

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
April 21, 2008 Session

AMY HATFIELD v. HAYNES PUBLICATIONS, INC., ET AL.

**Direct Appeal from the Circuit Court for Rutherford County
No. 50133 J. Mark Rogers, Judge**

**No. M2007-01390-WC-R3-WC - Mailed - July 31, 2008
Filed - September 2, 2008**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated section 50-6-225(e)(3) for a hearing and a report of findings of fact and conclusions of law. Employee was struck on the back by a heavy bundle of paper. Her injury was accepted as compensable. She was examined and treated by three authorized doctors, all of whom opined she had no permanent impairment. She sought additional medical treatment, which ultimately led to surgery to repair her sacro-iliac joints. The trial court found that the surgery was related to her work injury, and awarded 50% permanent partial disability ("PPD") to the body as a whole. Employer has appealed, contending that the medical evidence preponderates against the trial court's findings. We affirm the judgment.

Tenn. Code Ann. § 50-6-225(e) (Supp. 2007) Appeal as of Right; Judgment of the Circuit Court Affirmed

ALLEN W. WALLACE, SR. J., delivered the opinion of the court, in which CORNELIA A. CLARK, J., and DONALD P. HARRIS, SR. J., joined.

Elaine M. Youngblood, Nashville, Tennessee, for the appellants, Haynes Publications, Inc. and Alea North America Insurance Company.

Joseph K. Dughman and K. Cody Allison, Nashville, Tennessee, for the appellee, Amy Hatfield.

MEMORANDUM OPINION

Factual and Procedural Background

Amy Hatfield (“Employee”) was a “binder” for Haynes Publications (“Employer”). Her job consisted of opening bundles of paper and feeding them onto a machine. She also worked with waste paper created in the binding process. The bundles of paper were brought to Employee on skids, which were moved by a forklift truck. On June 10, 2003, she was injured when a forklift caused a stack of bundles to fall over. Employee was squatting, facing away from the forklift at the time. One of the bundles, which weighed thirty-five to forty pounds, struck her on the back and knocked her to the floor. Her supervisor, Alan Chatman, was nearby. Employee indicated to him that she thought she could continue working. Later in the day, she began to have back pain. She was switched to a lighter job for the remainder of her shift.

When she returned to work the next day, she was still in pain. She told Chatman that she intended to go to her doctor. At that time, he completed an accident report, and she was referred to a nearby clinic for medical treatment. She was given a cortisone shot and was prescribed physical therapy. She was also placed on light duty. However, Employer had no light duty work available. Her condition did not improve. She was referred to Dr. Robert Dimick, an orthopaedic surgeon. Dr. Dimick first saw her on July 2, 2003. She had previously had an MRI of her lower back, which was interpreted as normal. Dr. Dimick’s initial diagnosis was left pelvic pain. He recommended additional physical therapy. Employee returned to Dr. Dimick on July 29 and August 19, 2003. Dr. Dimick ordered additional tests: a bone scan, an MRI of her pelvis and a nerve conduction study of her legs. The results of these tests were normal. Employee’s symptoms did not improve. She therefore requested and received a panel of physicians for additional evaluation and treatment. She selected Dr. Jeffrey Hazlewood, a physiatrist.

Dr. Hazlewood first examined Employee on August 29, 2003. He reviewed the results of the tests which had been ordered by Dr. Dimick. Among other findings, he noted that Employee’s left leg was longer than her right leg. His initial diagnosis was “Mechanical [sacroiliac] and lumbar pain.” Dr. Hazlewood recommended additional physical therapy to treat this condition and also prescribed medication. Employee’s symptoms improved by about 50% over the next month. The discrepancy in leg lengths resolved. Thereafter she reached a plateau, and did not improve further. In October, a functional capacity evaluation was conducted at Dr. Hazlewood’s request. Dr. Hazlewood released her from his care with no impairment or restrictions at that time. He was unable to determine an objective basis for her continuing symptoms.

Employee requested an additional opinion, and was referred to Dr. Thomas O’Brien, an orthopaedic surgeon. He examined Employee on one occasion. Based upon the records of Drs. Dimick and Hazlewood, the results of the various diagnostic tests and his examination, Dr. O’Brien concluded that Employee had no permanent impairment and required no additional treatment.

Thereafter, Employee sought treatment outside of the workers’ compensation system. Through an internet search she became aware of Dr. Alan Lippitt, an orthopaedic surgeon in Atlanta who specialized in sacroiliac problems. Employee consulted Dr. Lippitt on December 8, 2003. His initial diagnosis was sacro-iliac joint dysfunction. He described this as a tearing of the ligament which holds the joint in place, thereby permitting the joint to “pop out of its

anatomical position.” This, in turn caused the piriformis muscle to go into spasm, placing pressure on the sciatic nerve. Dr. Lippitt testified that the diagnostic tests previously ordered for Employee - MRI’s, bone scan and standard EMG - were not useful for detecting this problem. He ordered a specialized EMG, referred to as an “H-wave” study. The test was performed, and confirmed Dr. Lippitt’s diagnosis. He recommended surgery to correct the conditions. Dr. Lippitt was unable to perform surgery because he had advanced arthritis. For that reason, the procedure was carried out by his partner, Dr. Amaral, on December 22, 2003. The procedure consisted of fusing the left side of the sacrum to the ilium by means of screws and a bone graft, and also releasing, i.e., cutting, the piriformis muscle. An identical procedure was performed on the right side by Dr. Amaral in October 2004. Dr. Lippitt opined that Employee retained a 20% permanent impairment to the body as a whole as a result of her injury and the surgical procedures. He testified that this impairment was not derived from the AMA Guides, as the Guides do not address this injury. In addition, he placed permanent restrictions upon Employee’s activities. These were to limit frequent lifting to ten to fifteen pounds, to limit standing, walking or sitting to one hour at a time, and to avoid stooping, crouching or bending.

Drs. Dimick, Hazlewood and O’Brien disagreed with Dr. Lippitt’s diagnosis, and considered the surgery to be unnecessary. All three testified that the ligaments which bind the sacrum to the ilium are among the strongest in the body. They testified that injuries to those ligaments are usually caused by high-speed motor vehicle impacts or falling from heights. None of them thought that the event described by Employee was likely to have caused such an injury. All three also testified that such an injury would have been revealed by the MRI, EMG and bone scans performed in the summer of 2003. Drs. Dimick and O’Brien did not believe that Employee had sustained an injury to her sacroiliac at all. Dr. Hazlewood opined that she had injured that joint, but that the injury had not made the joint unstable, as Dr. Lippitt contended. He also relied on the correction of the leg length discrepancy as evidence that the injury to the joint had healed. All three doctors also testified that Employee had never had any symptoms at all involving her right side.

Dr. Joseph Wieck reviewed medical records and depositions at the request of Employer. He did not examine Employee. Based upon his review of the information, he opined that Employee did not sustain a torn sacroiliac ligament as a result of her work injury. Similar to Drs. Dimick, Hazelwood and O’Brien, he opined that the testing done would have revealed such an injury. He also opined that the surgery performed by Dr. Amaral was unnecessary.

Employee was thirty-six years old on the day the trial took place. She was a high-school graduate. She had been diagnosed with dyslexia as a child, and has some difficulty with activities such as reading and typing. She had worked for Employer only about two-and-one-half months before her injury. Her primary work experience prior to that time was as a cashier and assistant manager at a McDonald’s restaurant. She testified that “prior to the surgeries, it hurt constantly. But now it’s when I sit long, stand long, try to walk, that’s when I have pain.” She agreed that she did not have any symptoms on her right side prior to the surgery by Dr. Amaral. She did not think that she could perform any of the jobs she had prior to her injury. She was able to do household chores and care for her children, with some assistance from her husband. She testified that she could not bend, stand, sit or walk for long periods of time. She

had applied for employment at McDonald's and also to be a dispatcher for a trucking company, but had not been hired for either job.

The trial court found that Employee had sustained a permanent injury as a result of the June 10, 2003 accident. It awarded 50% PPD. The court found Employee to be a credible witness, and specifically accredited the testimony of Dr. Lippitt over that of the other doctors. Employer has appealed, contending that the trial court erred in finding that Employee sustained a permanent injury as a result of the June 10 accident.

Standard of Review

The standard of review of issues of fact is de novo upon the record of the trial court accompanied by a presumption of correctness of the findings, unless the preponderance of evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (Supp. 2007). When credibility and weight to be given testimony are involved, considerable deference is given the trial court when the trial judge had the opportunity to observe the witness' demeanor and to hear in-court testimony. *Humphrey v. David Witherspoon, Inc.*, 734 S.W.2d 315, 315 (Tenn. 1987). A reviewing court, however, may draw its own conclusions about the weight and credibility to be given to expert testimony when all of the medical proof is by deposition. *Krick v. City of Lawrenceburg*, 945 S.W.2d 709, 712 (Tenn. 1997); *Landers v. Fireman's Fund Ins. Co.*, 775 S.W.2d 355, 356 (Tenn. 1989). A trial court's conclusions of law are reviewed de novo upon the record with no presumption of correctness. *Ridings v. Ralph M. Parsons Co.*, 914 S.W.2d 79, 80 (Tenn. 1996).

Analysis

Employer argues primarily that the trial court erred in accepting the testimony of Dr. Lippitt over the testimony of the other doctors. Employer's position is supported by the testimony of Drs. Dimick, Hazlewood, O'Brien and Wieck that the ligament which holds the sacroiliac joint together is extremely strong, and unlikely to be torn as a result of the accident described by Employee. Further, the negative tests ordered by Dr. Dimick, which were examined by all of the doctors who testified in the case, support the proposition that the ligament was not torn. In addition, Employee reported that her pain decreased after surgery, but she was functionally no better. Her restrictions, as assigned by Dr. Lippitt, did not change after the surgeries. The failure to improve function, Employer argues, suggests that the procedures did not correct an underlying problem. Also, the surgical procedure performed was not contained in a standard treatise which listed one thousand eight hundred orthopaedic procedures. Finally, Dr. Lippitt's decision that it was necessary to perform a fusion on the right side, even though Employee had no symptoms on that side, is troubling.

Employee's position is supported by Dr. Lippitt's testimony. He professed to be a specialist in problems of the sacroiliac joint. His diagnosis was supported by the "H-wave" EMG study performed at his request. Further, Dr. Hazlewood agreed with Dr. Lippitt that Employee had injured her sacroiliac, although he disagreed as to the extent of the injury. Employee's position is further supported by her report to Dr. Hazlewood, and testimony at trial, that she was able to feel the joint popping into and out of place prior to surgery.

In considering this evidence, we are mindful of both our obligation to resolve all reasonable doubts as to causation in favor of Employee, *Phillips v. A&H Constr. Co.*, 134 S.W.3d 145, 150 (Tenn. 2004), and of the presumption of correctness which attaches to the trial court's findings, *Skinner v. CNA Ins. Co.*, 824 S.W.2d 164, 166 (Tenn. 1992). Even taking those factors into account, the evidence in this case presents a close question. The trial court could have reasonably concluded that Employee had not sustained her burden of proof. However, the court found that she did sustain that burden, and upon our review, we cannot find that the evidence preponderates against that finding. The trial court specifically found Employee's testimony to be credible. In that regard, her statements concerning the onset and duration of her symptoms lend credence to her position. Dr. Hazlewood's testimony supports the conclusion that a sacro-iliac injury occurred. Dr. Lippitt's testimony invites some skepticism, but it does appear to have a scientific basis, and the procedures which he recommended provided Employee with some relief of her symptoms, although not of functional abilities. When expert testimony conflicts, the trial court has discretion to determine which to accept. *Kellerman v. Food Lion, Inc.*, 929 S.W.2d 333, 335 (Tenn. Workers' Comp. Panel 1996). The evidence in this case gives a credible basis for the trial court to accept the testimony of Dr. Lippitt. Therefore, viewing the record in its entirety, as we must, we are unable to conclude that the evidence preponderates against the conclusions reached by the trial court.

Conclusion

The judgment of the trial court is affirmed. Costs are taxed to the appellants, Haynes Publications, Inc. and Alea North America Insurance Co., and their sureties, for which execution may issue if necessary.

ALLEN W. WALLACE, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE
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APRIL 21, 2008 SESSION

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**Circuit Court for Rutherford County
No. 50133**

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JUDGMENT

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 appeals to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs are taxed to the appellants, Haynes Publications, Inc. and Alea North America Insurance Co., for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM