evidence.

Conclusion

The judgment of the trial court is affirmed. Costs on appeal are taxed to Employer, Rich Products Corporation, for which execution may issue if necessary.

Robert E. Lee Davies, Sr. Judge

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

TERESA ADAMS v. RICH PRODUCTS CORPORATION

Chancery Court for Shelby County
No. CH-10-2013

No. W2018-00288-SC-R3-WC – Filed August 30, 2019

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 Employer, Rich Products Corporation, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM