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

DARLENE WEBB v. GENERAL MOTORS COMPANY

Appeal from the Chancery Court for Shelby County
No. CH-13-0413-2 Arnold B. Goldin, Chancellor

No. W2014-00975-SC-R3-WC – Mailed July 16, 2015; Filed August 21, 2015

The employee sustained an injury to her arm in the course of her employment. Her authorized treating physicians diagnosed her with Complex Regional Pain Syndrome and assigned a permanent impairment rating. At trial, the employer presented testimony from evaluating physicians who opined that she did not meet the criteria for the assigned impairment rating and that the treating physicians had misapplied the American Medical Association guidelines for the evaluation of permanent impairment. The trial court credited the testimony of the treating physicians and found that the employee suffered from Complex Regional Pain Syndrome. It awarded the employee permanent disability benefits. The employer appeals. Pursuant to Tennessee Supreme Court Rule 51, the appeal has been referred to the Special Workers' Compensation Appeals Panel. We affirm.

Tenn. Code Ann. § 50-6-225(e)(2) Appeal as of Right; Judgment of the Chancery Court Affirmed

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

W. Troy Hart, Knoxville, Tennessee, for the appellant, General Motors Company.

Shannon L. Toon, Memphis, Tennessee, for the appellee, Darlene Webb.

OPINION

Factual and Procedural Background

The employee in this appeal, Darlene Webb ("Employee") had worked in several different industries before she began working for General Motors Company ("Employer" or "GM") in 2009. While working for GM, Employee became a "crown driver." Her job duties included using a forklift or similar vehicle to place large automobile parts into containers.

On September 27, 2010, Employee had to assemble a container of large parts by moving its interlocking "walls." The walls were roughly the height of Employee's chest and the width of her extended arms. While Employee was moving the walls, several fell over onto Employee's right arm; they pinned and crushed her arm. Eventually, Employee was able to slide her arm out from under the walls.

Employee immediately informed her supervisor what had occurred. Shortly after that, she went to Employer's medical department. The medical department gave Employee ice, a brace, and ibuprofen, and she returned to work. As the day wore on, however, Employee's arm became more painful. She returned to the medical department and was sent home for the remainder of the day. The following day, the medical department sent Employee to a minor medical clinic. After that, she was referred to an orthopedic surgeon, Jeffrey Dlabach, M.D., for further treatment.

Employee first visited Dr. Dlabach on October 14, 2010. In that visit, he noted swelling on the back of Employee's right hand and pain with motion of the knuckles and wrist. His initial diagnosis was a crush injury with tendinitis and neuritis, for which he prescribed a brace and oral cortisone. When Employee returned a week later, she reported approximately a 60% improvement in pain. Dr. Dlabach then prescribed physical therapy and nonsteroidal anti-inflammatory medication. Despite this treatment, over the next several weeks, Employee continued to have swelling, tenderness, weakness in her hand. She also had occasional discoloration of the area. By December 21, 2010, Dr. Dlabach had become concerned that Employee could be developing Complex Regional Pain Syndrome ("CRPS").[1]

Dr. Dlabach continued to treat Employee, but his concerns about CPRS caused him to also refer Employee to a neurologist specializing in pain management, Moacir

[1] This condition is also known as Reflex Sympathetic Dystrophy ("RSD"). The physicians who testified in this matter used both terms. To avoid confusion, in this Opinion, we will consistently refer to the condition as CRPS.

Schnapp, M.D. Dr. Schnapp first examined Employee on February 7, 2011. At that time, Dr. Schnapp observed slight swelling of the right hand, diminished grip strength, hypoesthesia (decreased sensation), allodynia (hypersensitivity), and coolness of the right hand compared to the left. Dr. Schnapp's preliminary diagnosis was CRPS. He recommended medication, a series of nerve blocks,[2] and aggressive physical therapy to treat the condition. Employee showed slow improvement from Dr. Schnapp's treatment, and she reported that the nerve blocks helped "substantially." Despite this, beginning in June 2011, Employee began to display supratentorial (psychological) and histrionic tendencies. The extent of these tendencies varied from one examination to the next.

During this time, Employee also continued to see Dr. Dlabach. In January 2012, Dr. Dlabach declared that Employee had reached maximum medical improvement. He also diagnosed her with CRPS, found that she suffered from symptom magnification, and assigned a 7% permanent impairment to her right hand. At that time, Dr. Dlabach did not recommend any permanent work restrictions and released Employee to regular duty.

In February 2012, Employee returned to work for Employer in her previous capacity as a crown driver. Due to the size and weight of the parts involved, she had difficulty performing the job duties. In light of this, Employee returned to Dr. Schnapp, who restricted Employee to a forty-hour work week and a 25-pound lifting maximum. Dr. Dlabach later endorsed these restrictions. Eventually, GM reassigned Employee to the position of "walk picker." As a walk picker, Employee used a shopping cart to obtain parts. She then placed the parts in a container and pushed the container onto a conveyor belt.

During this time, in hopes of resolving the dispute over Employee's workers' compensation benefits, Employee and Employer participated in an ongoing Benefit Review Conference. To that end, in November 2012, Employee underwent an independent medical evaluation by another orthopedic surgeon, Apurva Dalal, M.D.. In his evaluation, Dr. Dalal observed nine points that indicated that Employee has "significant complex regional pain syndrome" in her right hand. From this, Dr. Dalal concluded that, "according to the AMA Guides to the Evaluation of Permanent Impairment Sixth Edition," Employee qualified for a 32% impairment to her right extremity.

[2] Dr. Schnapp explained that "primarily the reason for the block is to cut down the sympathetic dysfunction, try to break the cycle of the pain, and allow the patient to participate in physical therapy." He explained: "A lot of improvement is seen by reengaging in the use of the arm" and that inactivity due to pain "tends to make the whole process worse, . . . cause more stiffness of the joints, and can cause permanent disfigurement, so it is important to address the pain as well as the sympathetic dysfunction."

In the meantime, Employee continued to work for GM as a walk picker. At some point in February 2013, Employee lifted a shipping crate and re-agitated her right wrist, causing it to hyperextend. She returned to Dr. Dlabach and Dr. Schnapp for treatment. Dr. Schnapp recommended that Employee undergo a brachial plexus block to alleviate her pain and other symptoms, since the prior nerve block treatment had substantially decreased her pain. The brachial plexus injection recommendation was submitted to the GM's Utilization Review ("UR") Provider, who declined to approve it because it was not a standard treatment modality for CRPS. Employee appealed to the Tennessee Department of Labor Workers' Compensation Division's Medical Director, and the UR decision was upheld.

The re-agitation of Employee's wrist resulted in significant additional work restrictions. Employer was unable to accommodate the new restrictions, so Employee missed work for approximately two weeks, from March 13, 2013 until March 28, 2013. She later sought temporary total disability benefits for the time period in which she was unable to work.

Despite the attempts to settle Employee's claim, Employee and Employer were unable to resolve their differences and reached impasse. Consequently, on March 19, 2013, Employee filed a complaint against Employer for workers' compensation benefits in the Chancery Court for Shelby County, Tennessee. She sought past and future medical expenses, temporary total disability benefits, and permanent partial disability benefits. Employer denied Employee was entitled to such benefits. Discovery ensued.

Employee filed a motion seeking temporary total disability benefits for the period of March 13, 2013 to March 28, 2013, in which she was unable to work. The motion also asked the trial court to enter an order compelling approval for the block injections recommended by Dr. Schnapp. In August 2013, the trial court held a hearing in which it considered, among other things, the deposition of Dr. Schnapp. The trial court credited Dr. Schnapp's testimony as Employee's treating physician. It ordered approval of the recommended block injections. Despite the fact that Dr. Dlabach had long since declared that Employee had reached maximum medical improvement, the trial court ordered Employer to pay temporary disability benefits during the time period in which Employee was unable to work because of the re-agitation of her wrist.

Also in August 2013, Employer filed a motion asking the trial court to compel Employee to undergo an independent medical examination by a pain management specialist, Jeffery Hazlewood, M.D., pursuant to Tennessee Code Annotated § 50-6-204(d)(1). Dr. Hazlewood's office was located in Lebanon, Tennessee, over 200 miles from Employee's home in Memphis. Although Employer offered to reimburse Employee for her travel expenses to see Dr. Hazlewood, Employee refused to do so. The trial court

resolved the resulting dispute by ordering Employer to select a physician in the Memphis area for the independent medical evaluation.

Pursuant to the trial court's order, Employer selected Memphis anesthesiologist and pain specialist Dennis McCoy, M.D., to perform its independent medical examination. Dr. McCoy examined Employee's arm on November 22, 2013. In addition, although Dr. Hazlewood did not examine Employee in person, Employer had him review Employee's medical records, and the parties deposed him about his review.

The trial court conducted the trial in March 2014. It heard in-court testimony from Employee. It also considered deposition testimony from Drs. Dlabach, Schnapp, McCoy and Hazlewood. Dr. Dalal's opinion was presented via a Form C-32 Standard Form Medical Report for Industrial Injuries.

At the trial, Employee testified that she was 40 years old and otherwise in good health. She graduated from high school and from a two-year community college. She studied phlebotomy at the community college, but never received her phlebotomy license. Prior to working for GM, she had held various office and clerical jobs, and worked as a data entry clerk, a medical assistant, and an airline customer service agent.

On the day of the accident, Employee testified, she began her shift by moving walls to "build her container up," so that she could begin taking orders and putting auto parts into her container. She described the walls for the container as made of "very thick and heavy" plastic and metal. To move the first three walls, Employee explained, she was "leaning over reaching down, pulling up one wall at a time." As Employee reached for the fourth wall, the other three "came and fell down, pinning my right hand, wrist and arm down." Employee finally pried her pinned arm free. When she did, she "saw dents in my hand" and a "red bruise between my thumb and wrist area." The arm was "wrinkled up a little bit" and starting to swell, and Employee "was in a lot of pain."

At the direction of her supervisor, Employee sought treatment that day from the plant nurse. The nurse recommended she go to the medical clinic to see the plant medical doctor. Soon after that, Employee began routinely seeing Dr. Dlabach and Dr. Schnapp.

At the time of trial, Employee was still employed by GM. However, she had been working as a walk picker for the year and a half leading up to the trial, and no longer felt comfortable working as a crown driver. Employee testified that she continued to experience "constant pain, off and on swelling," burning sensations, and "off and on discoloration, stiffness, numbness, tingling, and limited motion and tightness." She said the injury had left her unable to curl her hair, turn a key in her car's ignition, or garden. Employee said that the continuing weakness and pain in her right hand and arm made it

difficult for her to even write her name. Employee said that she had suffered no work-related injuries prior to the September 2010 accident.

Employee described the February 2013 incident in which she re-agitated her right hand. She testified: "I was trying to put my top on my shipping crate at the end of my assignment. And the shipping, the top was just too heavy. And it jarred down on my right hand and wrist and put pressure on my elbow." After that incident, Employee sought treatment from Dr. Dlabach and Dr. Schnapp. She said that her symptoms after the February 2013 re-injury were "similar to what I . . . had already or had experienced in the past."

Over the objections of Employer, the trial court granted Employee's request to admit into evidence the depositions of Drs. Dlabach and Schnapp.

In his deposition, Dr. Dlabach gave his assessment of Employee's condition, based on numerous observations. He said that, on various occasions during the time in which he had been treating Employee, he observed swelling on the back of her right hand, discoloration, hypersensitivity, weak grip, and coolness of the right hand relative to the left. While Employee rarely presented all of these symptoms in any single examination, for most examinations, she had one or more of them. Based on this, Dr. Dlabach finally diagnosed Employee as having CRPS. In his deposition, he described the condition:

> The best explanation I can -- I can give is you have an injury to an extremity and the nerves become affected, and then the nerves start perceiving stimulus's different. Something that is generally not painful becomes painful. Signals just start getting a little bit confused. And when the nerve starts to function improperly, you will notice skin color changes, temperature changes, you know, pain, the simple things like just blowing on the hand or just a sheet touching it producing pain. It's generally pain out of proportion.

Dr. Dlabach testified that most of Employee's symptoms had improved over time. In January 2012, when he declared Employee to be at maximum medical improvement, she had good range of motion, normal skin tone and color, normal sensitivity, and no swelling or motor dysfunction. Using the AMA Guidelines, he opined that Employee's CRPS had resulted in a permanent impairment of 7% of the right arm. Dr. Dlabach also arranged also for a Functional Capacity Evaluation of Employee, which indicated symptom magnification. Dr. Dlabach was asked whether other psychological or psychiatric diagnoses could also explain Employee's symptoms or symptom magnification. He responded that other causes can exist, and acknowledged the importance under the AMA Guides of ruling out other explanations for Employee's

symptoms. Dr. Dlabach was of the opinion that Employee was "truthful" and "compliant." He had no concerns that she was a malingerer.

Dr. Dlabach also described his treatment of Employee after the February 2013 re-agitation injury to her right wrist. He treated her with a steroid dosepack. After two weeks, he said, her wrist improved substantially. During this time, Dr. Dlabach also recommended that Employee return to see her orthopedic surgeon, Dr. Schnapp.

Employee also submitted the deposition testimony of Dr. Schnapp. Dr. Schnapp declared Employee to be at maximum medical improvement on November 13, 2012, several months after Dr. Dlabach did so. At that time, he said, Employee's symptoms included pain, weakness, coolness, and hypersensitivity of the right hand. He assigned a 20% impairment to the arm, and stated that this rating "was based on the AMA Guidelines, Sixth Edition." Dr. Schnapp did not include Employee's psychological overlay in his assessment of impairment. He noted that, at times, he thought there might be a psychological aspect to the severity of her injury. He added, however, that this concern did not change his diagnosis because he believed that Employee had only "tried to impress upon me that she was really having problems." When Dr. Schnapp found Employee had achieved her maximum medical improvement, he explained to her that "the pain may fluctuate from time to time and she may have good days and bad days."

In March 2013, Dr. Schnapp testified, Employee returned to him because she "had a substantial increase in her pain since the re-injury at work." He recounted that Employee told him that "she was lifting a heavy weight or at least more than she could handle, and she was pulled back by the weight and twisted her arm." At that time, he recommended a nerve block to ease her pain, but the utilization review board did not approve the treatment. Dr. Schnapp explained why he disagreed with the utilization review board's decision:

> [S]he reached maximum medical improvement, that doesn't mean that the pain is gone. It means that I don't have better options. She will have to continue with medication, in her case Topamax, and blocks can be used from time to time for acute in increase in the pain. I do not believe that the blocks will change her condition further in the sense that she would be any better except for pain relief. I don't think it's going to change the [CRPS] at all. . . . I would use the blocks in the future if the pain is exacerbated and she is not getting enough control of the pain with the medication. Again, I would not do the block for an acute increase of 3 or 4 days, but if the pain is enhanced and it has lasted for more than a week or two or it seems to be getting out of control, then blocks can help break that cycle.

In addition, Employee submitted to the trial court the November 2012 examination of Employee by orthopedic surgeon Dr. Apurva Dalal. Dr. Dalal examined Employee at the request of her attorney and compiled his opinions in a Form C-32 Standard Form Medical Report for Industrial Injuries. At trial, Employer objected to the admission of this report into evidence, on the basis that Dr. Dalal did not comply with the history or physical examination requirements set forth on the form and failed to attach his curriculum vitae or statement of his qualifications as required under Tennessee Code Annotated § 50-6-235(c).[3] In response, counsel for Employee pointed out that Employer failed to object to the report in accordance with the statutory mandates set forth in Section 50-6-235(c)(2). The trial court overruled Employer's objection and admitted Dr. Dalal's report into evidence.

In his report, Dr. Dalal detailed the findings from his November 2012 examination of Employee's right arm:

> Examination of the right upper extremity shows the patient has

[3] Tennessee Code Annotated § 50-6-235(c) states as follows:

> (c)(1) Any party may introduce direct testimony from a physician through a written medical report on a form established by the administrator. The administrator shall establish by rule the form for the report. All parties shall have the right to take the physician's deposition on cross examination concerning its contents. Any written medical report sought to be introduced as evidence shall be signed by the physician making the report bearing an original signature. A reproduced medical report that is not originally signed is not admissible as evidence unless accompanied by an originally signed affidavit from the physician or the submitting attorney verifying the contents of the report. Any written medical report sought to be introduced into evidence shall include within the body of the report or as an attachment a statement of qualifications of the person making the report. The administrator shall, by regulation, fix the fee to be charged by the physician for the preparation and filing of the report and fix penalties for a failure to file the report after a timely request for it by any interested party.
>
> (2) The written medical report of a treating or examining physician shall be admissible at any stage of a workers' compensation claim in lieu of a deposition upon oral examination, if notice of intent to use the sworn statement is provided to the opposing party or counsel not less than twenty (20) days before the date of intended use. If no objection is filed within ten (10) days of the receipt of the notice, the sworn statement shall be admissible as described in this subsection (c). In the event that a party does object, then the objecting party shall depose the physician within a reasonable period of time or the objection shall be deemed to be waived.

Tenn. Code Ann. § 50-6-235(c)(1),(2) (2014).

> discoloration of the skin. She has tightness of the skin and atrophy of the right forearm compared to the left side. There is a difference of 1.5 cm of maximum girth of the forearm. Further examination of the right hand shows the patient is unable to abduct or adduct the fingers against any resistance. She has significant contractures of the first, second, and third metacarpophalangeal joints. Actively and passively she is unable to extend her index middle and ring finger metacarpophaiangeal joints. She has a full range of motion of the proximal interphalangeal joints, however there is minimal strength present.
>
> Examination of the thumb shows that thumb opposition is significantly weak. Thumb abduction is also reduced. She has tenderness at the base of the thumb and in the wrist joint. She has hypersensitivity to touch. She has decreased sensation in the median nerve distribution.

In the conclusion of the report, Dr. Dalal opined that Employee had a 32% impairment of the right arm "according to the AMA Guides to the Evaluation of Permanent Impairment Sixth Edition." He referenced the tables provided by the AMA Guides, and said that Employee had "9 points," which indicated "significant complex regional pain syndrome." He recommended that Employee avoid repetitive use of her right hand for gripping, pulling, pushing or lifting. This concluded Employee's proof in support of her claim for workers' compensation benefits.

In opposition, Employer submitted the deposition testimony of Dr. Dennis McCoy, the Memphis anesthesiologist and pain specialist it employed to conduct an independent medical evaluation of Employee. Dr. McCoy examined Employee in November 2013. His findings included the following:

> [N]o color changes or skin or hair changes of the extremity . . . [N]o reduction in hand grasp or strength, no atrophy of the thenar muscles or muscles of the upper extremity, no significant tenderness over any phalanges, no allodynia, no temperature changes, no skin changes, no hair changes that would be exhibited in someone with longstanding CRPS.

Dr. McCoy noted that the day of the examination was cold, and Employee kept her hand in her jacket pocket throughout. When he asked Employee about her level of pain, she reported that her pain was usually about five or six on a scale of ten when her hand was cold, but less when her hand was warm. She described her pain level on the

day of the examination as eight on a scale of ten. Dr. McCoy diagnosed Employee with arthritis or "sympathetic remediated pain." He described sympathetic remediated pain and explained why he did not believe that Employee had CRPS:

> Sympathetic remediated pain is a nerve pain that is basically from the sympathetic nerve system, patients who had probably [CRPS] in the beginning. Based on Dr. Schnapp's notes, she did have signs that she did have [CRPS] beginnings, but he did the appropriate treatment very rapidly within that short span, with physical therapy and injections, and that -- those large symptoms went away. But the underlying sympathetic tone of the pain, that never really goes away, and it waxes and wanes. That's what sympathetic remediated pain is. That's why you don't call it RSD. You call it Complex Regional Pain Syndrome because it's complex. Certain facets of that disease always remain, whether you have the florid disease or not -- may not be there. So, she may still have sympathetic remediated pain with arthritis, and that's to be expected given the modality of injury.

In addition to his examination of Employee, Dr. McCoy reviewed her medical records and the evidentiary depositions of Dr. Dlabach and Dr. Schnapp. Ultimately, Dr. McCoy opined that, after her initial injury, Employee developed symptoms of CRPS, but those symptoms abated with appropriate treatment. He believed, however, that she continued to have sympathetic remediated pain. Dr. McCoy found Employee to be "truthful" and "motivated," but said that a person who was actually suffering from CRPS could not perform her job. In light of Dr. Schnapp's finding of supratentorial presentation, that is, the pain was only in Employee's mind, Dr. McCoy felt that a psychiatric or psychological evaluation would be appropriate. He concluded that Employee had no permanent impairment according to the AMA Guides. During cross-examination, Dr. McCoy conceded that he did not know what Employee's job duties at GM were, and did not know whether Dr. Dlabach or Dr. Schnapp had treated her first.

Employer also submitted to the trial court the deposition testimony of pain management specialist Dr. Jeffrey Hazlewood, from Lebanon, Tennessee. Dr. Hazlewood did not physically examine Employee, but he reviewed the medical records of the treating physicians who had examined or treated Employee for the September 2010 injury. In his testimony, Dr. Hazlewood described CRPS:

> [A] pain syndrome where the pain is subjectively and objectively greater than one would expect based on the mechanism injury. It's a neuropathic or nerve pain problem. The autonomic nervous system basically goes haywire, is the easiest way to explain it, where one can get all of these manifestations of neuropathic pain and objective findings such as swelling, temperature changes, color changes, hair changes, nail changes, skin texture changes, skin moisture changes, atrophy, passive range of motion, stiffness.

Dr. Hazlewood said that the Sixth Edition of the AMA Guides sets stringent criteria for an impairment rating based on CRPS. To warrant such an impairment rating, he said, the patient must display four of eleven listed objective criteria. He emphasized the importance of following the Guides' methodology because "there's no test to diagnose" CRPS. The impairment level must be determined at the time the patient reaches maximum medical improvement, and the rating physician must rule out comorbid conditions. He recommended that the patient also have a neuropsychological evaluation before impairment is determined.

Turning to Employee's treating physicians, Dr. Hazlewood took issue with their examination of Employee and their ultimate conclusions. He believed that Dr. Dlabach did not properly apply the AMA Guides because he did not document any of the eleven listed findings at the time he declared Employee to be at maximum medical improvement. He also criticized Dr. Dlabach's failure to use a differential diagnosis process to rule out comorbid conditions. Dr. Hazlewood noted that Dr. Schnapp also failed to document an objective basis for his impairment rating at the time it was given. Because Dr. Schnapp had noted supratentorial and histrionic or exaggerated factors during his treatment of Employee, Dr. Hazlewood asserted, he should have obtained a psychological evaluation. Dr. Hazlewood also questioned Dr. Schnapp's findings on the relative temperature of Employee's hands; he maintained that research has shown that one cannot determine skin temperature merely by feeling another's hands.

Dr. Hazlewood also reviewed Dr. Dalal's report. He acknowledged that Dr. Dalal recorded six of the eleven AMA criteria in his report. However, taking Dr. Dalal's findings at face value, Dr. Hazlewood opined the correct impairment rating based on his findings would be 20% of the upper extremity, rather than the 32% rating that Dr. Dalal gave.

At the conclusion of the trial, the trial court took the case under advisement. It later issued written findings of fact and conclusions of law.

The trial court concluded that Employee "suffers from CRPS, and although her

symptoms may fluctuate, the medical testimony supports a finding that her condition is permanent. The evidence further supports the finding that [Employee's] injury arose out of and in the course of her employment." In explaining his conclusion, the trial judge repeatedly noted that he found Employee's testimony credible. He based this assessment on his own observation of Employee's trial testimony; the deposition testimony of Dr. Dlabach, indicating that he found Employee to be truthful and had no concerns that she was malingering; and Dr. McCoy's similar comments that Employee was "truthful" and "motivated." Regarding the diagnosis, the trial court stated that it gave greater weight to the testimony of the treating physicians, Drs. Dlabach and Schnapp, than to the testimony of evaluating physicians Drs. McCoy, Dalal, and Hazlewood. The trial court rejected Employer's objection that the trial court's consideration of the testimony of Drs. Dlabach and Schnapp's ran afoul of Tennessee Code Annotated § 50-6-204:

> Here, the Court finds that nothing in the statute [Tennessee Code Annotated § 50-6-204] forecloses consideration of Dr. Dlabach or Dr. Schnapp's testimony. First, it should be noted that the statute does not limit the admissibility of expert testimony relating to the diagnosis of health condition or injury. Thus, even assuming that Dr. Dlabach and Dr. Schnapp's diagnoses were not made in reference to the AMA Guides, their testimony as to the diagnostic process could not be excluded on that basis alone. Second, in this case, both Dr. Dlabach and Dr. Schnapp testified to have formulated their impairment ratings in accordance with the AMA Guides. Dr. Dlabach expressly affirmed that he relied on the AMA Guides to formulate his analysis and opinion of [Employee's] permanent impairment rating, and Dr. Schnapp indicated that his 20% impairment rating was based on the sixth edition of the Guides as well.
>
> Their testimony plainly confirms that they utilized the AMA Guides and based their impairment ratings on them, as is required under Tennessee Code Annotated §50-6-204. In addition, it may be noted that Dr. Dalal's impairment rating was fixed according to the AMA Guides Sixth Edition. The Court has accepted the testimony of these physicians on this topic, and the Court finds it wholly appropriate to consider their opinions. Moreover, even if one assumes for the purpose of argument that the AMA Guides were not followed to strict perfection, the Court does not find that such a fact would be a bar to the admissibility of expert testimony. The AMA Guides are what their title implies: they are guidelines. While the legislature has mandated that they be utilized in formulating impairment ratings in order to provide "uniformity and fairness," Tenn. Code Ann. §50-6-204(d)(3)(A) (2014), when a qualified expert testifies to have based

> his or her impairment rating on the Guides, such testimony is admissible. Any perceived deviation from the Guides, the Court finds, goes to the weight of the testimony being proffered.

Thus, in reliance on the impairment rating by Dr. Schnapp, the trial court gave Employee a permanent impairment rating of 20% to the right arm. Considering the nature of CPRS, the trial court said, it gave greater weight to Dr. Schnapp's evaluation because Dr. Dlabach had referred Employee to Dr. Schnapp as a specialist in neurology with a subspecialty in pain management. The trial court pointed out that, although Dr. Hazlewood disputed Dr. Dalal's diagnosis of CRPS, Dr. Hazlewood's review of Dr. Dalal's records supported the conclusion that Employee's impairment should be rated at 20%. Therefore, it awarded Employee permanent partial disability benefits to be paid in a lump sum, as well as attorney fees, subject to a credit for Employer's prior overpayment of temporary total disability benefits. The trial court entered judgment in accordance with its findings. Employer now appeals.

Analysis

On appeal, Employer raises the following issues:

> 1) Whether the trial court erred in determining that [Employee] suffers from [CRPS] and is entitled to permanent partial disability benefits associated with that diagnosis.
>
> 2) Whether the trial court erred in granting [Employee]'s motion to compel medical benefits and temporary total disability benefits and ordering ongoing medical treatment for her claimed condition of [CRPS].
>
> 3) Whether the trial court erred by denying [Employer]'s motion to compel an independent medical evaluation with Dr. Jeffery Hazlewood.
>
> 4) Whether the trial court erred by admitting the Form C-32 and Independent Medical Evaluation Report Prepared by Dr. Apurva Dalal into evidence.
>
> 5) Whether the trial court erred by admitting the permanent impairment opinions of Dr. Jeffrey Dlabach, Dr. Moacir Schnapp, and Dr. Apurva Dalal into evidence.

We address each issue in turn.

The standard of review for findings of fact in a workers' compensation case is *de novo* upon the record of the trial court, accompanied by a presumption that the factual findings are correct, unless the evidence preponderates otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2008 & 2013 Supp.).[4] As to credibility and weight to be given to in-court testimony, the reviewing court accords considerable deference to the trial court, as the trial judge had the opportunity to observe the witness's demeanor and to hear in-court testimony. Madden v. Holland Group of Tenn., 277 S.W.3d 896, 900 (Tenn. 2009). However, 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 credibility and weight. 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).

Several issues raised by Employer involve the admissibility of depositions and expert medical reports; we review the trial court's decisions regarding the admissibility of evidence under an abuse of discretion standard. Shipley v. Williams, 350 S.W.3d 527, 552 (Tenn. 2011). A trial court abuses its discretion when it "applie[s] an incorrect legal standard, or reache[s] a decision which is against logic or reasoning that cause[s] an injustice to the party complaining." Eldridge v. Eldridge, 42 S.W.3d 82, 85 (Tenn. 2001). "Under the abuse of discretion standard, a trial court's ruling 'will be upheld so long as reasonable minds can disagree as to propriety of the decision made.'" Eldridge, 42 S.W.3d at 85 (quoting State v. Scott, 33 S.W.3d 746, 752 (Tenn. 2000)).

Diagnosis of CRPS and Entitlement to Permanent Partial Disability Benefits

Employer first contends that the trial court erred by finding that Employee had CRPS and awarding permanent disability benefits based on that finding. In support, Employer relies primarily on Dr. Hazlewood's testimony that when the treating physicians, Drs. Dlabach and Schnapp, assigned a permanent impairment rating to Employee for CRPS, neither complied with the criteria set forth in the AMA Guides. For this reason, Employer contends both physicians' depositions should have been excluded from evidence. If both depositions are properly excluded, Employer notes, this would leave Employee unable to meet her burden of providing competent medical testimony regarding the existence or permanency of her injury.

Employer bases its argument on Tennessee Code Annotated § 50-6-204(d)(3)(2010), which was in effect at the time of Employee's injury. The statute,

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

Employer contends, requires evidence regarding impairment ratings to comply with the AMA Guides:

> (3)(A) To provide uniformity and fairness for all parties in determining the degree of anatomical impairment sustained by the employee, a physician, . . . who is permitted to give expert testimony in a Tennessee court of law and who has provided medical treatment to an employee or who has examined or evaluated an employee seeking workers' compensation benefits shall utilize the applicable edition of the AMA Guides as established in § 50-6-102 or, in cases not covered by the AMA Guides, an impairment rating by any appropriate method used and accepted by the medical community.
>
> (B) No anatomical impairment or impairment rating, whether contained in a medical record, medical report, including a medical report pursuant to § 50-6-235(c), deposition or oral expert opinion testimony shall be accepted during a benefit review conference or be admissible into evidence at the trial of a workers' compensation matter unless the impairment is based on the applicable edition of the AMA Guides or, in cases not covered by the AMA Guides, an impairment rating by any appropriate method used and accepted by the medical community. . . .

Tenn. Code Ann. § 50-6-204(d)(3)(A)-(B) (2010). Employer argues that, despite the assertions by Dr. Dlabach and Dr. Schnapp that they relied on the AMA Guides in rendering their impairment ratings, neither complied with the requirements in the AMA Guides. Accordingly, Employer insists, neither physician's deposition should have been admitted into evidence, and this would leave Employee without the necessary expert proof that she sustained a permanent injury.

In response, Employee argues that such "any perceived deviations from the Guides goes to the weight of the evidence of the testimony being proffered," and not to its admissibility. Employee maintains that the trial court did not abuse its discretion in admitting both depositions into evidence.

Section 15.5 of the Sixth Edition of the AMA Guides describes CRPS as a "particularly challenging diagnosis to rate" and an "extreme rarity." Because of the difficulty in diagnosing the condition and the lack of "a gold standard diagnostic feature," the AMA Guides state that CRPS "may be rated only when: (1) the diagnosis is confirmed by objective parameters (specified [in Table 15-25]), (2) the diagnosis has been present for at least 1 year (to ensure accuracy of the diagnosis and to permit adequate time to achieve MMI), (3) the diagnosis has been verified by more than 1

physician, and (4) a comprehensive differential diagnosis process (which may include psychological evaluation and psychological testing) has clearly ruled out all other differential diagnoses)." Table 15-25 lists eleven objective conditions indicative of CRPS, including: changes in skin color, coolness of the skin, edema, dry or overly moist skin, changes in skin texture, soft tissue atrophy, joint stiffness, nail changes, hair growth changes, trophic bones changes/osteoporosis, and bone scans consistent with CRPS.

In the case before us, the physicians on whom Employee relies testified that they *based* their diagnosis and impairment ratings on the AMA Guides, in accordance with Section 50-6-204. Nevertheless, Employer argues that Drs. Schnapp, Dlabach, and Dalal did not conduct "the requisite comprehensive differential diagnosis" and failed to "observe enough objective criteria" to make a diagnosis under the AMA Guidelines.

We disagree. Dr. Dlabach and Dr. Schnapp both diagnosed Employee with CRPS and provided her treatment appropriate for that condition. Employee's symptoms responded to that treatment, and Employee was able to return to work some sixteen months after the injury. The proof shows that her symptoms waxed and waned, but all of the physicians who testified, including those called by Employer, agreed that this was in the normal course for CRPS. Throughout their treatment of Employee, both Dr. Dlabach and Dr. Schnapp observed and recorded many instances of swelling, discoloration, temperature changes, weakness, hypersensitivity, and other conditions consistent with the AMA Guides. Similarly, Dr. Dalal observed tightness of the skin, atrophy, and other symptoms in Employee's right arm when compared to her left arm. These findings are consistent with CRPS and the objective criteria set forth in the AMA Guides. As noted by Dr. Dlabach, while not all of the observed symptoms were simultaneously present in each examination, some were present in nearly every examination. Dr. Dlabach acknowledged the importance of differential diagnosis under the AMA Guidelines; he and the other physicians who examined Employee had no concerns that she was malingering.

The trial court held that any deviation from the AMA Guides by Employee's physicians went to the weight to be accorded their testimony, not to the admissibility of it. It reasoned that Tennessee Code Annotated § 50-6-204 did not foreclose consideration of the testimony of either Dr. Dlabach or Dr. Schnapp regarding the CRPS diagnosis because the statute governed impairment ratings. The trial court explained:

> The AMA Guides are what their title implies: they are guidelines. While the legislature has mandated that they be utilized in formulating impairment ratings in order to provide 'uniformity and fairness,' . . . when a qualified

> expert testifies to have based his or her impairment rating on the Guides, such testimony is admissible.

We agree. See Shipley, 350 S.W.3d at 551; Coyle v. Prieto, 822 S.W.2d 596, 600 (Tenn. Ct. App. 1991) ("The objection raised by the defendant [regarding the expert's qualifications and competency] goes more to the weight of the evidence rather than to its admissibility."). Courts in other states faced with evidentiary issues involving the interplay between a CRPS diagnosis and an impairment rating have taken a similar approach. See Brown v. W.T. Martin Plumbing & Heating, Inc., 72 A.3d 346, 352 (Vt. 2013) ("The Guides may be used as evidence to support expert testimony concerning the presence of CRPS, and a factfinder may choose to rely upon the criteria listed in . . . the Guides in determining if a claimant has an injury and whether that injury is appropriately labeled 'CRPS.' But the Guides do not necessarily contain the exclusive authoritative standard for diagnosing the condition. In the face of competing opinions regarding diagnosis, a factfinder must exercise reasoned judgment in weighing the competing expert opinions."); Tokico (USA), Inc. v. Kelly, 281 S.W.3d 771, 774-75 (Ky. 2009) (finding that a doctor's diagnosis of CRPS, that did not comply with the 5th Edition of the AMA Guides, did not invalidate the impairment rating that was assigned in conformity with the Guides) ("Diagnosing what causes impairment and assigning an impairment rating are different matters. Diagnostic criteria stated in the Guides clearly have relevance when judging the credibility of a diagnosis, but [Kentucky's staute] does not require a diagnosis to conform to criteria listed in the Guides."); see also Samuel D. Hodge, Jr., J.D., et al., Complex Regional Pain Syndrome – Why the Controversy? A Medical/Legal Overview, 13 Mich. St. U. J. Med. & L. 1, 32-36 (2009) (explaining the prior versions of the AMA Guidelines have been accused of "disseminating misleading information about the diagnosis" and "contain[ed] some incorrect and over restrictive diagnosis criteria."). We cannot conclude that the trial court abused its discretion in admitting into evidence the deposition testimony of Employee's experts.

Similarly, we cannot conclude that the trial court erred in crediting the testimony of Employee's experts and in basing its findings on the opinions of those experts. According appropriate deference to the trial court's findings on the witnesses' credibility, we hold that the evidence preponderates in favor of the trial court's findings regarding causation and permanency. Therefore, we affirm those findings and the award of permanent partial disability benefits.

Medical Treatment and Temporary Disability

Employer next contends that the trial court erred by granting Employee's motion to require Employer to pay for the brachial plexus block recommended by Dr. Schnapp and to pay temporary disability benefits from March 13, 2013 through March 28, 2013.

Employer's argument on the additional block treatment issue is premised on its assertion that Employee "does not have the diagnosis that she claims to have." For the reasons stated above, we disagree. Moreover, although Dr. Hazlewood opined to the contrary, Dr. Schnapp's deposition testimony fully supports his opinion that a brachial plexus block would benefit Employee by alleviating her pain and thereby enabling her to participate in physical therapy. The record shows that a past injection proved to be of "substantial" benefit to Employee. In granting Employee's motion for the treatment, the trial court chose to credit Dr. Schnapp's testimony as the treating physician. Based on our review of the record, we find no error in the trial court's decision.

Employer also contends that the trial court erred in ordering Employer to pay temporary total disability benefits for the period from March 13, 2013 to March 28, 2013. Employer argues that Employee sustained a second injury separate and distinct from the injury at issue in this appeal, so the trial court did not have subject matter jurisdiction to award the temporary total disability benefits to Employee.

From the medical testimony in the record, Employee's condition at maximum medical improvement permitted her to work with significant medical restrictions. Employer was able to accommodate those restrictions and placed Employee in a position as a walk picker. However, the undisputed medical testimony also indicated that Employee's CRPS would wax and wane, that it could worsen during certain periods even with Employee working within her restrictions. Employee testified that the February 2013 episode arose while Employee was performing job duties that were within her medical restrictions, and appeared to result from the weakened condition of her arm and hand; she said that the symptoms she experienced were "similar to what I . . . had already or had experienced in the past." The trial court credited Employee's testimony and we must accord great deference to the trial court's credibility determination. Employee's testimony was consistent with Dr. Schnapp's description of the course of CRPS, that the patient's pain and weakness will fluctuate from time to time, even after she has reached maximum medical improvement. As such, this episode appears to be more of a "flare-up" of the prior injury that rendered Employee temporarily unable to work within her prior restrictions, rather than a separate and distinct new injury. This being the case, we conclude that the trial court had jurisdiction to award Employee temporary total disability benefits.

In the alternative, Employer argues that Employee was not entitled to a second period of temporary total disability benefits absent a finding by the trial court that Dr. Dlabach was "premature and incorrect" in declaring that Employee had reached maximum medical improvement. In support, Employer cites Cleek v. Wal-Mart Stores, Inc., 19 S.W.3d 770, 777 (Tenn. 2000).

In Cleek, an employee was disabled by a shoulder fracture and returned to work at Wal-Mart 19 S.W.3d at 772. The employee's residual pain from the shoulder fracture forced the employee to retire prior to a finding of maximum medical improvement. Id. at 778. The Court in Cleek held that "temporary total disability benefits, which are terminated because of a nominal return to work, may be revived when (1) the employee is no longer capable of performing either that job or any other job because of the work-related injury; and (2) the employee, at the time of resignation, has yet to reach maximum medical improvement from the original accidental injury." Id. We find that the holding in Cleek does not preclude an award of temporary total disability benefits in this case, given the unique characteristics of CRPS. In his testimony, Dr. Schnapp explained that although Employee had "reached maximum medical improvement, that doesn't mean that the pain is gone . . . . She will have to continue with medication, in her case Topamax, and blocks can be used from time to time for acute increase in the pain." Thus, the finding of maximum medical improvement in this case was neither "premature" nor "incorrect." Rather, the medical testimony established that Employee's condition would wax and wane and she would have flare-ups of the original injury, such as the February 2013 episode, that could temporarily prevent Employee from being able to perform her job duties. Under these circumstances, we cannot conclude that the trial court erred in awarding temporary total disability benefits.

Denial of Motion to Compel IME by Dr. Hazlewood

Employer also contends the trial court erred in refusing to order Employee to undergo an independent medical examination by Dr. Hazlewood, whose office was located 200 miles from her home. Tennessee Code Annotated § 50-6-204(d)(1) provides:

> The injured employee must submit to examination by the employer's physician at all reasonable times if requested to do so by the employer, but the employee shall have the right to have the employee's own physician present at the examination, in which case the employee shall be liable to the employee's physician for that physician's services.

Tenn. Code Ann. § 50-6-204(d)(1) (2008 & Supp. 2010).

Our Supreme Court has said that this statute "provides the employer with the right to have the employee examined by a doctor of its choosing. It is only when the request is unreasonable that the employer cannot exercise this right." Overstreet v. TRW Commercial Steering Div., 256 S.W.3d 626, 637 (Tenn. 2008). We review the trial

court's decision on whether the employer's request is reasonable for an abuse of discretion. Overstreet, 256 S.W.3d at 639. In evaluating the reasonableness of the employer's request, "[t]he timing of the request must be reasonable and the requested examination must be reasonable, as a whole, in light of the surrounding circumstances." Id. at 637, n. 4; see also Kephart v. Hughes Hardwood Int'l, Inc., No. M2011-01568-WC-R3-WC, 2012 WL 3329705, at *3 (Tenn. Workers' Comp. Panel Aug. 15, 2012).

As mentioned, the trial court declined to require Employee to travel two hundred miles to Dr. Hazlewood's office for the examination, but instead directed Employer to select a physician from the Memphis area. In its argument, Employer has not given reasons that justify requiring Employee to travel over two hundred miles for the independent medical examination in this case. Employer emphasizes Dr. Hazlewood's experience and knowledge concerning CRPS, which are not disputed. However, Employer proffered nothing indicating that it could not find well-qualified physicians in the Memphis area. Indeed, Dr. McCoy, who ultimately conducted Employer's examination, had very substantial knowledge and experience on the subject. We find no error in the trial court's decision.

Admission of C-32 of Dr. Dalal

Employer next asserts that the trial court erred by admitting into evidence the C-32 report of Dr. Dalal. It argues that Dr. Dalal's report did not comply with the requirements set forth Tennessee Code Annotated § 50-6-235(c)(1) in that the report was not properly completed and did not attach a statement of Dr. Dalal's qualifications. At trial, Employer conceded that its objection to the report was not timely, as required by Section 50-6-235(c)(2).

Section 50-6-235(c)(1) requires that "[a]ny written medical report sought to be introduced into evidence shall include . . . a statement of qualifications of the person making the report." Tenn. Code Ann. § 50-6-235(c)(1). However, in order to challenge the report for failure to include such a statement, the objection must be made in accordance with subsection (c)(2) of the statute. This subsection states that such a report "shall be admissible" if no objection is filed within 10 days of receiving notice of the intent to use to sworn statement.[5] Tenn. Code Ann. § 50-6-235(c)(2). In the absence of a timely objection, we find no error in the trial court's decision to admit Dr. Dalal's report into evidence.

Admission of Impairment Opinions of Drs. Dlabach, Schnapp and Dalal

[5] Employer does not challenge the Employee's adherence to the specific notice requirements or that it lacked notice of the Employee's intent to rely on the opinions of Dr. Dalal.

Finally, Employer contends that the trial court erred in admitting into evidence the opinions of Drs. Dlabach, Schnapp, and Dalal. It argues that their opinions were not rendered in accordance with the Sixth Edition of the AMA Guides and so were not admissible under Tennessee Code Annotated § 50-6-204(d)(3)(A).

This argument is premised on the same assertions made by Employer in its contention that the trial court erred in awarding Employee permanent disability benefits. We have already agreed with the trial court that the extent to which any of the physicians strayed from the AMA Guides goes to the weight, rather than the admissibility, of their testimony. As such, we find the trial court did not err in admitting into evidence the testimony of Drs. Dlabach, Schnapp, and Dalal.

All other issues raised on appeal are pretermitted by our holdings.

Conclusion

The judgment of the trial court is affirmed. Costs are taxed to General Motors Company and its surety, for which execution may issue if necessary.

_____

HOLLY KIRBY, JUSTICE

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

DARLENE WEBB v. GENERAL MOTORS COMPANY

Chancery Court for Shelby County
No. CH1304132

No. W2014-00975-SC-R3-WC – Filed August 21, 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 Appellant, General Motors Company, and its surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM