IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT MEMPHIS
March 25, 2015 Session

MATTRESS FIRM, INC., ET. AL. v. DEANNA MUDRYK

Appeal from the Circuit Court for Shelby County
No. CT00463412 Robert Weiss, Judge

No. W2014-01017-SC-R3-WC – Mailed July 16, 2015; Filed August 24, 2015

The employee was the manager on duty at the employer's store. After two persons posing as customers stole her purse from the store, the employee pursued the assailants into the employer's parking lot. The employee sustained physical injuries in the encounter, and was later diagnosed with post-traumatic stress disorder caused by the incident. The employee sought workers' compensation benefits for her injuries. At the ensuing trial, only the employee's psychological injuries were at issue. The trial court held the psychological injuries were compensable, citing the street risk doctrine. However, the trial court limited the employee's damages to 1.5 times her impairment rating, based on the statutory cap contained in Tennessee Code Annotated § 50-6-241(d)(1)(A). After a careful review of the record, we affirm the trial court's conclusion that the injuries are compensable under the street risk doctrine but reverse its application of the statutory cap to the employee's injuries.

Tenn. Code Ann. § 50-6-225(e)(2) (2008 & 2013 Supp.); Appeal as of Right;
Judgment of the Circuit Court Affirmed in Part, Reversed in Part, and Remanded

JUSTICE HOLLY KIRBY delivered the opinion of the Court, in which CHANCELLOR MARTHA B. BRASFIELD and JUDGE BEN H. CANTRELL joined.

Jeffrey E. Nicoson and Ronald L. Harper, Memphis, Tennessee, for the appellants, Mattress Firm, Inc. and Zurich American Insurance Company.

David F. Kustoff, Memphis, Tennessee, for the appellee, Deanna Mudryk.

OPINION
Factual and Procedural Background

This appeal arises from a robbery of a Mattress Firm store located in Memphis, Tennessee. The employee, Deanna Mudryk ("Employee") began working as a store manager for Mattress Firm, Inc., ("Employer") in February 2009. As was common for Mattress Firm employees in training, Employee was rotated among several store locations. At each Mattress Firm store, employees were not provided a secure place to store their personal belongings while they were on duty; during their shift, employees typically placed personal items such as purses under the manager's desk at the front of the store.

On May 4, 2009, after Employee had been employed by Mattress Firm for approximately three months, she was assigned to work as the manager on duty at the Mattress Firm store in the Perimeter Mall in Memphis. During her shift, at the back of the store, other employees conducted a training program on a new line of mattresses. Employee attended the training program when possible, but as the manager on duty, she also was expected to attend to any customers who came into the store during the program. As was typical, Employee stowed her purse under the manager's desk near the front of the store.

At approximately 1:15 p.m. that day, two women entered the store. Employee left the training session to attend to them. One of the women, later identified as Dorothy Gunn, asked for assistance in shopping for a mattress, so Employee accompanied Gunn in walking through the store showroom looking at various mattresses. (Id. at 35)

While Employee was assisting Gunn, the second woman, later identified as Debra Cooper, remained near the store entrance, close to the manager's desk where Employee's purse was stowed. When Employee was near the far end of the store with Gunn, Cooper took Employee's purse from underneath the manager's desk. (Id. at 35). Employee immediately realized what Cooper had done and quickly made her way to the store entrance.

Near the door to the outside, Employee grabbed the purse in an effort to wrest it from Cooper. Employee and Cooper tussled over the purse as Cooper was leaving the store with the purse; Employee lost her footing in the scuffle but hung on to the purse.[1] Outside, in the Perimeter Mall parking lot, Cooper got into a waiting vehicle and Employee lost contact with her purse. The passenger car window was open, and Employee reached into the vehicle through the open window in an attempt to grab the

[1] We relate the events in accordance with Employee's trial testimony. Employer disputes that Employee grabbed the purse or sustained any physical injuries while she and Cooper were still inside the store; otherwise, the pertinent facts are essentially undisputed.

strap of her purse. At the same time, Gunn got into the driver's seat of the vehicle and Cooper began rolling up the window on Employee's arm. Gunn drove away while Employee's arm was trapped in the car window; as a result, Employee was dragged a considerable distance through the parking lot. By the time the incident was over, Employee had sustained substantial abrasions to her body, including her shoulders, legs, and arms.

Employee was hospitalized for treatment of her physical injuries. She eventually recovered from the physical injuries. Later, she obtained psychological treatment from several doctors. Ultimately, Employee was diagnosed with post-traumatic stress disorder ("PTSD"). Employee sought workers' compensation benefits for her injuries.[2]

Employer declined to pay workers' compensation benefits for the Employee's PTSD, so the parties engaged in a benefit review conference on that issue. This effort was unsuccessful. On October 30, 2012, the parties arrived at an impasse. Employee then filed this action against Employer for workers' compensation benefits in the Circuit Court for Shelby County, Tennessee.

The trial was held in April 2014. The trial court heard testimony from Employee and from a police officer who responded to the scene. Also admitted into evidence were the depositions of several employees who were attending the training session in the Mattress Firm store on the day in question, as well as the deposition testimony of Mattress Firm's representative and one of Employee's treating physicians.

In her testimony, Employee related the events that occurred the day of the Mattress Firm robbery. The robbery occurred on Employee's birthday, and she had in her purse approximately $450 in cash that she received as a birthday gift earlier that day. Employee's purse also contained her wallet, her credit cards, her personal keys, and keys for Employer's nearby stores and warehouse. Employee testified that, at the time her purse was stolen, she believed that it also contained a cash deposit from her previous day's work at a different Mattress Firm store, but she later learned that the cash deposit was not in her purse at the time of the robbery. Employee testified that her actions in trying to retrieve the purse were motivated, at least in part, by an impulse to protect the company property, namely, the keys and the deposit she believed might have been in the purse.

Over Employer's objection, the trial court permitted Employee to testify about an earlier robbery at another Mattress Firm store, by at least one of the same perpetrators. Employee testified that, about three months before the robbery of the Perimeter Mall

[2] Only the PTSD claims are at issue in this appeal; benefits for the physical injuries and the related expenses are not at issue.

Mattress Firm store, Gunn – one of the robbers in the incident that is the subject of this appeal – attempted to rob a Mattress Firm store in Southaven, Mississippi, while Employee was working at the Southaven store. In the previous incident, Employee said, Gunn stole Employee's purse from the manager's station at the front of the store in the same way her accomplice Cooper stole it at the Perimeter Mall store, but in the Southaven incident, a Mattress Firm co-worker tackled Gunn onto a showroom bed to prevent her from leaving the store with Employee's purse. Employee said that, in the Perimeter Mall incident, when she recognized Gunn as the same woman who had perpetrated the earlier robbery, she quickly realized that Gunn's accomplice Cooper had taken her purse in the same way.

Employee testified that, in the wake of the Perimeter Mall robbery, she developed anxiety, depression, and sleep disturbance. She sought treatment from a psychologist and a psychiatrist, and she claimed she saw each over 100 times. Asked how she was doing at the time of trial, Employee responded:

> Paranoid in surroundings I'm not familiar. If anybody comes up behind me and I can't see them in my peripheral it bothers me. I tend to get panic attacks, shortness of breath. I wet myself in public at stores. I've abandoned shopping carts and had to leave the store because I thought I saw one of the women. I don't function like I used to function.
>
> I'm scared all the time, constantly scared. Scared these women are going to get out of jail. I'm scared they're going to come find me at my home because they have my address and license. Their family has threatened me, threatened my husband, followed me. I'm scared.

After she recovered from the physical injuries sustained in the robbery, Employee said, Employer did not contact her about returning to work and did not offer her another position: "They have never called, never sent a letter, never asked me how I was, nothing. I've had no contact with Mattress Firm." She acknowledged that she, likewise, never contacted Employer. Employee claimed that she had not been medically cleared to return to a similar position, selling to the public, but acknowledged that she could work in other positions. She conceded that she had not created a resume or tried to obtain a job with any other potential employer.

The trial court also heard testimony from the police officer who responded to the Perimeter Mall store robbery, Officer Terry Thompson with the City of Memphis Police Department. Officer Thompson described the witnesses' accounts of the incident, Employee's injuries, and outlined proper police procedure in such a situation. He said that, from his investigation, he did not learn anything that lead him to believe that Gunn and Cooper had specifically targeted Mattress Firm stores; he was of the opinion that the incident was a random robbery.

In his deposition testimony, Employee's psychiatrist, John Morgan, M.D., testified that he first visited with Employee in March 2010. He reviewed the records from two of Employee's psychologists and interviewed Employee. Ultimately, Dr. Morgan diagnosed Employee with PTSD and gave her medication to improve her sleep. On June 14, 2012, after Employee underwent more treatment and made many more visits to his office, Dr. Morgan determined that she had reached maximum medical improvement. He assigned her a 15% permanent impairment to the body as whole. Dr. Morgan testified about her ability to work as follows:

> She would not, in my opinion, not be able, as things stood at that time, to return to this specific, this specific store and the job that she was doing. It might be that she could have done a similar job at a different store. I don't know. Before making a decision like that, I would have talked with [another one of her treating physicians], his thoughts about it. But I didn't, I didn't see any realistic idea that she would be able to function back at that facility in the same role, the way that things were at that time.

Dr. Morgan described Employee as being in a "holding pattern," unable to move on with her life until she got resolution of the criminal process against her assailants and of her worker's compensation claim. He added:

> Unless she begins to approach this from a different perspective, the only thing that might set the stage for this would be some type of redress. Given the current state of affairs, I see her as being locked in and unlikely to make significant progress, unless and until, there's satisfactory resolution from a legal perspective. Considerations of secondary gain are prominent, and I do not see any way for us to get past that until those matters are resolved.

Dr. Morgan indicated frustration with Employee's unwillingness or inability to improve her condition prior to resolution of the legal matters. He believed that she could make progress toward some type of vocational engagement again, though not in the same position she had held with Mattress Firm.

Employer submitted into evidence the deposition of Mattress Firm Division Vice President Jason Starr. In his testimony, Starr acknowledged that Mattress Firm does not provide a safe or other secure place for employees to stow personal items or valuables, or even a safe for cash payments from customers. He explained that one of the designated areas in which employees are asked to put cash is between mattresses on display in the store showroom. Asked about Mattress Firm policies and procedures regarding assaults and robberies at their stores, Starr conceded that Mattress Firm had no written policies. He said, however, that employees are not to chase robbers who steal from a store or "take unreasonable risks to put themselves in danger [and] [s]hould behave in a way that

mitigates or minimizes any physical harm or risks." Starr could not say with certainty whether Employee had received training about what to do in the event of a store robbery.

Starr was asked about the possibility of Employee returning to work for Mattress Firm. He said that Employer had jobs available in the Memphis area that were not at the Perimeter Mall store location and that did not require public contact, such as positions in the Memphis warehouse and distribution center. He indicated that Employer would permit Employee to return to work for Mattress Firm, but added that Employee had never contacted Mattress Firm for the purpose of returning to work. Starr said that, on one occasion he spoke to Mattress Firm's district manager over the Memphis stores and to its Human Resources Department about Employee's well-being after the robbery, but he did not remember any specifics about the conversation.

After considering all of the evidence, on April 24, 2014, the trial court issued an oral ruling that was later incorporated by reference into a written order. The trial court held that Employee's PTSD was compensable under the street risk doctrine. Under that doctrine, the trial court considered the Perimeter Mall store robbery to be a "neutral force." The trial court emphasized that Mattress Firm "created [an] environment[] [where] there is no secure location, and there wasn't a room for her purse to be locked up. There was no office, no safe." It also noted the other Mattress Firm robbery in which Employee was present. All of these factors, the trial court said, informed its conclusion that Employee had sustained a psychiatric injury of post-traumatic stress disorder while in the course and scope of her duties and responsibilities for Employer.

However, the trial court awarded Employee a lump sum payment of only 1.5 times her impairment rating of 15%, an award totaling $33,561.90. It pointed out that two years had passed since Employee was released by her treating physician and that Employee had presented "no testimony or proof that you have done anything to find any sort of employment is telling. . . . there is always going to need to be a next step. The fact that no step was ever taken, I think the cap absolutely applies in this situation." The trial court ordered Employer to pay Employee's attorney fee and future medical benefits related to her PTSD. From this ruling, Employer appeals.

Issues Presented and Standard of Review

On appeal, Employer challenges the trial court's conclusion that Employee's psychological injury was compensable under the street risk doctrine and argues that the trial court erred in admitting evidence regarding the prior robbery attempt at Mattress Firm's Southaven location.

On cross-appeal, Employee raises one issue. Employee argues that the trial court erred in holding that the Employee had a meaningful return to work and in capping her damages at one-and-a-half times the impairment rating pursuant to Tenn. Code Ann. §

50-6-241(d)(1)(A). Employee argues that the burden was on the Employer to take affirmative steps to return Employee to work, and that Employer failed to do so.

Issues of fact in a workers' compensation case are reviewed *de novo* upon the trial court record, with a presumption that the factual findings are correct unless the evidence preponderates otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2008 & 2013 Supp.).[3] When the credibility of witnesses is involved, the reviewing court accords considerable deference to the trial court, because the trial judge had the opportunity to observe the witnesses' demeanor and hear in-court testimony. Madden v. Holland Group of Tenn. Inc., 277 S.W.3d 896, 900 (Tenn. 2009). When the issues involve expert medical testimony that is contained in the record by deposition, 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). A trial court's conclusions of law are reviewed *de novo* upon the record, with no presumption of correctness. Seiber v. Reeves Logging, 284 S.W.3d 294, 298 (Tenn. 2009).

Compensability

We begin by addressing Employer's argument that the trial court erred in finding that Employee sustained a compensable mental injury.

Employer argues that Employee's PTSD neither arose from, nor occurred in, the course of her employment because her injuries resulted from her pursuit of personal property, namely, her purse. Under Tennessee Code Annotated § 50-6-103(a), only injuries "arising out of and in the course of employment" are compensable under the Workers' Compensation Law. The phrases "arising out of" employment and "in the course of" employment are two separate requirements. Tennessee Code Annotated § 50-6-103(a)(2008); Woods v. Harry B. Woods Plumbing Co. Inc., 967 S.W.2d 768, 771 (Tenn. 1998). The phrase "arising out of" refers to the origin of the injury. Id.; see Padilla v. Twin City Fire Ins. Co., 324 S.W.3d 507, 511 (Tenn. 2010). "An injury arises out of the employment when 'there is a causal connection between the conditions under which the work is required to be performed and the resulting injury.'" Hubble v. Dyer Nursing Home, 188 S.W.3d 525, 534 (Tenn. 2006) (citing Blankenship v. Am. Ordnance Sys., LLS, 164 S.W.3d 350, 354 (Tenn. 2005); Fritts v. Safety Nat'l Cas. Corp., 163 S.W.3d 673, 678 (Tenn. 2005)). In contrast, the phrase "in the course of employment" refers to the time, place and circumstances under which the injury occurred. Woods, 967 S.W.2d at 771 (citing McAdams v. Canale, 294 S.W.2d 696, 699 (Tenn. 1956)). "An injury occurs in the course of employment if 'it takes place within the period of the employment, at a place where the employee reasonably may be, and while the employee

[3] Currently codified at Tennessee Code Annotated § 50-6-225(a)(2) (2014), which is applicable to all injuries occurring on or after July 1, 2014.

is fulfilling work duties or engaged in doing something incidental thereto.'" Hubble, 188 S.W.3d at 534 (quoting Blankenship, 164 S.W.3d at 354). The element of causation is satisfied where "the injury has a rational, causal connection to the work[.]" Braden v. Sears, Roebuck & Co., 833 S.W.2d 496, 498 (Tenn. 1992).

In this case, the only injury at issue is Employee's PTSD. Tennessee courts have held that "a mental stimulus, such as fright, shock, or even excessive, unexpected anxiety could amount to an 'accident' sufficient to justify an award for a resulting mental or nervous disorder." Beck v. State, 779 S.W.2d 367, 370 (Tenn. 1989) (quoting Jose v. Equifax, 556 S.W.2d 82, 84 (Tenn. 1977)).

To determine whether Employee's PTSD occurred "in the course of employment," we look to the unique factual scenario presented in this case. First, it is undisputed that the robbery occurred during normal business hours at a time when Employee was on duty and responsible for helping any customer who entered the store.

Next, we consider the place the injury occurred. The parties argue at length over whether Employee's PTSD arose from occurrences inside the store or outside the store, from Employee's initial physical contact with and recognition of the assailants inside the store or from being dragged through Employer's parking lot by the assailants' car.

We find that it is unnecessary to parse whether Employee's injury occurred inside the store or in the parking lot. In Lollar v. Wal-Mart Stores, Inc., 767 S.W.2d 143, 150 (Tenn. 1989), our Supreme Court "adopted a premises liability standard employed by nearly all jurisdictions, see 1 Larson, Workmens' Compensation Law, § 15.11 (1985 ed.), and held 'that a worker who is on the employer's premises coming to or going from the actual work place is acting in the course of employment [and] that if the employer has provided a parking area for its employees, that parking area is part of the employer's premises regardless of whether the lot is also available to customers or the general public.' " Copeland v. Leaf, Inc., 829 S.W.2d 140, 141 (Tenn. 1992) (quoting Lollar, 767 S.W.2d at 150). See also Hubble v. Dyer Nursing Home, 188 S.W.3d 525, 534 (Tenn. 2006) ("For example, the employer's parking lot is considered part of the employer's premises.") (citing Lollar, 767 S.W.2d at 150).

Under this standard, the parking lot outside of the Perimeter Mall store would be considered part of the Employer's premises, so the entire robbery episode occurred on the Employer's premises. Consequently, any mental injuries resulting from the incident would satisfy the "in the course of employment" requirement. Thus, the evidence supports the trial court's holding that Employee's injury occurred "in the course of employment."

We now turn to whether Employee's injury "arose out of the employment." Our Supreme Court has previously discussed the standards to be applied where an employee is injured from an assault that occurs while the employee is at work:

> We believe that issues of whether assaults upon employees arise out of the scope of employment can best be divided into three general classifications: (1) assaults with an "inherent connection" to employment such as disputes over performance, pay or termination; (2) assaults stemming from "inherently private" disputes imported into the employment setting from the claimant's domestic or private life and not exacerbated by the employment; and (3) assaults resulting from a "neutral force" such as random assaults on employees by individuals outside the employment relationship.
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> Assaults with an "inherent connection" to employment are compensable. Assaults stemming from "inherently private" disputes imported into the employment setting from the claimant's domestic or private life and not exacerbated by the employment are not compensable. Assaults resulting from a "neutral force" such as random assaults may or may not be compensable depending on the facts and circumstances of the employment.

Woods 967 S.W.2d at 771 (internal citations with parentheticals omitted). Thus, assaults with an inherent connection to employment are compensable, assaults stemming from inherently private disputes are normally not compensable, and assaults resulting from a "neutral force" such as a random assault may or may not be compensable, depending on the circumstances.

In the case at bar, the trial court held that the assault on Employee was a "neutral force" assault, because she was assaulted in the workplace by the random assailants. As noted above, this holding required the trial court to further consider the particular circumstances surrounding the assault.

To do so, the trial court applied the so-called "street-risk doctrine." "[S]imply stated, [the street risk doctrine] is that the risks of the street are the risks of the employment, if the employment requires the employee's use of the street." Hudson v. Thurston Motor Lines, Inc., 583 S.W.2d 597, 602 (Tenn. 1979). The Hudson Court, applying this rule, determined that an attack upon a truck driver by unknown assailants during his lunch hour arose from his employment. Hudson, 583 S.W.2d at 598, 601-02. The Court further explained the application of the street risk doctrine in Wait v. Travelers Indem. Co. of Illinois, 240 S.W.3d 220 (Tenn. 2007). In Wait, the Court observed that, "in limited circumstances, where the employment involves 'indiscriminate exposure to the general public,' the 'street risk' doctrine may supply the required causal connection between the employment and the injury." Wait, 240 S.W.3d at 228 (quoting Jesse v. Savings Prods., 772 S.W.2d 425, 427 (Tenn. 1989)).

In the instant case, the trial court applied the street risk doctrine to find a causal connection between Employee's job and the assault that resulted in her PTSD. Employer argues that the trial court erred because the evidence presented to the trial court did not show that Employee was indiscriminately exposed to the general public. We disagree. It is undisputed that Employer's Perimeter Mall store was a retail establishment, open to anyone who chose to walk through its doors. It is likewise undisputed that Employee's job duties included greeting and assisting any person who came into the store and presented as a customer. We agree with the trial court that this constitutes "indiscriminate exposure to the general public" as described in Wait.

Additionally, the facts in this case are analogous to those in Beck v. State, 779 S.W.2d 367 (Tenn. 1989). In Beck, the Court affirmed an award of workers' compensation benefits to a driver's license examiner who was sexually assaulted at her place of employment and suffered mental injuries. 779 S.W.2d at 368. The Court reasoned that the "assailant had access to Plaintiff because her workplace was open to the public. . . . [Her] indiscriminate exposure to the general public was one of the conditions under which her work was required to be performed, and the actions of persons on those premises can be considered a hazard of the employment." Beck, 779 S.W.2d at 371. The same reasoning is applicable in this case.

Employer insists that the trial court erred in allowing Employee to testify that the same assailants had previously attempted to steal her purse in the same manner at another Mattress Firm store location, only months earlier. Employer contends that this was reversible error because the evidence was irrelevant and prejudicial because it could lead to an inference that the assailants had specifically targeted Employer's stores. Employer asserts that the Employee failed to prove this fact directly, so evidence of the prior robbery attempt should have been excluded.

"[D]ecisions regarding the admission or exclusion of evidence are entrusted to the trial court's discretion. Accordingly, reviewing courts will not disturb these decisions on appeal unless the trial court has abused its discretion." State v. Hester, 324 S.W.3d 1, 59 (Tenn. 2010). An abuse of discretion in the admission of evidence occurs where the trial court applied incorrect legal standards, reached an illogical conclusion, based its decision on a clearly erroneous assessment of the evidence, or employed reasoning that causes an injustice to the complaining party. Konvalinka v. Chattanooga-Hamilton County Hosp. Auth., 249 S.W.3d 346, 358 (Tenn. 2008); State v. Banks, 271 S.W.3d 90, 116 (Tenn. 2008).

Under the facts of this case, we find there was ample reason for the trial court to permit Employee to testify about the prior robbery attempt at the Southaven Mattress Firm store. First, it related to Employee's thoughts and actions during the incident in question at the Perimeter Mall store. She testified that, as she was escorting Gunn around the Perimeter Mall store, she suddenly recognized Gunn as the thief in the prior Southaven store incident. This recognition lead Employee to look in the direction of

Gunn's accomplice Cooper at the front of the store and realize that Cooper had purloined her purse in the same manner as had occurred in the Southaven incident.

Second, Employee's testimony on the prior robbery attempt supports Employee's contention that Mattress Firm store employees were indiscriminately exposed to the public in the course of their duties. This supports the trial court's application of the street risk doctrine.

Third, though Employer bristles at any inference that Gunn and Cooper targeted the Perimeter Mall Mattress Firm store for robbery, we find this is not an unfair inference under the circumstances. True, the police officer who came to the scene testified that he found no evidence that the store was targeted by the perpetrators. Nevertheless, Employee was entitled to put on proof that could lead to a contrary conclusion. The same perpetrators had attempted to rob Employee of her purse at the Southaven Mattress Firm store came to the Perimeter Mall Mattress Firm store only a few months later for the same purpose. This could be seen as suggesting that the perpetrators sought to take advantage of the fact that Mattress Firm gave employees little choice but to leave their personal belongings, such as purses, unprotected while they escorted customers around the store showroom looking at mattresses on display.

This situation bears some similarity to the facts presented in Hurst v. Labor Ready, 197 S.W.3d 756 (Tenn. 2006), in which a deceased employee's family sought workers' compensation benefits for his death. In Hurst, the employee was shot by a third party as he stood outside of his employer's office waiting for his paycheck. 197 S.W.3d at 758. Though not completely clear, the shooting appeared to arise from the perpetrator's conflict with the employer's management over a policy that forbade public use of the employer's restroom facilities. Id. at 759. The Court permitted evidence related to that conflict, and explained as follows:

> To establish this causal connection, workers whose employment exposes them to the hazards of the street, or who are assaulted under circumstances that fairly suggest they were singled out for attack because of their association with their employer, are entitled to establish this causal connection with the aid of the street risk doctrine.

Hurst, 197 S.W.3d at 761 (emphasis omitted) (quoting Braden, 833 S.W.2d at 499). Here, Employee was entitled to put on evidence suggesting that these perpetrators were aware that Mattress Firm store employees normally had to stow their personal belongings at the manager's station at the front of the store, leaving them vulnerable to robbery. Overall, we find no error in the trial court's decision to permit Employee to testify about the prior Southaven Mattress Firm robbery attempt.

Employer argues next that, even if the altercation began in the course of employment, once Employee took action to recover her purse, she was, in effect, on

personal business and no longer acting in the scope of her employment as a manager. For this reason, Employer asserts, the trial court erred in awarding benefits.

In support, Employer cites Alder v. Mid-S. Beverages, Inc., 783 S.W.2d 544, 545 (Tenn. 1990). In Alder, two employee drivers were robbed of personal effects while they stood next to their employer's vehicle during their lunch hour. Alder, 783 S.W.2d at 545. Neither was injured in the robbery. Id. Afterward, the drivers decided to search for their assailants' vehicle to retrieve their personal possessions. Id. The drivers located the robbers' vehicle in a nearby apartment complex. Id. at 546. In the ensuing confrontation at the apartment complex, one of the employee drivers was shot and seriously injured. Id. The Supreme Court affirmed the trial court's holding that, at the time of the injuries, the employees were no longer acting in the scope of their employment because they pursued their assailants to recover personal property. Id. at 547. Accordingly, the Alder Court affirmed the trial court's denial of workers' compensation benefits. Id.

We find that Alder is distinguishable in several significant respects. First, in Alder, there was considerable time and distance between the initial theft and the later physical encounter at the apartment complex. In the case at bar, by all accounts, Employee acted immediately and reflexively to retrieve her purse and remained on the Employer's premises throughout the entire episode. Her actions, though clearly unwise, must be viewed against the backdrop of the Southaven robbery, in which a co-worker tackled one of the same perpetrators to retrieve the purse. Moreover, Employee testified that her actions were motivated, at least in part, by her belief that the stolen purse contained, money belonging to Mattress Firm (which later turned out to be incorrect), and store keys to all the Mattress Firm stores in the region (which was correct). See Hudson, 583 S.W.2d at 603 (finding it appropriate to apply the street risk doctrine to injuries sustained when an employee, charged with responsibility of protecting valuable equipment both during his lunch hour as well as during working hours, was robbed). Employer scoffs at this suggested motivation for Employee's actions and points to the testimony of its Division Vice President that Mattress Firm had an unwritten corporate policy that employees should not chase robbers stealing from a store or put themselves at risk. Regardless, the trial court was free to credit Employee's testimony about the partial motivation behind her actions, and also free to discredit the testimony of Employer's representative, particularly where Employer was unable to show that Employee had been made aware of such a policy. Indeed, it would be ironic for Mattress Firm to create a situation in which employees were left little choice but to leave their personal belongings in an insecure location during working hours but were prohibited under Mattress Firm policies from taking action to retrieve such personal items in the foreseeable event of a theft.

Based on these considerations, we conclude that the evidence does not preponderate against the trial court's holding that Employee's injury was compensable.

Meaningful Return to Work

Having affirmed the trial court's holding that Employee's PTSD is compensable, we now turn to Employee's contention that the trial court incorrectly limited her award to one and one-half times the medical impairment rating pursuant to Tennessee Code Annotated § 50-6-241(d)(1)(A).[4] Employee argues that the trial court erred because the burden was on the Employer to take affirmative steps to return Employee to work. In response, Employer argues that the evidence at trial showed that Employee never contacted Employer about the possibility of returning to work.

Addressing this issue, our Supreme Court has explained:

> [T]he courts must assess the reasonableness of the employer in attempting to return the employee to work and the reasonableness of the employee in failing to either return to or remain at work. The determination of the reasonableness of the actions of the employer and the employee depends on the facts of each case.

Tryon v. Saturn Corp., 254 S.W.3d 321, 328-29 (Tenn. 2008) (internal citations omitted). The language used by our Legislature in the applicable statute suggests that, to take advantage of the "cap," the onus is on the employer to take some action to return the employee to work within her medial restrictions. Tenn. Code Ann. § 50-6-241(d)(1)(A). Tennessee Code Annotated § 50-6-241(d)(1)(A) provides that an award of permanent partial disability benefits is limited to one and one-half times the medical impairment rating when, "*the pre-injury employer returns the employee to employment* at a wage equal to or greater than the wage the employee was receiving at the time of the injury[.]" (Emphasis added). Consistent with this language, the Supreme Court has held that, in order for the cap to apply, "the burden is upon the employer to show, by a preponderance of the evidence, that an offer of a return to work is [made] at a wage equal to or greater than the pre-injury employment and that the work is within the medical restrictions . . .

[4] Tennessee Code Annotated § 50-6-241(d)(1)(A) states in its entirety as follows:

> For injuries occurring on or after July 1, 2004, but before July 1, 2014, in cases in which an injured employee is eligible to receive any permanent partial disability benefits either for body as a whole or for schedule member injuries, except schedule member injuries specified in § 50-6-207(3)(A)(ii)(a)-(l), (n), (q), and (r), and the pre-injury employer returns the employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of the injury, the maximum permanent partial disability benefits that the employee may receive is one and one half (1 ½) times the medical impairment rating determined pursuant to § 50-6-204(d)(3). In making the determinations, the court shall consider all pertinent factors, including lay and expert testimony, the employee's age, education, skills and training, local job opportunities and capacity to work at types of employment available in claimant's disabled condition.

Tenn. Code Ann. § 50-6-241(d)(1)(A).

for the returning employee." Cha Yang v. Nissan N. Am., Inc., 440 S.W.3d 593, 598 (Tenn. 2014) (quoting Ogren v. Housecall Health Care, Inc., 101 S.W.3d 55, 57 (Tenn. Workers' Comp. Panel 1998)). This interpretation aligns with the policy goals of the statutory caps, which seek to encourage the retention of injured employees by reducing the liability of an employer who returns an injured employee to work at the same or a greater wage, and consequently relieves society of the burden of providing compensation to the injured worker. See Britt v. Dyer's Emp't Agency, Inc., 396 S.W.3d 519, 524 (Tenn. 2013).

In the instant case, Employee's psychiatrist Dr. Morgan testified that Employee could not successfully return to work at the Perimeter Mall Mattress Firm location, and he was unsure whether she could return to the same job at another location. Employer Vice President Starr testified that Employer had jobs available within the restrictions described by Dr. Morgan, jobs that would not require Employee to interact with the general public. Importantly, however, Employer presented no evidence that Employee was made aware of such options, or in fact that Employer offered her any options whatsoever. Thus, even if Employer had acceptable work available to Employee, it made no effort to communicate that fact to Employee.

To be clear, Employee's actions were likewise unreasonable. Dr. Morgan testified that Employee allowed herself to remain in a holding pattern, unable to move forward with her life until resolution of the legal matters associated with the robbery. For her part, as noted by the trial court, Employee made no effort to return to work. Nevertheless, based on our review of the record, Employer did not meet its burden under the statute of showing that it took some action to return Employee to work in an appropriate position. Under these circumstances, we must conclude that the evidence preponderates against the trial court's implicit finding that Employee had a meaningful return to work. As a result, we reverse the trial court's application of the statutory caps under Tennessee Code Annotated § 50-6-241(d)(1)(A).

The trial court did not make an alternative finding on the extent of Employee's disability. See Bldg. Materials Corp. v. Britt, 211 S.W.3d 706, 713-14 (Tenn. 2007). Accordingly, we must remand the case for additional findings as to the extent of Employee's permanent partial disability without regard to the one and one-half times impairment cap.

Conclusion

The trial court's finding that Employee's award is subject to the one and one-half times impairment cap is reversed. The judgment is affirmed in all other respects. The case is remanded to the trial court for additional proceedings consistent with this Opinion. Costs are taxed to Mattress Firm, Inc., Zurich American Insurance Company, and their surety, for which execution may issue if necessary.

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HOLLY KIRBY, JUSTICE

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

MATTRESS FIRM, INC., ET AL v. DEANNA MUDRYK

Circuit Court for Shelby County
No. CT00463412

No. W2014-01017-SC-R3-WC – Filed August 24, 2015

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 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 Appellants, Mattress Firm, Inc. and Zurich American Insurance Company, and their surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM